# THE LAW JOURNAL:

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## VOL. XXVI.—1891.

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[*The Notes of Cases and the Gazette List are arranged to be bound each in a separate volume.*]

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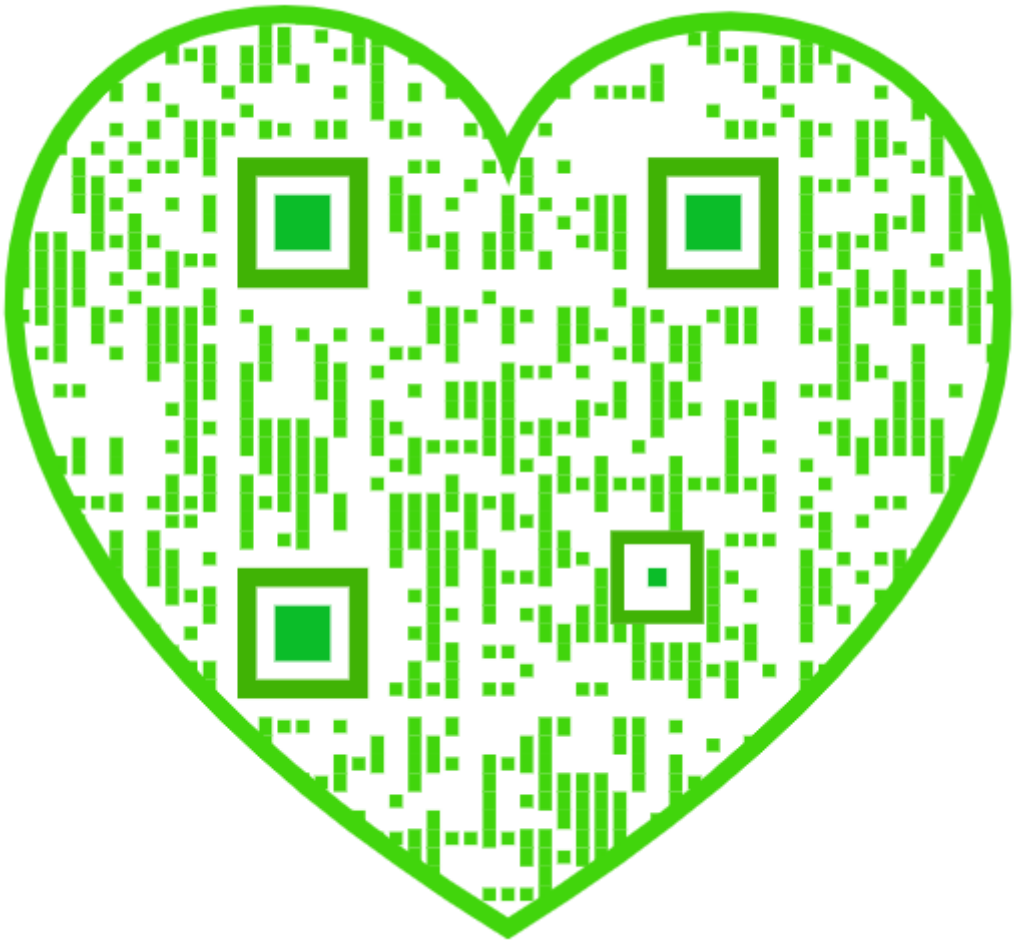

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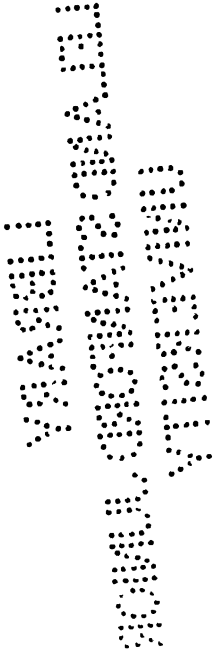

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*SATURDAY, JANUARY* 3, 1891.


## 'OBITER DICTA.'

MR. SCULLY and the Parnellites are said to be threatening a petition against the return of Sir J. P. Hennessy for Kilkenny, on the ground of undue influence on the part of the priests. It may be worth while to point out that the Corrupt and Illegal Practices Prevention Act, 1883, amended the Corrupt Practices Prevention Act, 1854, in an important particular bearing on this question. The Act of 1883, by section 2, enacts that 'every person directly or indirectly . . . . make use of or threaten to make use of any force, violence, or restraint, or inflict or threaten to inflict by himself or by any other person any *temporal or spiritual* injury . . . . or loss upon any person in order to induce or compel such person to vote or refrain from voting shall be guilty of undue influence.' Now the words 'temporal or spiritual' did not occur in the repealed section 5 of the Act of 1854, for which this section is substituted. They were inserted, no doubt, with a view to the celebrated judgment of the late Mr. Justice Keogh in the two Galway cases, 1 O'M. & H. 46, 303, and 2 O'M. & H. 46. In the first of these cases the charges of undue influence failed, the learned judge declining 'to hold a very hard-and-fast line as to language which might be used in excited times either by Catholic ecclesiastics or by civilians.' In the second, Captain Nolan was unseated on the ground of undue influence, Mr. Justice Keogh holding that 'there was a foregone conclusion on the part of the Archbishop, his suffragan bishop, and the greater part, if not the whole, of the parish priests to strain every point, to move every engine, to use every influence to gain their object, to overthrow all free will and liberty' in Galway; and Mr. Trench, who had the minority of the votes, ultimately obtained the seat by the judgment of the Court of Common Pleas on a case stated under the Parliamentary Elections Act, 1868, as may be seen from *Trench* v. *Nolan*, 6 Ir. Rep. C. L. 464.

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THE 159th section of the Municipal Corporations Act, 1882, re-enacting section 5 of the Municipal Corporations Act Amendment Act, 1861, which replaced section 102 of the Municipal Corporations Act, 1835, enacts that the clerk to *borough* justices 'shall not, by himself or his partner or otherwise, be directly or indirectly employed or interested in the prosecution of any offender committed for trial by those justices, or any of them,' and that if any person acts in contravention of this enactment 'he shall, for every offence, be liable to a fine not exceeding 100*l.*, recoverable by action.' Clerks to *county* justices, however, are still allowed to conduct, and very frequently do conduct, the prosecution of offenders committed for trial by such justices, to the very great discredit of the administration of the criminal law. Mr. Justice Wills having recently stigmatised the system as 'abominable,' it may be expected that a determined attempt to abolish it will be made by the Government sooner or later. But would it not be well for the Law Society to take the initiative? The present 'abominable' system, so long as it exists, is a very great disadvantage to solicitors as a body, who are undeservedly suffering from the imputation that *now and then committals, on the advice of the clerk to the committing justices, would not take place, and innocent persons would not be prosecuted if it were not for the desire of the clerk to get to himself the profit of prosecuting.* An abominable system indeed!

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A SERIOUS accident has recently happened at Redruth by reason of a platform giving way beneath a crowd which was apparently too great for its strength. It may be well to point out that the adoptive Public Health Acts Amendment Act, 1890, provides new and fairly efficient means for insuring the security of platforms. By section 37 of this Act, 'whenever large numbers of persons are likely to assemble on the occasion of any show, entertainment, public procession, open-air meeting, or other like occasion, every roof of a building, and every platform, balcony, or other structure or part thereof let or used, or intended to be let or

used, for the purpose of affording sitting or standing accommodation for a number of persons, shall be safely constructed or secured to the satisfaction of the surveyor of the urban authority;' and 'any person who allows to be used any platform not so safely constructed or secured' is liable to a penalty not exceeding 50*l*. This provision is a very reasonable one, and its enactment amongst the many sections of the third part of the Act of 1890 forms of itself a strong reason for the adoption by local authorities of that part of the Act at any rate. The common law liability, however, of the person allowing a platform to be used by the public is of a very extensive character, as was held by the Exchequer Chamber in *Francis* v. *Cockrell*, 39 Law J. Rep. Q. B. 291. In that case the plaintiff, who had been injured by the falling of a grand stand to which he had been admitted to view some races, successfully sued a person who had employed a competent contractor to erect the stand, and was not only himself quite free from negligence, but derived no profit from the admission money, which was appropriated to the race fund. Whether this common law liability would be extinguished upon the certificate of safety being obtained from the local surveyor under the new Act is doubtful; but we are inclined to think that it would not.

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SINCE the repeal of the Chancery Funds Consolidated Rules, 1874, a trustee who pays a fund into Court under the Trustee Relief Act (10 & 11 Vict. c. 96) is no longer required to set forth in his affidavit the names of the persons entitled to the fund; and, according to the decision of Mr. Justice Chitty in *In re Graham's Trusts* (Notes of Cases, p. 164), he is no longer bound to give notice to such persons under rule 5 of the Chancery Funds (Amended) Orders, 1874, that order having been rendered of no effect by such repeal. It seems that rule 41 of the Supreme Court Funds Rules, 1886, does not require trustees paying money into Court under the Trustee Relief Act to set out in the affidavit the names and addresses of the parties interested. Rule 34 of the Chancery Funds Consolidated Rules, 1874, was repealed by rule 2 of the Funds Rules of 1884. Rule 5 of the Chancery Funds (Amended) Orders, 1874, did require trustees so paying money into Court to give notice to the persons named in the affidavit which had to be made in pursuance of rule 34 of the Consolidated Rules, 1874, but since the making of rule 41 of the 1886 rules, rule 5 of the Amended Rules of 1874 becomes of no effect. Mr. Justice Chitty thought that the change must be taken to have been deliberately made because of the great difficulty in giving notice. Money is often paid into Court simply because the trustees do not know who are entitled to it, or what their addresses are. Moreover, as the matter must in every case come before the Court, the fund is sure not to be parted with until the right persons have been served.

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IN *In re The Agricultural Hotel Company* (*Lim.*) (Notes of Cases, p. 168), which came last week before Mr. Justice Kekewich, the important question again arose whether, under the Companies Act, 1867 and 1877, a company has power to reduce a portion only of its capital, or whether it must reduce the whole capital; in other words, whether a company can reduce its ordinary shares without at the same time reducing its preference shares, and *vice versâ*. On this question there is some conflict of authority. In the case of *In re The Union Plate Glass Company* (*Lim.*), 58 Law J. Rep. Chanc. 767; L. R. 42 Chanc. Div. 513, Lord Justice, then Mr. Justice, Kay decided that a company had no power to reduce some of its shares without reducing the whole, and accordingly he refused to sanction a proposed reduction. That decision was, however, contrary to the opinion which had been previously expressed by Mr. Justice North in *In re The Barrow Hæmatite Steel Company*, 58 Law J. Rep. Chanc. 148; L. R. 39 Chanc. Div. 582, and in *In re The Quebrada Railway, Land, and Copper Company* (*Lim.*), 58 Law J. Rep. Chanc. 332; L. R. 40 Chanc. Div. 363.

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SHORTLY after Mr. Justice Kay's decision in *In re The Union Plate Glass Company* (*Lim.*) (*ubi supra*) the point came before Mr. Justice North in *In re The Gatling Gun Company* (*Lim.*), 59 Law J. Rep. Chanc. 279; L. R. 43 Chanc. Div. 628. The learned judge preferred to follow his own decisions than to give way to the conclusion arrived at by Mr. Justice Kay. His lordship adhered to the view which he had laid down in *In re The Barrow Hæmatite Steel Company* (*Lim.*) (*ubi supra*). With regard to the observation of Mr. Justice Kay that he could not find the smallest intimation that the statutes gave a company power to reduce certain of its shares without reducing the others, Mr. Justice North remarked that he could not find the smallest intimation that the Acts prevented a company from reducing some of its shares without reducing the others. If a proper case was shown, his lordship said, for the Court giving its assent to what was proposed, he thought there was nothing in the Acts to deprive the company of the power of doing it.

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IN *In re The Agricultural Hotel Company* (*Lim.*) a petition was presented for the reduction of the capital of a company which had both ordinary and preference shares, but desired only to reduce the former. On the question whether this could be done without reducing the preference shares also, Mr. Justice Kekewich said that, if the decision of Mr. Justice Kay in *In re The Union Plate Glass Company* (*Lim.*) had stood alone, he would have followed it, but that, having regard to the several contrary decisions of Mr. Justice North, his lordship was bound to exercise his own judgment, which was in favour of the view of Mr. Justice North, and not of that of Mr. Justice Kay. It was to be hoped, Mr. Justice Kekewich added, that the point would soon be settled by the Court of Appeal. His lordship refrained from giving any opinion whether the Court could sanction the reduction of one part of one class of capital.

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THE recent case of *Barrow* v. *Isaacs* requires very careful consideration, the more especially as it has a most important bearing on the everyday practice of underletting where the lease requires the lessor's consent to the underlease. The action was for forfeiture of a lease on the ground of the breach of the covenant not to underlet without the consent of the lessor in writing, 'such consent not to be arbitrarily withheld.' The defendant had underlet to a tenant admitted to be

highly respectable and fully responsible, but without applying to the plaintiff for his consent, the omission so to apply arising simply from the defendant's solicitor's clerk having forgotten to refer to the lease, and consequently having overlooked the covenant and the necessity to apply for consent. Day, J., ruled that there was no answer to the action, and the Court of Appeal has in a considered judgment affirmed this ruling. We quite agree, if we may say so, with the learned judgment of Lord Justice Kay that the oversight of the defendant's solicitor's clerk was not one of those mistakes against which equity would relieve on general grounds. (See *per* Lord Eldon in *Hill* v. *Barclay*, 16 Ves. 402; 18 Ves. 56.) But was there a breach at all? Lord Esher, though perfectly certain that if the plaintiff had been asked at the time, it never would have crossed his mind to object to the subtenants, 'that his pretended objection, taken after he had found there had been this slip, was a mere afterthought, and that his consent ought not, according to the covenant itself, to have been withheld,' says, 'Nevertheless, as his consent was not asked, *it is obvious* that there was a breach of the covenant.' Is it so obvious? In *Hyde* v. *Warden*, 47 Law J. Rep. Exch. 121, Lord Justice Brett and Chief Justice Cockburn concur in effect in the proposition that where the subtenant is in fact respectable and responsible, the head landlord cannot eject as on a breach of a qualified covenant of this kind on the ground that no consent in writing has been obtained, and for this *Treloar* v. *Bigge*, 43 Law J. Rep. Exch. 95, is cited. In *Treloar* v. *Bigge* (which, however, was not a forfeiture case) consent had been asked for and refused, as indeed, for anything that appears to the contrary, it may have been in *Hyde* v. *Warden*. On the whole, we think that *Hyde* v. *Warden* is distinguishable, and if not distinguishable, is wrong on this point, and that the judgment in *Barrow* v. *Isaacs* is quite correct, and will be treated as a binding authority for the future. Whether the severity of the excluding subsection 6 of section 14 of the Conveyancing Act requires mitigating may perhaps be a question for Parliament, and we may mention that last session a bill was introduced by Mr. Lloyd Morgan to provide, amongst other things, that the exclusion should be done away with. Should the bill be reintroduced, *Barrow* v. *Isaacs* will give it not a little motive power, for the lease was a beneficial one, and the hardship on the tenant, who happens to have been recently the Lord Mayor of London, a very great one.

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IF a suggestion had been made a few years ago that the Incorporated Law Society should give a subscription 'entertainment' in place of holding its annual London meeting, the idea would certainly have been scouted and its author regarded as forgetful of the dignity of his profession. But *tempora mutantur*, &c., applies no less to the chief Law Society than to other mundane institutions; and probably nothing more than a feeling of mild surprise, combined with a certain amount of curiosity as to the nature of the 'entertainment,' was caused by the somewhat vaguely worded circular of December 17 addressed to the members. A second circular, issued on Christmas Eve, gave more particulars, and it is now apparently settled that the 'entertainment' (some of the provincial members had evidently anticipated a 'variety entertainment'!) shall be a reception, a *conversazione*, and a dance at the society's hall in Chancery Lane in April next. If the guarantee fund be well supported, the 'function' will, no doubt, prove a great success and conduce to the cultivation of friendly intercourse between members of a profession whose future position depends very much on their hearty unanimity in resisting attacks from without and healing dissensions from within. This new departure is at least noteworthy as an example of the growing influence of 'lovely woman;' for who can doubt that the 'happy thought' emanated from the ladies?

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WITH reference to our remarks last week upon the case of *Mumford* v. *Collier*, we are informed upon good authority that *Ex parte Kennedy, in re Willis*, is not to go to the House of Lords.

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WE understand that at the Hardwicke Debating Society a resolution in favour of sympathy with, and support of, General Booth's scheme was carried just before the Christmas vacation by a small majority after two nights' debate. At the first debate General Booth himself attended and spoke, and there was a very large attendance indeed, the Inner Temple Lecture Hall being crowded. At the second debate Mr. Loch, the secretary of the Charity Organisation Society, had been expected to speak, but illness unfortunately prevented him from attending.

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## 'LAW JOURNAL REPORTS' FOR JANUARY.

To the January number of the LAW JOURNAL REPORTS are prefixed seventy-six new Rules of the Supreme Court, constituting the General Rules under the Bankruptcy Acts, 1883 and 1890, dated November 26, 1890, to which copious forms are attached; the Companies (Winding-up) Rules, 1890, 180 in number, and an appendix and index of forms; and two Orders of the Lord Chancellor, dated November 29, 1890, under section 1, subsection 5, and section 2 of the same Act, by the first of which County Courts 'excluded from having jurisdiction in bankruptcy' 'shall be excluded from having jurisdiction under the Companies (Winding-up) Act, 1890,' and enacting that the district of any such County Court shall for the purpose of the Winding-up Act be attached to the Court to which that district is attached for the purpose of bankruptcy jurisdiction.

In the Chancery Division (pp. 1–48), in which eighteen cases will be found reported, *Taylor* v. *Russell*, in which Mr. Justice Kay was reversed, decides that in a contest between mortgagees for priority, a trust or equity, in order to affect the conscience of a mortgagee who has got in the legal estate, must be a trust or equity in favour of the mortgagee against whom the legal estate is set up. In *In re Macgowan, Macgowan* v. *Murray* the question was what constitutes an 'arrangement' for the sale of land which, within rule 11 under the Solicitors' Remuneration Act, 1881, entitles a solicitor to the scale fee for negotiating. Mr. Justice Kay held that a solicitor who had brought about a conditional contract of sale of property forming the object of an administration action, such sale being subsequently sanctioned by the Court, was not entitled to the fee for 'negotiating.' This decision has, however, since been reversed by the Court of Appeal (see Notes of Cases, p. 161). According to *In re Kershaw* executors are not bound, in distributing their testator's estate,

to retain assets in their hands to meet a liability of which they have notice unless the liability amounts to a debt. *Ex parte The Scottish Economic Life Assurance Society* enunciates the principle by which the return of the deposit required by the Life Assurance Companies Act, 1870, is regulated in the case of the amalgamation of two companies. The House of Lords, in *Perry, Davis & Son* v. *Harbord*, held that when a combination of words has been used as a trade-mark before the passing of the Trade-mark Regulation Act, 1875, a part of such combination cannot be registered as a trade-mark under section 10 of the Act. *In re Winslow, Frere* v. *Winslow*, was a case in which a beneficiary under a will, who had received more than his share, was not ordered to refund. *Kelly* v. *Heathman* decided that the amendment of a specification, which did not make the specification as amended claim an invention substantially larger than or different from the invention claimed by the original specification, did not invalidate the patent. *In re Walker* illustrates what constitutes such a possession of money by a defaulting trustee as will justify attachment. In *Ashworth* v. *Roberts* the duties of a licensee of a patent are discussed. *In re Alsbury* is an application of the doctrine laid down by the House of Lords in *Bouch* v. *Sproule*, 56 Law J. Rep. Chanc. 1037, with respect to income and capital as between a tenant-for-life and a remainderman. The House of Lords in *Storer & Co.* v. *Johnson & Weatherall* held that the Court has powers under its general jurisdiction, and not under the Solicitors Act, 1843, to refer part of an agent's bill to taxation. *In re May* was a case of the operation of the Married Women's Property Act, 1882, on the administration of a man's estate by his widow. *In re Cane* settled a point of construction of a will and the practice under a special case stated under Order XXXIV. What is a 'public company' for the purposes of an investment clause was defined in *Rickett* v. *Sharp: In re Sharp. In re The Earl of Lucan* decides that, though a voluntary assignment of a reversionary fund effectually passes the equitable interest, a charge on such a fund, unaccompanied by an assignment, will not be enforced against the fund. In *Mellersh* v. *Brown* it was held that in a mortgage of reversionary personal estate, in which there was no covenant for payment of interest after the date fixed for repayment of the principal, interest must be paid by way of damages in a redemption or foreclosure action. In *Jenkins* v. *Jackson* the practice of the taxing-master in apportioning costs when each party is partially successful is settled in accordance with *Knight* v. *Pursell*, 49 Law J. Rep. Chanc. 120. *In re Hirst's Mortgage* decides that a petition by a mortgagee under 25 & 26 Vict. c. 108, for leave to sell the surface of the mortgaged property with a reservation of the minerals, must be served on the mortgagor.

In the Queen's Bench Division (pp. 1-32), in which nine cases are reported, *Budgett & Co.* v. *Binnington & Co.* shows the effect of a strike with respect to liabilities arising under a charterparty and bill of lading. In *Bird* v. *Davey*, the oft-arising question of the attestation of a bill of sale was again the subject of decision by the Court of Appeal. In *Wilding* v. *Bean* it was held that there is no jurisdiction to order substituted service of a writ within the jurisdiction when the defendant is out of the jurisdiction, at any rate when he is not shown to have left the jurisdiction to evade service. The construction of a bill of sale was again raised in *Haslewood* v. *The Consolidated Company*, and the differences of judicial opinion discussed. *The Overseers of Putney* v. *The London and South-Western Railway Company* was a case of the liability of the promoters of a railway company in respect to the deficiency of poor rate occasioned by the company's taking land outside their limits of deviation. In *The Mayor, &c., of Manchester* v. *Williams* it was held that an action for libel could not be maintained by a corporation in the absence of an allegation that the corporation's property had been injured. *Mackay* v. *M'Guire* was a case of the retention of a bankrupt's name on the list of parliamentary and municipal voters, notwithstanding that his property vested in his trustee, inasmuch as the bankrupt had been in continuous occupation and paid rent to his landlord. The validity of entries of objection in respect of the occupation franchise was adjudicated in *Sutton* v. *Wade* and *Gale* v. *Overend*.

In the Magistrates' Cases (pp. 1-8), of which four appear in this number, in *Showers and others* (*appellants*) and *The Assessment Committee of the Chelmsford Union* (*respondents*), the ratability of premises occupied by the chief constable and men of the Essex constabulary was decided in favour of the poor-law authority. In *Payne* v. *Thomas* a conviction was affirmed for selling liquor otherwise than by standard measure. *Edwards* v. *Roberts* was a case of non-compliance with section 2 of the Summary Jurisdiction Act, 1857. In *Foster* (*appellant*) v. *The North Hendrie Lead Mining Company* (*respondents*) it was held that a mining shaft in which the process of sinking to a depth exceeding fifty yards is in progress, and which has not been exempted by the inspector, is a working shaft within the Metalliferous Mines Regulation Act, 1872, s. 23, subs. 10, and must be provided with guides, although it has not been worked for the ordinary purposes of a mine in operation.

## THE AMERICAN COPYRIGHT BILL.

A PRINT of the American Copyright Bill, to which we have more than once adverted (see *ante*, pp. 728, 743), can now be had at Messrs. Sampson Low's. After careful perusal of the bill we are not surprised at the consternation it is causing in the English printing trade, as evidenced by the letters of Mr. Arnold Forster and Mr. Clowes to the *Times*, and of the chairman of the Printing and Allied Trades' Association to the *Daily Graphic*. Shortly put, the bill aims at nothing less than a transfer of a great portion of English printing business to the United States, in requiring that American mechanical production shall be a condition precedent to American copyright. Of the three chief parties to the circulation for sale of literary matter—the author, the publisher, and the printer—the first two have comparatively little concern as to the place where the printer plays his part, and both of them will be likely enough to prefer to home production that foreign production which will ensure the greatest amount of sale. Whether a policy of stand-off and acceptance of the American bill as it stands will be to the real interest of authors and publishers is another question. Mr. Tuer, who is well known as a publisher, but is, we think, also an author, has argued in the *Times* that it would be for the interest of neither, and we are inclined to agree with him; but the question is too wide to discuss here and now. Let us at present confine our-

selves to ascertaining the meaning of the American bill. The crucial clause of it, omitting superfluous matter, is as follows:—

No person shall be entitled to a copyright unless he shall on or before the day of publication in this or any foreign country deliver . . . within the United States . . . a printed copy of the title of the book . . . for which he desires a copyright, nor unless he shall also, not later than the day of publication thereof in this or any foreign country, deliver . . . within the United States two copies of such copyright book. . . . Provided that the two copies of the same required to be delivered as above shall be printed from type set within the limits of the United States or from plates made therefrom. During the existence of such copyright, the importation into the United States of any book so copyrighted, or any edition or editions thereof, or any plates of the same not made from type set within the limits of the United States shall be, and it is hereby, prohibited except in the cases specified in section 2,505 of the Revised Statutes of the United States, and except in the cases of persons purchasing for use and not for sale who import not more than two copies of such book at any one time. . . . Provided, nevertheless, that in the case of books in foreign languages, of which only translations in English are copyrighted, the prohibition of importation shall apply only to the translations of the same, and the importation of the books in the original language shall be permitted.

Section 2,505 of the Revised Statutes exempts from duty books more than twenty years old, books for the use of philosophical societies or schools, professional books of foreigners, &c. The exceptions from the prohibition to import will, therefore, generally include books for use and not for sale. Where these exceptions do not apply, no English prints of books copyrighted in America will be allowed to be imported into America at all. In order to obtain the American copyright, the printing in America, before publication in England, of two copies will be required. This will not of itself necessitate the printing in America only, or even the printing in America of more than the two copies, but, of course, the practical effect in a considerable number of cases will be that all the copies of a book will be printed in America only and sent over to this country to be bound and sold. A point of greater importance is that the American copyright must be taken out at once or it will be lost. The unknown author therefore, for whose book the demand in America will be little or none, will, in many cases, lose the American copyright by not venturing upon the double expense of printing in the two countries. The 'advance' sheets system, in the event of no copyright being taken out in America, may go on as before.

The bill contains thirteen clauses. It applies to works of art and dramatic and musical compositions as well as books, but the crucial clause, which we have extracted above, affects, in its essential part, books only. The period of copyright will be twenty-eight years, with power to extend for fourteen years more. As to 'reciprocity,' it is proposed that—

This Act shall only apply to a citizen of a foreign State or nation when such foreign State or nation permits to citizens of the United States of America the benefit of copyright on substantially the same basis as its own citizens; or when such foreign State or nation permits to citizens of the United States of America copyright privileges substantially similar to those provided for in this Act; or when such foreign State or nation is a party to an international agreement which provides for reciprocities in the grant of copyright, by the terms of which agreement the United States of America may at pleasure become a party to such agreement.

## STOCKBROKERS' PLEDGES OF OTHER PEOPLES' SECURITIES.

IN a former article on this subject, soon after Mr. Justice Kekewich had given judgment in the cases of *Simmons* v. *The London Joint Stock Bank* and *Little* v. *The London Joint Stock Bank*, dissatisfaction was expressed with the decision, principally on the ground that the learned judge had been too much influenced by the decision of the House of Lords in *The Earl of Sheffield* v. *The London Joint Stock Bank*, 57 Law J. Rep. Chanc. 986; L. R. 13 App. Cas. 333. As we then pointed out, the Lords there only drew a certain inference from certain facts, which were in some respects different from those in the cases before Mr. Justice Kekewich, where the pledges had been made by stockbrokers and not a money-dealer, as in *Lord Sheffield's Case*. The Court of Appeal has been to quite as great an extent overawed by the decision of the supreme tribunal. Lord Justice Bowen, in delivering the judgment of the Court, after stating the facts of *Simmons's Case*, says that *Lord Sheffield's Case* 'seems to show that, under such circumstances, the bank acquired no title to the bonds as against the true owner.' This is assuming that the facts were the same as in *Lord Sheffield's Case*. As a matter of fact, there is this great distinction between the two cases—that in the House of Lords' case the person who deposited the bonds payable to bearer belonging to his customers *en bloc*, with other customers' bonds, was a money dealer, whereas in *Simmons's and Little's Cases* the deposit of customers' bonds to bearer *en bloc* was by a stockbroker. The Court of Appeal has done its best to decide a neat point of law. Taking the circumstances of *Simmons's Case* it held, and we think rightly, that the securities to bearer belonged to the broker's client. Then it assumed, in order 'to avoid a miscarriage of justice,' what would, perhaps, have been difficult to prove, that the securities were 'completely negotiable' instruments. Then it proceeded to draw the inference of fact necessary in order to arrive at a decision against the bank. 'The bank,' says the Court of Appeal, 'were aware that the bonds *might very probably* belong, not to' the broker 'at all, but to one or more of his clients. The bank took it for granted that, if the bonds did not in fact belong to' the broker 'he had been authorised by the real owner to raise money on the bonds, within the limit of their market value. This assumption and belief were based, not on inquiry or investigation, but on the bank's faith in the honesty of' the broker, 'and was, in fact, erroneous. But the bank did not believe that' the broker 'had been authorised by the real owner to deposit the bonds *en bloc*, together with other securities which belonged to other persons, and to raise a lump sum upon the whole. The bank were, indeed, honestly of opinion that' the broker 'might lawfully do so,' but 'they based their view upon a mistaken assumption that such deposit *en bloc*, without authority from the client, was recognised by the law.' Explaining this, the Court says that the bank 'knew that the bonds in question might probably belong to a third person; they did not know and did not believe that the owner had authorised their being deposited and pledged *en bloc*, but they honestly believed that such an authority

from the owner was not necessary in law, if he had sanctioned . . . the pledging of the documents for any sum of money whatever.' Assuming these to be the facts, the Court of Appeal held that the bank never became *bonâ fide* holders for value without notice, but had chosen to shut their eyes to a necessary part of the inquiry under a misconception of the law. This is straining the doctrine of notice beyond anything which has so far been done, except, perhaps, in *The Earl of Sheffield's Case*. The ruling applies to all negotiable instruments, including Bank of England notes. If a case as to money dealers is a binding authority as to stockbrokers, a case as to stockbrokers is binding in a case of anyone pledging a banknote or other strictly negotiable security when the pledgee *knows that the security may belong to a third person*. A mortgagee was long ago held to be a purchaser for value. Are all purchasers for value to be affected with notice when they purchase a negotiable instrument, or take banknotes in exchange for cash, 'knowing that they may belong to a third person?' In all cases they know of that possibility. The decision upsets all one's notions of the effect of a transfer of a negotiable instrument; it is opposed to a decision, exactly in point, of the Exchequer Chamber; and, if it is not reversed on appeal, it will be because the House of Lords considers itself bound by *Lord Sheffield's Case* to draw an inference of fact much stronger than that drawn by the Court of Appeal in *Simmons's* and *Little's Cases*.

# Reviews.

## THE ARBITRATION ACT, 1889.

*The Law of Arbitration.* Being the Arbitration Act, 1889, with Notes of Statutes, Rules of Court, Forms, and Cases, and an Appendix. By W. OUTRAM CREWE, Solicitor, &c., with Honours, Hilary Term, 1866. London: Wm. Clowes & Sons. 1890.

THIS handy manual supplies the reader in a convenient form with the Arbitration Act, 1889 (which repealed the previously existing general enactments relating to arbitration), the rules, forms, &c. Those who desire to inform their minds on the general history of the law of arbitration may be referred to the preface, where they will find it stated that that very ancient mode of settling disputes probably existed before the Twelve Tables of Rome, 450 B.C.; that it was recommended by Plato in his work on 'The Laws,' which was based on the actual legal system of the Athenians and Spartans; and that it is treated of in the 'Digest' of Justinian. It is more, however, to the purpose for the modern reader to be told that now, by section 1 of the Arbitration Act, 1889, a submission to arbitration, unless a contrary intention be expressed in it, is irrevocable, except by the leave of a judge, and that it is to have the same effect in all respects as if it had been made an order of Court; and that an award on a submission may, by leave of the Court or a judge, be enforced in the same manner as a judgment or order to the same effect. The Act of 1889, s. 24, provides that the Act shall apply to every arbitration under any Act passed before and after its commencement, and accordingly at p. 79 we have a long list of the enactments containing arbitration clauses. The work is carefully done, and will prove serviceable to those who are engaged in arbitration cases.

# Correspondence.

## UNITED LAW SOCIETY.—LEGAL CORRESPONDENCE DEPARTMENT.

SIR,—As it may be expected that law students will shortly return to their reading, I beg you will allow me to call their attention, through the medium of your journal, to the above-named auxiliary to legal education.

The object of the department is the discussion of legal points, obtained by an organised system of correspondence. The department is divided into sections. A like question is issued to each section on a large sheet of paper, on which is a list of members in the section. The first member on the list, on receiving the form from the secretary, writes his opinion upon it and forwards it to the next member, who acts similarly, and the form is kept moving till it reaches the last member on the list, who returns it to the secretary. He sends it round a second time, and thus every member has the opportunity of seeing the opinions respectively of the entire section, of commenting upon them, and of amending or defending his own opinion. It is not obligatory on members to write opinions, though it is very desirable that all should do so.

The advantages of the department are obvious. First, the attention of members is called to questions of doubt or interest. Secondly, members acquire the useful habit of expressing themselves clearly and forcibly on legal points. This habit proves invaluable in the answering of examination questions, as the finals of this and previous years disclose, many of the members having obtained honours. Thirdly, which is perhaps the chief advantage, law students in all parts of the country and in London are brought into friendly intercourse and become cognisant of one another's reasoning powers and acquaintance with the law.

Members are entitled to compete for the societies in union prizes, value five, three, and two guineas, offered annually by the United Law Society.

I shall be happy to give any further information to law students who may apply to me.

I hope to have a very large influx of new members to help me in maintaining the prestige of the department, which has been working efficiently for upwards of fifteen years. HENRY ENGLAND BARREN.

23 Bouverie Street, E.C.: Dec. 31.

## MAGISTRATES' CLERKS AS PROSECUTING SOLICITORS.

SIR,—In your issue of December 20, 1890, you have a few comments upon the remarks recently made by Mr. Justice Wills upon this subject. What, I ask, would the learned judge have said had he known that many country justices' clerks act as private solicitors in respect of business coming before their own benches of magistrates? The writer is aware of a case at present in which the justices' clerk for the division is acting in respect of an application to divert a public highway,

and as solicitor for the applicant prepared the notices to come before justices of his own bench, and the same clerk to justices has for years been preparing nearly all the notices to come before his bench as solicitor for parties applying to transfer public-house licenses. Is it not holding a brief for the brewers as against the general public? W.

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SIR,—The remarks of Mr. Justice Wills, at Liverpool, are hardly fair, as the hypothetical case he put was not parallel with the case of a clerk to justices.

It makes no difference whatever to a clerk whether a prisoner is convicted or not; and, in most cases, the question for committal is not one for the clerk, but for the bench.

It may not be generally known that a circular was some time ago issued from the Home Office to clerks to justices intimating to the effect that a previous conviction for felony was an antecedent under the Summary Jurisdiction Act, 1879, which rendered it obligatory upon the justices to send a case for trial.

Let the public and the judges by all means quarrel with the law, and the Home Office, and the discretion exercised by justices in petty sessions as much as they like, but do not let them blame and attack the wrong body of men.

Again; why, in the name of common fairness, should justices' clerks be prohibited and disqualified from being prosecuting solicitors and exercising the ordinary rights of their profession?

I would suggest that justices in petty sessions—the Court being composed of not less than three—should have much greater powers conferred on them, either on a plea of guilty or otherwise, with regard to many cases now sent for trial at the assizes or sessions. It seems ridiculous to suppose that a burglar, caught red-handed and pleading guilty, could not have speedy justice meted out to him by three of Her Majesty's justices. Prisoners would not have to lie languishing in gaol awaiting trial, and a vast expense would be saved to the community. D.

December 20.

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## MONEY FOUND UPON CONVICTED PRISONERS.

SIR,—In answer to 'Inquirer,' probably section 8 of 5 Geo. IV. c. 83, may assist him as to money found on a vagrant. I cannot understand how a rogue and vagabond would be committed for trial, nor how he would receive *nine* months, as the limit of punishment for a rogue and vagabond is three months. Does not 'Inquirer' mean the man was committed as an incorrigible rogue? C. FORTESCUE.

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## SKY SIGNS IN LONDON.

### SUMMARY OF THE COUNTY COUNCIL'S BILL.

THE following is a summary of the principal provisions of the bill which the County Council will ask Parliament to sanction for the prohibition of future and regulation of existing sky signs in the county of London.

The preamble recites that it is expedient, with a view to the safety of the public and the prevention of unsightly erections in London, to provide for the prohibition of certain erections above buildings or streets for purposes of advertisement, and for the regulation of such erections now existing.

*Definition of 'Sky Sign.'*—Clause 2 defines a 'sky sign' as meaning any word, letter, device, or representation supported on or attached to any pole, framework, or other support wholly or in part over any house or structure. It further includes any balloon or similar device employed wholly or in part for the purposes of advertisements, but it does not include any flagstaff or weather-cock unless used for advertising purposes.

*Inspecting Officer.*—Clause 3 enacts that for the purposes of this Act the district surveyor of each district in the metropolis shall inspect sky signs in his district and report from time to time to the council, as to any sky signs existing contrary to the provisions of the Act.

*Prohibition of future Sky Signs.*—Clause 4 enacts that from and after the passing of this Act it shall be unlawful to erect or place any sky sign wholly or in part above or over any house, building, structure, street, or public way.

*Regulation of Existing Sky Signs.*—Clause 5 provides that it shall be unlawful from and after the passing of this Act to retain any sky sign which shall have been erected, except in pursuance of, and in accordance with, the terms of a license to be granted by the council.

*Certificates as to Existing Sky Signs.*—Clause 6 enacts that any person desiring to retain any existing sky sign may at any time, within three months from the passing of the Act, make an application in writing to the surveyor for the district for the inspection of such sky sign, and, upon payment of two guineas to such surveyor (which shall be his fee for the inspection), he shall either grant his certificate for its continuance, or, in case of refusal, shall state the grounds of such refusal.

*Application to Council for License.*—Clause 7 provides that any person who shall have obtained a certificate of continuance of any sky sign from the surveyor shall, within fourteen days of its issue, forward the same to the council, with an application for a license to retain such sky sign, and, upon payment of a fee of 5*s.* for registration, the council shall grant a license for a period of two years.

*Renewal of License — Ultimate Extinction.* — Clause 8 enacts that every license may be renewed from the expiration of the first period of two years, for a further period of two years, and on the expiration of that period for one other period of two years, making, with the original term of the license, six years in all, but not longer. This clause further provides that upon every renewal the same payments shall be made, and the same procedure gone through as enacted in clauses 6 and 7.

*Alteration of Sky Signs to meet Surveyor's Requirements.*—Clause 9 empowers any owner of a sky sign to whom the surveyor has refused his certificate to make such modifications as shall meet the objections stated in the form of refusal, and may thereupon, upon payment of a further sum of one guinea to the surveyor, request him to reinspect the sky sign.

*Refusal Certificates to be sent to the Council.*—Clause 10 provides that, where a surveyor refuses to grant a certificate, it shall be his duty to forward forthwith a copy of his refusal to the council.

*Appeal against Refusal of Certificate.*—Clause 11 gives to the owner of an existing sky sign the right of appeal to the council against the refusal of the district surveyor to grant a certificate, provided that the appeal be made within seven days of the refusal.

*Forfeiture of License.*—Clause 12 enacts that licenses shall be forfeited and become void (1) if any addition, unauthorised, be made to the sky sign; (2) if any change be made in the sign or part thereof; (3) if any part of the sign fall, through accident, decay, or any other cause; (4) if the building over which the sign is placed is altered

so as to involve a disturbance of the sign; and (5) if the building become unoccupied or destroyed.

*Penalties.*—Clause 13 imposes on any person who erects or retains a sky sign contrary to this Act, a penalty of 5*l.*, and for every day on which the offence is continued after conviction a further penalty of 2*l.*

*Removal of Sky Signs.*—Clause 14 provides that the County Council and the Corporation of London shall have power to remove sky signs erected or retained contrary to the provisions of this Act, as if they were dangerous structures within the meaning of the Building Act, 1855.

## LAW AND PROFESSIONAL NOTES.

By T. F. UTTLEY, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### A COMPANIES ACT FOR 1891.

DURING 1890 three statutes affecting companies were passed, and one of them only comes into operation with this year, and yet our wise legislators have already drafted a new measure to be called the 'Companies Act, 1891.' The following brief summary of the bill may give some idea of its intention. It has to be construed, so far as is consistent with the tenor thereof, as one with the Companies Acts, 1862 to 1886, though this should clearly be the Companies Acts, 1862 to 1890. It is proposed that the bill shall become an Act on September 1, 1891. The real object and *summum bonum* of the bill, however, is to establish the system of provisional registration for companies, to be followed by complete registration. Before complete registration is permitted it will be necessary to show that not less than three-fourths of the shares of the company have been allotted; that not less than one-fifth of every such share, subject to payment in cash, has been so paid in cash; and, finally, that an extraordinary resolution to apply for a certificate of complete registration has been passed by the shareholders, or that the capital has been raised by private subscription without the issue of a prospectus to the public. On these conditions being fulfilled, the registrar will grant a certificate equivalent to the certificate of incorporation now issued under the Companies Act, 1862. It is further proposed to limit the amount of expenditure to be incurred between the provisional and complete registration. The waiver clause of 1867 is apparently to be abolished, as, according to the present bill, it is desired to enact that a waiver is to be absolutely void in point of law, and the consequent necessity will follow of requiring disclosure of every contract, payment, commissions, and the like, and any omission to do so would be fraudulent. Some useful provisions as to the system of keeping company accounts and the duties of directors in relation thereto conclude the principal features of this bill, of which, doubtless, a great deal will be heard in the professional organs of the accountants. Already a financial paper has discussed and virtually condemned it, and, perhaps, if it is likely to extend the present rage for 'officialism,' it would be as well if other professional papers did likewise. There should surely be a *via media* between the present system of conducting company matters and the infliction of officialism. Cannot some one suggest it?

### VALUERS' FEES.

All the foremost towns of the United Kingdom in these latter years of the nineteenth century are bestirring themselves to improve their domains, and, naturally, in doing so have often to trench on private property, for which compensation has to be paid. The owner of the property calls in his valuer, who, as in manner bound, too often runs up the value of the property higher than need be; but, on the other hand, the municipal authorities safeguard themselves by electing a valuer on their side, who, of course, does not appreciate the property so expensively, and then between these two stools and the likelihood of a fall it is as well that an arbitrator can be appointed. For a private owner to value his property at 480*l.* and the arbitrator to award 180*l.* shows a considerable difference and points a moral—to make your claim as reasonable as possible. A nice question arises on these arbitration cases: Is the valuer to obtain his percentage on the amount at which he valued the property, or on the amount awarded by the arbitrator? Looked at from a practical point of view, most persons would say on the latter amount; and that is also the legal view, as demonstrated recently by a case in which a valuer sought to obtain the higher, but only obtained the lower percentage.

### 'THE COMMERCIAL HANDBOOK.'

Everybody knows Wilson's 'Useful Handy Books,' published by Effingham Wilson, of the Royal Exchange. The latest addition to this series is entitled 'The Commercial Handbook and Office Assistant,' by Mr. Michael Crowley, Fellow of the Society of Accountants and Auditors, and a chartered accountant. It is produced in a handy form in excellent clear, bold type, and divided into four parts, comprising respectively Commercial Definitions and Explanations, Business Forms, Miscellaneous Commercial Information, and Tables of Reference. The author gives a definition of partnership: 'A partnership is an association of two or more persons for the purpose of carrying on business on the mutual understanding of participating in the profits and losses,' and, in a footnote, states that this merely conveys the mercantile idea of partnership. The curious reader is referred to legal text-books for legal definitions of it. In 'Lindley on Partnership' he will find numerous definitions by different lawyers, and in a variety of languages, though, from the difficulty of giving a legal definition positively and negatively correct, the learned author, Sir N. Lindley himself, recoils. Some capital remarks are made on books as evidence. The original entries in shop books with the oath of the bookkeeper are competent evidence, it is stated, to prove the items charged. Written orders for goods and railway and other receipts proving delivery should always be preserved. Books not appearing to contain the first entries or charges made at the time the transactions took place are excluded. Books with erasure or interlineations are also liable to be excluded. When the day-book contains marks which show that the items have been transferred to a ledger, the ledger must be produced. There are many other practical items likely to be of use to lawyers in this little volume, such as notes on payments of accounts, when demandable; method of opening sets of books, 'for sole owner,' for a new partnership, for a hitherto existing partnership; best method of writing off bad debts; and the best method of keeping partnership accounts, (1) where there are no profits or losses, (2) where there is a profit, (3) where there is a loss to be made good. Such a capital, well-written little work as this should be at every professional and commercial man's elbow, and each of his staff should have his own private copy.

### DEEDS OF ARRANGEMENT.

The utility of deeds of arrangement seems to be becoming more and more recognised, but as every year new aspirants enter the different professions all cannot be expected to have the Act of 1887 at their fingers' ends. They may, however, obtain sufficient knowledge by perusing an epitome of the Act recently issued by Mr. John Lanham, of the firm of Messrs. Kerr & Lanham, in such a form that it can be carried in any pocket. As

the editor states in his introduction, the design of the pages is that of placing concisely before the reader the Deeds of Arrangement Act, 1887, with the Rules and Orders pertaining to the same, in a consolidated and useful form. The Inland Revenue authorities have adjudged that the *ad valorem* stamp duty payable upon the sworn value of the property passing under the deed attaches upon the net amount only, and not on the total estimated value. The registrar has also decided that the fee for filing is chargeable upon the lower amount. Another work of a similar character should prove a handy one, containing as it does a most valuable collection of precedents. Its title sufficiently indicates its contents: 'Arrangements between Debtors and Creditors, being a Collection of Precedents, by Mr. Frank Dodd, Barrister-at-Law, with an Introduction by Mr. Henry Bolland, F.S.A.' The popularity of the book is shown by its having run into a second edition. It is wise to suggest that, in circumstances of any complication, the deeds or terms of arrangement should be settled by an experienced legal man.

### CATTLE—WEIGHTS AND MEASURES.

Agricultural practitioners would do well to draw the attention of their clients to the new pleuro-pneumonia order now in operation. By the new order boundary lines are to be formed round any district in which there has been an outbreak, the affected cattle and all others in contact with them being slaughtered, and this is compulsory. No movements of cattle from farm to farm within that district or out of it, except by special license, will be allowed, the Board of Agriculture in this matter being guided by their travelling inspectors. In the case of fat cattle intended to be slaughtered within three days, the local authority is allowed to grant such permission; but in all other cases the travelling inspector or other duly appointed person must grant it. Our contemporary the *Estates Gazette* also draws notice to another matter. Farmers would do well to note that an Act of Parliament comes into force on January 1, amending the Weights and Measures Act, under which they will not only have to get all weights and measures stamped, but all weighing instruments must also be examined and stamped before they can be legally used. Any person having in his possession any unstamped weight, measure, or weighing instrument for purposes of trade will be liable to penalties. There is, therefore, no farmer in the land to whom this Act will not apply, for there must be some part of the farm produce disposed of in such manner as to bring the farmer within the meaning of this measure, the neglect of which entails a penalty of 5*l.*, besides expenses, and also the publication of conviction for breach of the law.

### A FLAW IN PROSPECTUSES.

Draftsmen of prospectuses seem to have overlooked the Directors' Liability Act, 1890, and still use in their prospectuses of new companies the stereotyped phrase, 'Incorporated under the Companies Acts, 1862 to 1887,' instead of '1862 to 1890.' The question has thereupon been raised whether persons who have subscribed upon prospectuses so inaccurately worded could not repudiate their liability. It is a very nice point, and doubtless may serve as the proverbial straw to save someone from drowning.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & CO., Publishers, 22 Warwick Lane. London, E.C.—ADVT.

## ARRANGEMENTS FOR QUEEN'S BENCH CHAMBERS.

*Hilary Sittings*, 1891.

### A to F.

ALL applications by summons or otherwise in actions assigned to Master Pollock are to be made returnable before him in his own Room, No. 173, at 11.30 A.M., on Tuesdays, Thursdays, and Saturdays.

### G to N.

All applications by summons or otherwise in actions assigned to Master Butler are to be made returnable before him in his own Room, No. 112, at 11.30 A.M., on Tuesdays, Thursdays, and Saturdays.

### O to Z.

All applications by summons or otherwise in actions assigned to Master Manley Smith are to be made returnable before him in his own Room, No. 114, at 11.30 A.M., on Tuesdays, Thursdays, and Saturdays.

The parties are to meet in the anteroom of Masters' Chambers, and the summonses will be inserted in the printed list for the day after the summonses to be heard before the master sitting in chambers, and will be called over by the attendant on the respective rooms for a first and second time at 11.30, and will be dealt with by the master in the same manner as if they were returnable at chambers. BY ORDER OF THE MASTERS.

### MASTERS IN CHAMBERS.

### A to F.

Mondays, Wednesdays, and Fridays: Master Kaye.
Tuesdays, Thursdays, and Saturdays: Master Johnson.

### G to N.

Mondays, Wednesdays, and Fridays: Master Walton.
Tuesdays, Thursdays, and Saturdays: Master Macdonell.

### O to Z.

Mondays, Wednesdays, and Fridays: Master Archibald.
Tuesdays, Thursdays, and Saturdays: Master Wilberforce.

## ADVERTISEMENTS FOR MISSING HEIRS AND OTHERS IN 1890.

MR. SIDNEY H. PRESTON, of 1 Great College Street, Westminster, writes as follows:—

During the very eventful year now closing numberless advertisements have been issued by solicitors and others inquiring for missing relatives, legatees, and next-of-kin to claim 'windfalls' more or less considerable. In some cases these notices are singularly successful as a means of conveying good news, while in others the persons sought are dead, absent beyond seas, or from other causes fail to respond. As this is pre-eminently the season when most families are thinking of relatives long lost sight of, it seems a convenient moment for summarising the more remarkable of these kindred notices, the subject being of universal interest, and likely to become each year more important as populations increase and our colonies extend.

To begin with 'Crown Windfalls.' Some forty persons died intestate or illegitimate without known heirs, consequently their estates fell to the Crown, and the Treasury solicitor, as the nominee of Her Majesty, advertised for the next-of-kin. The amount of each estate is not stated

but some of these windfalls, in past years, have been of immense value, 200,000*l.* being about the maximum.

Henry H., or his representatives, are entitled to share in the proceeds of the sale of a castle and other estate in Radnor; and some property has recently been discovered to which the representatives of E. S., of Wakefield, who died in 1857, may be entitled. The address is wanted of a person who obtained his living by conjuring in public-houses; and R. P. B., who went to Australia, and had the misfortune to break his leg, is wanted to claim 2,000*l.* The son of a grocer, last heard of in 1873 travelling with a menagerie, is inquired for; and E. J., of Londonderry, is entitled to 1,000*l.* The descendants of Pierre J., who married in 1742, are sought; 2,500*l.* has become divisible among the nephews and nieces of an innkeeper, who died in 1851; and the sons of a farm bailiff, who left England several years ago, are interested in an estate. W. G., of the Grenadier Guards, who may have died in a hospital, is wanted; also the relatives of a lady, formerly an inmate of the Fulham Union; while the German Consul inquires for H. M. C., of whom it is not known whether he is alive or dead. The papers relating to money and shares of T. J. R., who was burnt to death, are missing; the daughter of a postmaster has died possessed of freehold property to which her missing heirs are entitled; and 3,397*l.* awaits the unknown heirs of John Renny.

The next-of-kin of a governess who died at sea, and of a ship's captain who died at Tahiti, are sought; also information as to the relatives of an Indian princess. Mary T., believed to have died in 1863, or her children, are entitled to a legacy of 3,000*l.*; and a traveller in jewellery, who left for Canada in 1866, is wanted to participate in his father's estate; while R. W., Robert, and Eliza Yates, or their representatives, are only now inquired for as legatees of P. W., who died in 1816. Mr. Pyne, M.P., last seen in 1888, is supposed to have been drowned, and letters of administration have been granted to his estate accordingly. Many similar applications were made, pursuant to the Presumption of Life Limitation (Scotland) Act, under which relatives of Scotchmen 'supposed to be dead' sought to 'uplift and enjoy' their estates. All inquiries as to the next-of-kin of a royal lecturer, who died at Munich, have proved futile; and the children of a captain who went to New Zealand thirty-eight years ago are missing.

Information was sought as to the kindred of a young gentleman who left his home in the eighteenth century, and became a tutor under an assumed name, owing to a breach with his parents; and it would be to the advantage of J. A., the son of a spirit merchant, of Glasgow, to communicate with his father's executors. Mr. de la R., of London, has died abroad leaving property, but his heirs are unknown; and the relations of S. B., who was killed in action on board H.M.S. Monmouth, are interested in an estate in Chancery. A gardener, late of Rosherville Gardens, is entitled to residuary estate; and H. S. C., who left for Australia in 1843, is also entitled to property. The relations of J. C., who died in 1844, are only now sought; also of a Scotch drover, who died in Queensland. Lady S. is wanted to participate in an unclaimed estate left by a lady who died at sea; and representatives of proprietors of shares in the West New Jersey Society some two hundred years ago are entitled to unclaimed dividends. B. E., who left Leeds for America in 1840, is sought; also G. D. S., who went to South Africa in 1880, and George E., who left Wakefield in 1830.

The heirs of the widow of a general; the children of an organ builder, and of a bootmaker who left his home in 1862 and not since heard of, are wanted. The sons of a Scotch supervisor of excise can receive a share of their father's means falling to them; and the nephews and nieces of a house steward are interested in the residue of an estate. John M., last heard of at Buenos Ayres, is entitled to property; Jane J., who emigrated many years ago, is interested in the estate of her cousin; and John K., who left for America in 1863, and not since heard of, is requested to make himself known, or he will be declared to be deceased, intestate.

Among many persons inquired for by the Court of Chancery may be mentioned J. G., who left for America in 1851, interested in a sum of 4,100*l.*; G. S., employed at a livery stable in 1841; a person who went to America, enlisted under a feigned name, and believed to have been killed in battle; the children of a porter, formerly of the University Hospital; J. M., who left for Australia in 1855; and Elizabeth G., who left for Paris in 1862.

The next-of-kin of the following, among many others, were sought: The daughter of a lady who died in Charing Cross Hospital; H. R., whose sons and daughters were last heard of at San Francisco, the Black Forest, and elsewhere; William Ritchie, who died at Tennessee; Martha B., of London, who died in 1848; T. F., of Liverpool, who died in 1843; a domestic servant; the wife of a surgeon, deceased in 1837; a professor of the harp; and a wine merchant, who died in 1823.

Numerous persons were wanted for 'something to their advantage.' These included the relations of a boy who left London with a party of Mormons; Sir Edward C., who was alive thirty-five years ago; John C., formerly of Liverpool, afterwards of Buenos Ayres; the widow of W. R., of Manchester, drowned at sea; an excavator; the son of a clergyman; a cabdriver; and the widow and son of a waiter; while the son of a riding-master in the Life Guards, and Patrick E., of Antrim, in 1856 were wanted for something 'greatly' to their benefit.

In addition to the foregoing examples of family vicissitudes, it may be noted that the Cape Government published a long list of intestates, whose 'unknown heirs' are entitled to about 35,000*l.*; the War Office issued lists of soldiers' unclaimed balances; and the New Zealand Government issued lists of intestates. The Bank of England issued notices respecting unclaimed stock or dividends, and numerous rewards were offered for missing birth, marriage, and burial certificates, not to mention lost wills, supposed bank deposits, &c.

Many other cases deserve a passing notice, but I fear I have already trespassed largely on your valuable space. The interesting nature of the subject must be my apology.

## NOTICES FOR THE WEEK.

### ROTA OF REGISTRARS.

WEDNESDAY, January 7.—Court of Appeal No. 2: Mr. Beal. Mr. Justice Chitty: Mr. Godfrey. Mr. Justice North: Mr. Jackson. Mr. Justice Stirling: Mr. Carrington. Mr. Justice Kekewich: Mr. Rolt. Mr. Justice Romer: Mr. Ward.

Thursday, January 8.—Court of Appeal No. 2: Mr. Pugh. Mr. Justice Chitty: Mr. Leach. Mr. Justice North: Mr. Clowes. Mr. Justice Stirling: Mr. Lavie. Mr. Justice Kekewich: Mr. Farmer. Mr. Justice Romer: Mr. Pemberton.

Friday, January 9. — Court of Appeal No. 2: Mr. Beal. Mr. Justice Chitty: Mr. Godfrey. Mr. Justice North: Mr. Jackson. Mr. Justice Stirling: Mr. Carrington. Mr. Justice Kekewich: Mr. Rolt. Mr. Justice Romer: Mr. Ward.

Saturday, January 10.—Court of Appeal No. 2: Mr. Pugh. Mr. Justice Chitty: Mr. Leach. Mr. Justice North: Mr. Clowes. Mr. Justice Stirling: Mr. Lavie. Mr. Justice Kekewich: Mr. Farmer. Mr. Justice Romer: Mr. Pemberton.

# SITTINGS PAPERS.

## SUPREME COURT OF JUDICATURE.

*Hilary Sittings*, 1891.

## COURT OF APPEAL.

### APPEAL COURT I.

FINAL AND INTERLOCUTORY APPEALS FROM THE QUEEN'S BENCH DIVISION, THE PROBATE, DIVORCE, AND ADMIRALTY DIVISION (ADMIRALTY), AND THE QUEEN'S BENCH DIVISION SITTING IN BANKRUPTCY.

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|---|---|---|
| | *Jan.* | |
| Monday | 12 | Appeal Motions, *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench New Trial Paper if required. |
| Tuesday | 13 | Queen's Bench New Trial Paper. |
| Wednesday | 14 | |
| Thursday | 15 | |
| Friday | 16 | Bankruptcy Appeals and Queen's Bench New Trial Paper. |
| Saturday | 17 | Queen's Bench New Trial Paper. |
| Monday | 19 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required. |
| Tuesday | 20 | Queen's Bench Final Appeals. |
| Wednesday | 21 | |
| Thursday | 22 | |
| Friday | 23 | Bankruptcy Appeals and Queen's Bench Final Appeals. |
| Saturday | 24 | Queen's Bench Final Appeals. |
| Monday | 26 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench New Trial Paper if required. |
| Tuesday | 27 | Queen's Bench New Trial Paper. |
| Wednesday | 28 | |
| Thursday | 29 | |
| Friday | 30 | Bankruptcy Appeals and Queen's Bench Final Appeals. |
| Saturday | 31 | Queen's Bench New Trial Paper. |
| | *Feb.* | |
| Monday | 2 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required. |
| Tuesday | 3 | Queen's Bench Final Appeals. |
| Wednesday | 4 | |
| Thursday | 5 | |
| Friday | 6 | Bankruptcy Appeals and Queen's Bench Final Appeals. |
| Saturday | 7 | Queen's Bench Final Appeals. |
| Monday | 9 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench New Trial Paper if required. |
| Tuesday | 10 | Queen's Bench New Trial Paper. |
| Wednesday | 11 | |
| Thursday | 12 | |
| Friday | 13 | Bankruptcy Appeals and Queen's Bench New Trial Paper. |
| Saturday | 14 | Queen's Bench New Trial Paper. |
| Monday | 16 | Appeal Motions *ex parte*, Original Motions, Appeal from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required. |
| Tuesday | 17 | Queen's Bench Final Appeals. |
| Wednesday | 18 | |
| Thursday | 19 | |
| Friday | 20 | Bankruptcy Appeals and Queen's Bench Final Appeals. |
| Saturday | 21 | Queen's Bench Final Appeals. |
| Monday | 23 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench New Trial Paper if required. |
| Tuesday | 24 | Queen's Bench New Trial Paper. |
| Wednesday | 25 | |
| Thursday | 26 | |
| Friday | 27 | Bankruptcy Appeals and Queen's Bench New Trial Paper. |
| Saturday | 28 | Queen's Bench New Trial Paper. |
| | *March* | |
| Monday | 2 | Appeal Motions *ex parte*, Original Motions, and Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required. |
| Tuesday | 3 | Queen's Bench Final Appeals. |
| Wednesday | 4 | |
| Thursday | 5 | |
| Friday | 6 | Bankruptcy Appeals and Queen's Bench Final Appeals. |
| Saturday | 7 | Queen's Bench Final Appeals. |
| Monday | 9 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench New Trial Paper if required. |
| | *Mar.* | |
| Tuesday | 10 | Queen's Bench New Trial Paper. |
| Wednesday | 11 | |
| Thursday | 12 | |
| Friday | 13 | Bankruptcy Appeals and Queen's Bench New Trial Paper. |
| Saturday | 14 | Queen's Bench New Trial Paper. |
| Monday | 16 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required. |
| Tuesday | 17 | Queen's Bench Final Appeals. |
| Wednesday | 18 | |
| Thursday | 19 | |
| Friday | 20 | Bankruptcy Appeals and Queen's Bench Final Appeals. |
| Saturday | 21 | Queen's Bench Final Appeals. |
| Monday | 23 | Appeal Motions *ex parte*, Original Motions, and Appeals from Orders made on Interlocutory Motions, and Queen's Bench New Trial Paper. |
| Tuesday | 24 | Queen's Bench New Trial Paper. |
| Wednesday | 25 | |

N.B.—Admiralty Appeals (with Assessors) are taken in Appeal Court I. on specially appointed days.

### APPEAL COURT II.

FINAL AND INTERLOCUTORY APPEALS FROM THE CHANCERY, AND PROBATE, DIVORCE, AND ADMIRALTY DIVISIONS (PROBATE AND DIVORCE), AND THE COUNTY PALATINE AND STANNARIES COURTS.

| | | |
|---|---|---|
| | *Jan.* | |
| Monday | 12 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required. |
| Tuesday | 13 | Chancery Final Appeals. |
| Wednesday | 14 | |
| Thursday | 15 | County Palatine Appeals (if any) and Chancery Final Appeals. |
| Friday | 16 | Chancery Final Appeals. |
| Saturday | 17 | |
| Monday | 19 | Queen's Bench New Trial Paper. |
| Tuesday | 20 | |
| Wednesday | 21 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Queen's Bench New Trial Paper if required. |
| Thursday | 22 | Queen's Bench New Trial Paper. |
| Friday | 23 | |
| Saturday | 24 | |
| Monday | 26 | Chancery Final Appeals. |
| Tuesday | 27 | |
| Wednesday | 5 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required. |
| Thursday | 29 | Chancery Final Appeals. |
| Friday | 30 | |
| Saturday | 31 | |
| | *Feb.* | |
| Monday | 2 | Queen's Bench New Trial Paper. |
| Tuesday | 3 | |
| Wednesday | 4 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Queen's Bench New Trial Paper if required. |
| Thursday | 5 | County Palatine Appeals (if any) and Queen's Bench New Trial Paper. |
| Friday | 6 | Queen's Bench New Trial Paper. |
| Saturday | 7 | |
| Monday | 9 | Chancery Final Appeals. |
| Tuesday | 10 | |
| Wednesday | 11 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required. |
| Thursday | 12 | Chancery Final Appeals. |
| Friday | 13 | |
| Saturday | 14 | |
| Monday | 16 | Queen's Bench New Trial Paper. |
| Tuesday | 17 | |
| Wednesday | 18 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Queen's Bench New Trial Paper if required |
| Thursday | 19 | Queen's Bench New Trial Paper. |
| Friday | 20 | |
| Saturday | 21 | |
| Monday | 23 | Chancery Final Appeals. |
| Tuesday | 24 | |
| Wednesday | 25 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required. |
| Thursday | 26 | Chancery Final Appeals. |
| Friday | 27 | |
| Saturday | 28 | |
| | *Mar.* | |
| Monday | 2 | Queen's Bench New Trial Paper. |
| Tuesday | 3 | |

| | | |
|---|---|---|
| | *Mar.* | |
| Wednesday | 4 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Queen's Bench New Trial Paper if required. |
| Thursday | 5 | County Palatine Appeals (if any) and Queen's Bench New Trial Paper. |
| Friday | 6 | Queen's Bench New Trial Paper. |
| Saturday | 7 | |
| Monday | 9 | Chancery Final Appeals. |
| Tuesday | 10 | |
| Wednesday | 11 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required. |
| Thursday | 12 | Chancery Final Appeals. |
| Friday | 13 | |
| Saturday | 14 | |
| Monday | 16 | Queen's Bench New Trial Paper. |
| Tuesday | 17 | |
| Wednesday | 18 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Queen's Bench New Trial Paper if required |
| Thursday | 19 | Queen's Bench New Trial Paper. |
| Friday | 20 | |
| Saturday | 21 | |
| Monday | 23 | Chancery Final Appeals. |
| Tuesday | 24 | |
| Wednesday | 25 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required. |

N.B.—Lunacy Petitions (if any) are taken in Appeal Court II. on every Monday, at Eleven, until further notice.

# HIGH COURT OF JUSTICE.

## CHANCERY DIVISION.

### CHANCERY COURT I.

#### BEFORE MR. JUSTICE CHITTY.

| | | |
|---|---|---|
| | *Jan.* | |
| Monday | 12 | Sitting in Chambers. |
| Tuesday | 13 | Motions and Non-Witness List. |
| Wednesday | 14 | Non-Witness List. |
| Thursday | 15 | |
| Friday | 16 | Motions and Non-Witness List. |
| Saturday | 17 | Petitions, Short Causes, Procedure Summonses, Opposed Petitions, and Non-Witness List. |
| Monday | 19 | Sitting in Chambers. |
| Tuesday | 20 | Non-Witness List. |
| Wednesday | 21 | |
| Thursday | 22 | |
| Friday | 23 | Motions and Non-Witness List. |
| Saturday | 24 | Petitions, Short Causes, Opposed Petitions, Procedure Summonses, and Non-Witness List. |
| Monday | 26 | Sitting in Chambers. |
| Tuesday | 27 | Non-Witness List. |
| Wednesday | 28 | |
| Thursday | 29 | |
| Friday | 30 | Motions and Non-Witness List. |
| Saturday | 31 | Petitions, Short Causes, Procedure Summonses, Opposed Petitions, and Non-Witness List. |
| | *Feb.* | |
| Monday | 2 | Sitting in Chambers. |
| Tuesday | 3 | Witness List. |
| Wednesday | 4 | |
| Thursday | 5 | |
| Friday | 6 | Motions and Non-Witness List. |
| Saturday | 7 | Petitions, Short Causes, Opposed Petitions, Procedure Summonses, and Non-Witness List. |
| Monday | 9 | Sitting in Chambers. |
| Tuesday | 10 | Witness List. |
| Wednesday | 11 | |
| Thursday | 12 | |
| Friday | 13 | Motions and Non-Witness List. |
| Saturday | 14 | Petitions, Short Causes, Procedure Summonses, Opposed Petitions, and Non-Witness List. |
| Monday | 16 | Sitting in Chambers. |
| Tuesday | 17 | Witness List. |
| Wednesday | 18 | |
| Thursday | 19 | |
| Friday | 20 | Motions and Non-Witness List. |
| Saturday | 21 | Petitions, Short Causes, Opposed Petitions, Procedure Summonses, and Non-Witness List. |
| Monday | 23 | Sitting in Chambers. |
| Tuesday | 24 | Witness List. |
| Wednesday | 25 | |
| Thursday | 26 | |
| Friday | 27 | Motions and Non-Witness List. |
| Saturday | 28 | Petitions, Short Causes, Opposed Petitions, Procedure Summonses, and Non-Witness List. |
| | *Mar.* | |
| Monday | 2 | Sitting in Chambers. |
| Tuesday | 3 | Non-Witness List. |
| Wednesday | 4 | |
| Thursday | 5 | |
| Friday | 6 | Motions and Non-Witness List. |
| Saturday | 7 | Petitions, Short Causes, Procedure Summonses, Opposed Petitions, and Non-Witness List. |
| Monday | 9 | Sitting in Chambers. |
| Tuesday | 10 | Non-Witness List. |
| Wednesday | 11 | |
| Thursday | 12 | |
| Friday | 13 | Motions and Non-Witness List. |
| Saturday | 14 | Petitions, Short Causes, Opposed Petitions, Procedure Summonses, and Non-Witness List. |
| Monday | 16 | Sitting in Chambers. |
| Tuesday | 17 | Non-Witness List. |
| Wednesday | 18 | |
| Thursday | 19 | |
| Friday | 20 | Motions and Non-Witness List. |
| Saturday | 21 | Petitions, Short Causes, Procedure Summonses, Opposed Petitions, and Non-Witness List. |
| Monday | 23 | Sitting in Chambers. |
| Tuesday | 24 | Remaining Motions and Non-Witness List. |
| Wednesday | 25 | |

N.B.—In the weeks when Non-Witness Actions are taken, Further Considerations will be taken on Tuesdays. In the weeks when Witness Actions are taken, Further Considerations will not be taken on Tuesdays, but may be taken on Saturdays.

N.B.—The following papers on Further Consideration are required for the use of the Judge—viz. Two copies of Minutes of the proposed Judgment or Order, one copy Pleadings, and one copy Chief Clerk's Certificate, which must be left in Court with the Judge's Clerk one clear day before the Further Consideration is ready to come into the Paper.

### CHANCERY COURT II.

#### BEFORE MR. JUSTICE NORTH.

| | | |
|---|---|---|
| | *Jan.* | |
| Monday | 12 | Sitting in Chambers. |
| Tuesday | 13 | Motions, Adjourned Summonses, and General Paper. |
| Wednesday | 14 | Further Considerations and General Paper. |
| Thursday | 15 | |
| Friday | 16 | Motions and Adjourned Summonses. |
| Saturday | 17 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 19 | Sitting in Chambers. |
| Tuesday | 20 | General Paper. |
| Wednesday | 21 | |
| Thursday | 22 | |
| Friday | 23 | Motions and Adjourned Summonses. |
| Saturday | 24 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 26 | Sitting in Chambers. |
| Tuesday | 27 | General Paper. |
| Wednesday | 28 | |
| Thursday | 29 | |
| Friday | 30 | Motions and Adjourned Summonses. |
| Saturday | 31 | Short Causes, Petitions, and Adjourned Summonses. |
| | *Feb.* | |
| Monday | 2 | Sitting in Chambers. |
| Tuesday | 3 | General Paper. |
| Wednesday | 4 | |
| Thursday | 5 | |
| Friday | 6 | Motions and Adjourned Summonses. |
| Saturday | 7 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 9 | Sitting in Chambers. |
| Tuesday | 10 | General Paper. |
| Wednesday | 11 | |
| Thursday | 12 | |
| Friday | 13 | Motions and Adjourned Summonses. |
| Saturday | 14 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 16 | Sitting in Chambers. |
| Tuesday | 17 | General Paper. |
| Wednesday | 18 | |
| Thursday | 19 | |
| Friday | 20 | Motions and Adjourned Summonses. |
| Saturday | 21 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 23 | Sitting in Chambers. |
| Tuesday | 24 | General Paper. |
| Wednesday | 25 | |
| Friday | 26 | |
| Friday | 27 | Motions and Adjourned Summonses. |
| Saturday | 28 | Short Causes, Petitions, and Adjourned Summonses. |
| | *Mar.* | |
| Monday | 2 | Sitting in Chambers. |
| Tuesday | 3 | General Paper. |
| Wednesday | 4 | |
| Thursday | 5 | |
| Friday | 6 | Motions and Adjourned Summonses. |
| Saturday | 7 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 9 | Sitting in Chambers. |
| Tuesday | 10 | General Paper. |
| Wednesday | 11 | |
| Thursday | 12 | |

| | | |
|---|---|---|
| | *Mar.* | |
| Friday | 13 | Motions and Adjourned Summonses. |
| Saturday | 14 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 16 | Sitting in Chambers. |
| Tuesday | 17 | General Paper. |
| Wednesday | 18 | |
| Thursday | 19 | |
| Friday | 20 | Motions and Adjourned Summonses. |
| Saturday | 21 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 23 | Sitting in Chambers. |
| Tuesday | 24 | General Paper. |
| Wednesday | 25 | Motions and Adjourned Summonses. |

Witness Actions will be taken on Tuesday, January 20, and continued on Tuesdays, Wednesdays, and Thursdays until further notice.

Any Cause intended to be heard as a Short Cause before Mr. Justice Chitty, or Mr. Justice North must be so marked in the Cause Book at least one clear day before the same can be put in the Paper to be so heard. Two Copies of Minutes of the proposed Judgment or Order must be left in Court with the Judge's Clerk the day before the Cause is to be put in the Paper.

## LORD CHANCELLOR'S COURT.

### BEFORE MR. JUSTICE STIRLING.

| | | |
|---|---|---|
| | *Jan.* | |
| Monday | 12 | Sitting in Chambers. |
| Tuesday | 13 | Motions, Adjourned Summonses, and General Paper. |
| Wednesday | 14 | General Paper. |
| Thursday | 15 | |
| Friday | 16 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 17 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 19 | Sitting in Chambers. |
| Tuesday | 20 | General Paper. |
| Wednesday | 21 | |
| Thursday | 22 | |
| Friday | 23 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 24 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 26 | Sitting in Chambers. |
| Tuesday | 27 | General Paper. |
| Wednesday | 28 | |
| Thursday | 29 | |
| Friday | 30 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 31 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| | *Feb.* | |
| Monday | 2 | Sitting in Chambers. |
| Tuesday | 3 | General Paper. |
| Wednesday | 4 | |
| Thursday | 5 | |
| Friday | 6 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 7 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 9 | Sitting in Chambers. |
| Tuesday | 10 | General Paper. |
| Wednesday | 11 | |
| Thursday | 12 | |
| Friday | 13 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 14 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 16 | Sitting in Chambers. |
| Tuesday | 17 | General Paper. |
| Wednesday | 18 | |
| Thursday | 19 | |
| Friday | 20 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 21 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 23 | Sitting in Chambers. |
| Tuesday | 24 | General Paper. |
| Wednesday | 25 | |
| Thursday | 26 | |
| Friday | 27 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 28 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| | *Mar.* | |
| Monday | 2 | Sitting in Chambers. |
| Tuesday | 3 | General Paper. |
| Wednesday | 4 | |
| Thursday | 5 | |
| Friday | 6 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 7 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 9 | Sitting in Chambers. |
| Tuesday | 10 | General Paper. |
| Wednesday | 11 | |
| Thursday | 12 | |
| Friday | 13 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 14 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 16 | Sitting in Chambers. |
| Tuesday | 17 | General Paper. |
| Wednesday | 18 | |
| Thursday | 19 | |
| Friday | 20 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 21 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 23 | Sitting in Chambers. |
| Tuesday | 24 | Remaining Motions, Adjourned Summonses, and General Paper. |
| Wednesday | 25 | Motions, Adjourned Summonses, and General Paper. |

Any Cause intended to be heard as a short Cause must be so marked in the Cause Book at least one clear day before the same can be put in the Paper to be so heard, and the necessary Papers, including Minutes of the proposed Judgment or Order, must be left with the Judge's Clerk one clear day before the Cause is to be put into the Paper.

## CHANCERY COURT IV.

### BEFORE MR. JUSTICE KEKEWICH.

| | | |
|---|---|---|
| | *Jan.* | |
| Monday | 12 | Sitting in Chambers. |
| Tuesday | 13 | Motions and Adjourned Summonses. |
| Wednesday | 14 | General Paper. |
| Thursday | 15 | |
| Friday | 16 | Motions and Adjourned Summonses. |
| Saturday | 17 | Petitions, Short Causes, and Adjourned Summonses. |
| Monday | 19 | Sitting in Chambers. |
| Tuesday | 20 | General Paper. |
| Wednesday | 21 | |
| Thursday | 22 | |
| Friday | 23 | Motions and Adjourned Summonses. |
| Saturday | 24 | Petitions, Short Causes, and Adjourned Summonses. |
| Monday | 26 | Sitting in Chambers. |
| Tuesday | 27 | General Paper. |
| Wednesday | 28 | |
| Thursday | 29 | |
| Friday | 30 | Motions and Adjourned Summonses. |
| Saturday | 31 | Petitions, Short Causes, and Adjourned Summonses. |
| | *Feb.* | |
| Monday | 2 | Sitting in Chambers. |
| Tuesday | 3 | General Paper. |
| Wednesday | 4 | |
| Thursday | 5 | |
| Friday | 6 | Motions and Adjourned Summonses. |
| Saturday | 7 | Petitions, Short Causes, and Adjourned Summonses. |
| Monday | 9 | Sitting in Chambers. |
| Tuesday | 10 | General Paper. |
| Wednesday | 11 | |
| Thursday | 12 | |
| Friday | 13 | Motions and Adjourned Summonses. |
| Saturday | 14 | Petitions, Short Causes, and Adjourned Summonses. |
| Monday | 16 | Sitting in Chambers. |
| Tuesday | 17 | General Paper. |
| Wednesday | 18 | |
| Thursday | 19 | |
| Friday | 20 | Motions and Adjourned Summonses. |
| Saturday | 21 | Petitions, Short Causes, and Adjourned Summonses. |
| Monday | 23 | Sitting in Chambers. |
| Tuesday | 24 | General Paper. |
| Wednesday | 25 | |
| Thursday | 26 | |
| Friday | 27 | Motions and Adjourned Summonses. |
| Saturday | 28 | Petitions, Short Causes, and Adjourned Summonses. |
| | *Mar.* | |
| Monday | 2 | Sitting in Chambers. |
| Tuesday | 3 | General Paper. |
| Wednesday | 4 | |
| Thursday | 5 | |
| Friday | 6 | Motions and Adjourned Summonses. |
| Saturday | 7 | Petitions, Short Causes, and Adjourned Summonses. |
| Monday | 9 | Sitting in Chambers. |
| Tuesday | 10 | General Paper. |
| Wednesday | 11 | |
| Thursday | 12 | |
| Friday | 13 | Motions and Adjourned Summonses. |
| Saturday | 14 | Petitions, Short Causes, and Adjourned Summonses. |
| Monday | 16 | Sitting in Chambers. |
| Tuesday | 17 | General Paper. |
| Wednesday | 18 | |
| Thursday | 19 | |
| Friday | 20 | Motions and Adjourned Summonses. |
| Saturday | 21 | Petitions, Short Causes, and Adjourned Summonses. |
| Monday | 23 | Sitting in Chambers. |
| Tuesday | 24 | General Paper. |
| Wednesday | 25 | Motions. |

Liverpool and Manchester Business will be taken as follows: Motions on days appointed for Motions. Petitions, Short Causes, and Adjourned Summonses on Saturdays. Summonses in Chambers on Friday afternoons, Liverpool and Manchester Summonses being taken on alternate Fridays, commencing with Liverpool Summonses on Friday, January 16.

## CHANCERY COURT III.

### BEFORE MR. JUSTICE ROMER.

Actions transferred for Trial or Hearing only will be taken in the order in the Cause List on every day of the Sittings from January 12 to March 25, both inclusive.

## CALENDAR OF THE COUNTY COURTS.

FROM JANUARY 5 TO JANUARY 10.

| No. of Circuit | His Honour | January 5 | January 6 | January 7 | January 8 | January 9 | January 10 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Altrincham | — | — | Birkenhead | — |
| 8 | Judge Russell | — | Manchester | Manchester | Manchester | Manchester | — |
| 15 | Judge Turner | — | — | — | Middlesbrough | Stockton-on-Tees | — |
| 19 | Judge Barber | — | Derby | Ilkeston | Chesterfield | Chesterfield | — |
| 28 | Judge Jordan | Stoke | Newcastle | Hanley | Stafford | Leek | Cheadle |
| 47 | Judge Powell | — | Lambeth | Woolwich | Lambeth | Greenwich | — |
| 58 | Judge Edge | — | Exeter | Exeter | Exeter | Newton Abbot | Newton Abbot |

## LAW STUDENTS SOCIETIES.

LIVERPOOL.—At a meeting of this association on December 22 a debate was held on the following subject for discussion: 'Whilst A. is lunching at an hotel as B.'s guest, his hat and coat, which he had hung up in the place provided for them, are stolen. Neither A. nor B. are staying at the hotel. Can A. recover damages from the proprietor of the hotel for the loss of his hat and coat?' Mr. F. Archer, solicitor, in the chair.—Mr. H. Todd opened in the affirmative, which was also supported by Messrs. E. W. Pierce, H. M'Master, Rutherford, and the secretary.—Mr. F. R. Martin opened in the negative, which was also supported by Messrs. R. B. Hughes, E. Lloyd, and H. Glover. —The question was decided in the affirmative by a majority of eleven.

## HONOURS AND APPOINTMENTS.

MR. COLQUHOUN, Q.C., has been appointed County Court Judge for the county Down, in place of Mr. Lefroy, Q.C., who has resigned. Mr. Colquhoun was called to the bar in 1867.

The Lord Chancellor has appointed the ex-Mayor Albert Edward Shapland, Esq. (of the firm of J. T. Shapland & Son, solicitors), a Justice of the Peace for the Borough of South Molton.

Mr. Christopher Vickry Bridgman has been appointed Registrar to the High Court of Judicature for the Stonehouse District of Devonshire. Mr. Bridgman has also been appointed by Judge Edge to be Registrar of the Stonehouse County Court District. Mr. Bridgman has in consequence of these appointments resigned the registrarship of the Tavistock County Court district and of the clerkship to the justices of Plymouth, which offices he has held for twenty-three and eight years respectively. Mr. Bridgman was admitted in 1863.

Mr. William Smee, B.A., of 5 York Buildings, Adelphi, W.C., and Chiswick, has been appointed a Commissioner for Oaths. Mr. Smee was admitted in 1884.

Mr. Harry Pearce, of 25 Bedford Row, W.C., has been appointed a Commissioner to administer Oaths in the Supreme Courts of Judicature. Mr. Pearce was admitted in 1884.

Mr. James Frederick Griffith, of 4 Old Serjeants' Inn, Chancery Lane, W.C., has been appointed a Commissioner for Oaths. Mr. Griffith was admitted in 1884.

Mr. Frederick Adolphus Camidge, of York, has been appointed a Commissioner for Oaths. Mr. Camidge was admitted in 1884.

Mr. Alleyne Brown, of Southport, has been appointed a Commissioner for Oaths. Mr. Brown was admitted in 1884.

Mr. Joseph Edward Gilson, of Sheffield, has been appointed a Commissioner for Oaths. Mr. Gilson was admitted in 1883.

Mr. Thomas Howson (of the firm of Ainsworth, Sanderson & Howson), of Blackburn, has been appointed a Commissioner for Oaths. Mr. Howson was admitted in 1883.

Mr. Walter Foster, of Leeds, has been appointed a Commissioner for Oaths. Mr. Foster was admitted in 1884.

Mr. Edward Challinor (of the firm of Challinor & Shaw), of Leek, has been appointed a Commissioner for Oaths. Mr. Challinor was admitted in 1884.

THE 'LAW QUARTERLY' ON THE 'LAW REPORTS.'—We do not think the profession will be thankful for the change in the official style of the 'Law Reports.' The incorporation of the date in the reference is well meant, but the importance of making references short and simple appears to have been overlooked. And the Council of Law Reporting have lost the opportunity of effecting an improvement often urged upon them—the separation of the Court of Appeal cases from cases decided in Courts of First Instance, of which latter far too many are reported. The general management of the 'Law Reports' has been anything but satisfactory for some years past, and we see no signs of mending.—*Law Quarterly Review.*

## BIRTHS.

On the morning of Christmas Day, at Queen Anne's Mansions, St. James's Park, Lady Charley, wife of Sir William Charley, Q.C., Common Serjeant of London, of a daughter.

On Christmas Day, at Cliff House, The Park, Nottingham, the wife of George Parr, Solicitor, of a daughter.

On Dec. 28, at 2 Lynton Villas, Alexandra Road, Kingston Hill, the wife of Arthur P. Poley, Esq., Barrister-at-Law, of the Inner Temple, of a son.

## MARRIAGES.

On Dec. 22, at Holy Trinity Church, Tunbridge Wells, James William Greig, of Lincoln's Inn, Esq., Barrister-at-Law, eldest son of John Borthwick Greig, Writer to the Signet, of 12 Hillgrove Road, South Hampstead, Middlesex, to Jennie Taylor Brown, only daughter of the late Captain Edward Brown, of Salem, Massachusetts, United States of America.

On Dec. 23, at 20 Lawrence Place, Partick, David Calder Leck, of the Middle Temple, Barrister-at-Law, to Jane Hill, only daughter of the late George Wood, of Thornwood, Kilmalcolm, N.B.

On Dec. 23, at Cobham Church, Surrey, Leopold J. Maxse, second son of Admiral Maxse, of Dunley Hill, Dorking, to Katharine, eldest daughter of his Honour Judge Lushington, of Pyports, Cobham.

## DEATHS.

On Dec. 20, at 48 Solon New Road, Brixton, S.W., after a long and painful illness, Helen Louisa (Nellie), the beloved wife of Charles J. Guy, Solicitor, aged 33.

On Dec. 22, at Hotel Euler, Bale, Switzerland, Meneen Margaret, dearly beloved wife of John Hony Trehane, of Tamar View, Yelverton, and Plymouth, Devon, Solicitor.

On Dec. 26, at Windsor House, 29 Westbourne Park Road, Bayswater, Sophia, widow of the late William Griffith, of Windsor, and French's, in the Island of Barbadoes, Esq., Barrister-at-Law, formerly Solicitor-General of that island, and mother of Sir W. Brandford Griffith, K.C.M.G., Governor of the Gold Coast Colony.

On Dec. 27, at Baroda, Ventnor, I.W., William Frank Jones, B.C.L., M.A., Barrister-at-Law, of Lincoln's Inn, late of 71 Lansdowne Road, W., in his 50th year.

On Dec. 27, Eliza Frances, widow of Francis Snowden, Judge of H.M.'s Supreme Court, Hongkong.

On Dec. 27, of pleuro-pneumonia, James William Lambert, Esq., Solicitor, 17 Bedford Row, London, aged 59.

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# The Law Journal.

*SATURDAY, JANUARY* 10, 1891.


## 'OBITER DICTA.'

IT is understood that the strikes on the Scotch railways, whether they are now drawing to an end or not, have already caused much inconvenience and loss to the customers or intending customers of the companies concerned. As might have been expected, the question whether future difficulties of a similar kind could not be prevented or mitigated by legislation has been raised in more quarters than one. To a certain extent legislation has already taken place. It is provided by section 5 of the Conspiracy and Protection of Property Act, 1875, that, 'where any person wilfully and maliciously breaks a contract of service or of hiring knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life or cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury, he shall on conviction thereof by a Court of summary jurisdiction or on indictment be liable either to pay a penalty not exceeding 20*l.*, or to be imprisoned for a term not exceeding three months, with or without hard labour.' It is not difficult to imagine cases where this enactment might be put in force against engine-drivers or signalmen suddenly deserting their posts, but, of course, it would have no effect in the case of any servant whatever quitting his work at the expiration of due notice duly given. It has been suggested that railway servants should be considered to be engaged on a kind of permanent service determinable only on notice given by their employers, but such an heroic remedy, of which we greatly doubt the justice, is not likely to find favour in the present day. It might, perhaps, however, be feasible to provide for a certain compulsory length of notice to be given by all railway servants, and also to breach of contract before expiration of notice punishable *simpliciter* without the requirement that the servant should have reasonable cause to expect danger to the public from his act. On the other hand, and in the interest of the public as well as of the servants themselves, it would be perfectly reasonable to provide that where, as in the case of signalmen and engine drivers, overtime service is performed at great risk, a limit to the number of hours of continuous service should be prescribed by Act of Parliament. In the Report of the Railway Commission of 1877 on Accidents, we find it stated that 'there was abundant evidence to show that on exceptional occasions men, upon whom the safety of trains mainly depended, were either required or permitted to continue on duty for an excessive length of time,' and also that, 'in certain cases, the duties exacted from men of these classes were too protracted;' and the commissioners, though shrinking from the recommendations of restricted hours of labour, reported in favour of the fact of a servant having been too long employed being made *primâ facie* evidence of negligence in any proceedings against a railway company for injuries by an accident arising in connection with his employment.

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OUR correspondent 'D.' (*ante*, p. 7) not a little surprises us. Commenting on the strictures of Mr. Justice Wills upon the practice of county justices' clerks conducting prosecutions, he says that 'it makes no difference whatever to a clerk whether a prisoner is *convicted* or not' (the italics are our own). This is quite true, but much beside the mark. It makes all the difference in the world to a person accused before justices whether he is prosecuted or not, whether he may be ultimately convicted or acquitted; and as he cannot be prosecuted without a committal, it is of vital importance to the administration of justice that the committal should have been advised by the clerk on grounds absolutely free from suspicion, if advised by the clerk it was. As to 'D.'s' second point, that 'in most cases the question for committal is not one for the clerk, but for the bench,' we must take leave to remark not only that in most cases

the practice is just the other way, but that if in one single case it may be otherwise, 'D.'s' case is on this point practically gone.

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WE have to thank Mr. C. Fortescue (*ante*, p. 7) for a reference to section 8 of the Vagrant Act (5 Geo. IV. c. 83) as to paying for a vagrant's keep in prison out of money found upon him. By that section every justice of the peace by whom any person shall be adjudged to be 'an idle or disorderly person, or a rogue and vagabond, or an incorrigible rogue,' may 'order that such offender shall be searched, and that his or her trunks, boxes, bundles, parcels shall be inspected,' and, further, that 'it shall be lawful for the said justice to order that any money which may be then found with or upon such offender, shall be paid and applied for and towards the expense of apprehending, conveying to the house of correction, and maintaining such offender during the time for which he or she shall have been committed.' On consideration, however, we cannot think that the power given by this section extends to the case of the incorrigible rogue committed, under section 10, to the house of correction, there to remain until the next quarter sessions, at which the justices of the peace there assembled may sentence him to further imprisonment for any time not exceeding one year; but the point is doubtful. If section 8 applies to cases under section 10, the committing justice, and not any of the justices in quarter sessions, would, we think, be the proper authority to make the order.

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CONTRACTS with infants are beset with difficulties, for that privileged class seem able to blow hot and blow cold, 'to approbate and reprobate,' as the Scotch lawyers have it, but there seems no doubt of the reasonableness of the decision in *Maw* v. *Jones*, 59 Law J. Rep. Q. B. 542. The plaintiff was apprenticed to the defendants to learn their business by a deed which provided that they could dismiss him at a week's notice if he showed incapacity or want of interest in his work. He did show a want of interest in his work, but his masters, instead of giving him a week's notice, dismissed him summarily on the ground that he had been guilty of frequent acts of insubordination and had gone out at night without permission. The apprentice brought this action for wrongful dismissal, and the alleged misconduct having been disproved, the jury gave as damages a sum greatly exceeding in amount the value of a week's notice, the judge having directed the jury that they could do so. On a motion for a new trial, the Divisional Court upheld the judge's direction. 'The jury,' said Lord Coleridge, 'were entitled to take into account the difficulty that the plaintiff, after being discharged, might experience in obtaining employment elsewhere.' As is well known, in the case of domestic servants, the master can either give a month's notice of dismissal or dismiss at once on payment of a month's wages. It is not, however, as clear as it might be, whether the wages are simply wages without respect to board, or board wages. In Smith's 'Master and Servant' (4th edition, p. 92 *n* (*r*)) it is stated that the wages would probably be a calendar month's, and the case of *Gordon* v. *Potter*, 1 F. & F. 644, is cited, in which Mr. Justice Hill, at Nisi Prius, told the jury that the plaintiff would be entitled to the accruing wages and a calendar month's wages in addition without board wages.

MUCH consternation has been caused by the refusal of the licensing justices of Aston, near Birmingham, to transfer a license to a certain 'district manager' of Messrs. Ind, Coope & Co., 'who admitted that he should not reside on the premises though responsible for the conduct of the house' in respect of which the license was proposed to be transferred, 'a barman being left in charge.' The ground of the refusal is stated to be 'that the Licensing Act laid it down that the house must be held by the responsible tenant and occupier, conducting the business as his own, and not for the profit of other persons,' which, of course, cannot be the case where the house is a 'tied' one, as thousands of houses are, and—which accounts for the consternation—the bulk of the houses in Aston. The question of construction of the Licensing Act is as difficult as it is important. Section 1 of the Act of 1828 speaks of the person to be licensed as 'keeping or about to keep' the house—an expression which would not be suitable in the case of a mere servant; and section 4, which deals with transfers, gives jurisdiction to the justices 'to license such persons intending to *keep* inns theretofore *kept* by other persons being about to remove from such inns as they the said justices shall in the exercise of their discretion deem fit and proper persons.' It is beyond doubt that the justices have an absolute discretion to refuse a transfer (see *Regina* v. *Moore*, 50 Law J. Rep. M. C. 121), but it is by no means so clear that they have not jurisdiction to transfer a license to a non-resident (though the language of the Act points in that direction), unless, indeed, the license be that of a beerhouse, in which case, as the Inland Revenue license can by 3 & 4 Vict. c. 61, be granted to a real resident holder and occupier only, it would be idle for the justices to grant the corresponding justices' license to a non-resident.

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SUMMONSES against railway passengers for travelling without tickets have been pretty frequent lately, the offenders being in many cases small boys, as to whom a correspondent of the *Globe* has suggested that the maximum fine of 40*s.* should be imposed, with a promise of remission by the bench in consideration of an undertaking by the parents to whip the offending urchins. Any such arrangement, whether wise or unwise (and we think it would be unwise), is, of course, quite outside the law. It is material to point out, however, that for a second offence of (1) travelling without payment of fare and with intent to avoid payment thereof, or (2) on failure to pay, giving a false name and address to a railway company's officer, the offender is liable, in the discretion of the Court, to imprisonment for not more than a month, without the option of a fine. So it is provided by section 5 of the Regulation of Railways Act, 1889 (52 & 53 Vict. c. 57), which replaces, though it does not repeal, the better known section 103 of the Railways Clauses Act, 1845, and the invalid bye-laws made thereunder, which have been the subject of so much controversy since, in *Dearden* v. *Townsend*, 38 Law J. Rep. M. C. 50, it was first decided that the ticketless passenger could not be convicted under either statute or bye-law unless actual fraud were proved. However great and systematic the fraud might be, there was, prior to the Act of 1889, no power to imprison without the option of a fine, which was rather hard upon the railway companies.

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IT is not often that questions turning upon the provisions of section 3 of the Life Assurance Companies Act, 1870, have come before the Courts; and the point raised in *Ex parte The Scottish Economic Life Assurance Society*, reported in the current number of our Reports (60 Law J. Rep. Chanc. 14), seems to be quite a novel one. That section requires every life assurance society to deposit in Court the sum of 20,000*l.*, which is to be returned to the company so soon as its life assurance fund accumulated out of premiums shall have amounted to 40,000*l.* It appeared that two life assurance companies, the Scottish Economic and the Scottish Metropolitan, had agreed to amalgamate, the former of which had not accumulated 40,000*l.* out of premiums in accordance with the section. Consequently it was not entitled to the return of its statutory deposit of 20,000*l.* The Scottish Metropolitan, however, had accumulated a sum far exceeding that amount, and under the amalgamation scheme had agreed to take over the liability for policies of the Scottish Economic. Lord Justice (then Mr. Justice) Kay refused to allow payment out of the Scottish Economic's deposit fund of 20,000*l.* to the Scottish Metropolitan until there had been a further accumulation of 40,000*l.* out of the premiums of the two amalgamated companies. There can be no doubt that in an ordinary case, before payment out of a deposited fund can be sanctioned, there must, in order to satisfy the words of the section, be an accumulation of 40,000*l.* out of the premiums on the policies of the particular company by which the deposit of 20,000*l.* was originally made. It is true that here the joint life assurance funds accumulated out of premiums was greatly in excess of the prescribed amount; but, as Mr. Justice Kay observed, the letter of the statute had not been complied with. Moreover, in his lordship's opinion, the spirit of the Act had not been satisfied, there having been no sufficient accumulation in respect of or to meet the life assurance policies of the Scottish Economic. However, the order which the learned judge thought proper to make removed the difficulty.

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AUDACITY—at least in evil doing—often commands success. A keen-witted and plausible scoundrel, who has for some months been engaged in swindling that easily deluded section of the British public willing to pay a bonus to any agent who will find a 'snug berth or remunerative employment,' hit upon a bold method of improving his credit and inspiring confidence in his correspondents at a distance. Having selected as his offices a set of chambers in a Southern seaport recently vacated (on their removing to other premises) by a firm of solicitors of good repute, he added to the heading of his notepaper 'late A. and B.' (the firm in question). Such of the victims as took the precaution to look up the name and address in a directory found that the solicitors had occupied the chambers for a long time and held sundry public appointments, and they apparently accepted the *bona fides* of the successors as established. When, at last, this trick was brought to the knowledge of the solicitors whose names had thus been used as a blind, the swindler had netted a considerable sum and disappeared. The police met with difficulty in obtaining a warrant, and the delay gave the swindler so good a start that he has for some weeks successfully eluded all attempts at his apprehension. Solicitors who are removing their offices will do well to bear this dodge in mind, and take steps to prevent its being made a precedent by the 'long firm' community.

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MR. EDLMAN, a late wealthy director of the London and Westminster Bank, has, by his will, directed certain bequests to his children to be considerably reduced in event of their becoming Roman Catholics. There seems to be no doubt that such a restriction is good although there be no gift over. (See *In re Dickson's Trust*, 1 Sim. N. S. 37, in which a testator bequeathed a life interest in 10,000*l.* to his daughter, and revoked it by a codicil 'in event of her becoming a nun, continuing to reside in a convent, or in any other way associating herself permanently with any Roman Catholic establishment of that nature.') On the other hand, bequests for the propagation of the Roman Catholic religion which were unlawful before 2 & 3 Wm. IV. c. 115, as was held in *Cary* v. *Abbott*, 7 Ves. 490, and other cases, are expresely legalised by that statute, which places 'Her Majesty's subjects professing the Roman Catholic religion in respect of their schools, places of religious worship, and charitable purposes' under the same laws as Protestant Dissenters.

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## THE PUBLIC TRUSTEE BILL.

THE bill introduced by Mr. Howard Vincent, Mr. Warmington, Q.C., Sir Albert Rollit, and Mr. Bradlaugh 'for the appointment of a public trustee' is avowedly of an experimental character, as in its last clause it provides for the possible abolition of the office which it proposes to create 'at any time within five years from the commencement of the Act.' The authors of the bill must surely mean 'at any time after five years,' as it must be contemplated that time enough shall be given to discover whether the Act is likely to be successful. The explanatory memorandum prefixed to the bill states that in some of the American States and of our own colonies—notably in New Zealand—a public office exists for the purpose intended to be served by the present measure. The value or usefulness of a public functionary of this kind can hardly be appraised beforehand by an examination of the bill itself, but will be tested by the rules by which its objects will be carried out, and which are from time to time to be framed by the Lord Commissioners of the Treasury.

There are two remarks in the memorandum which will act in a somewhat deterrent manner on a testator who might be disposed to place his estate in the hands of the new officer. The first is: 'The Public Trust Office will, therefore, be not only self-supporting, but a profitable source of public revenue.' The second states: 'The supersession of professional men in relation to trust property is distinctly provided against by the bill.' If the State is to carry on a profitable debt-collecting and asset-realisation business, and the same number as heretofore of solicitors, accountants, and surveyors are to be employed, the administration of the estates of deceased persons is likely to prove very expensive to the estates so administered. Doubtless to many persons the bill would be a perfect godsend, as it would furnish a ready excuse for declining a thankless and responsible office of executor or trustee on behalf of their friends. Against all objections, however, may be urged the powerful argument of security. The public trustee will not

abscond; he will never die or become incapacitated; he will not be induced out of mistaken kindness to commit breaches of trust, and he will not quarrel with himself as a body of trustees may quarrel with each other, and harass the estate with needless litigation; and, above all, there will be the guarantee of the Consolidated Fund. In the case of large estates, where a little more or less of expense is of no great consequence, when no business has to be carried on, and when the investments authorised are within the strict limits imposed by the Court, the public trustee will be an admirable harbour of refuge for perplexed testators. It would have been a serviceable guide to opinion if the framers of the bill had informed us how long a functionary of this character had been established in the countries in which he exists, and how far the system had proved satisfactory. It is to be hoped that either in the form of a return or of official statistics some information will be given on the subject. Small estates, which require careful nursing and individual labour and attention, are not likely to avail themselves of the new office.

The bill consists of forty-two sections. The trustee is to be a corporation sole with perpetual succession, with power to hold and acquire property, to execute deeds, to grant leases, and to do such other acts as may be necessary. He may have a staff of assistants, and his salary and those of his assistants and the expenses of the office are to be paid out of the Consolidated Fund. Neither the trustee nor any of his assistants is to act professionally as counsel, solicitor, or auditor, but may in his discretion avail himself of professional guidance. The ordinary layman might reasonably expect that the mere proving of the will and the audit of accounts would be undertaken by the office itself. The auditing of accounts would seem to be one of the very objects contemplated, as otherwise the only gain by appointing the public trustee as executor or trustee would be the guarantee of the Consolidated Fund. The bill then provides that private persons may vest their property by deed or will in the public trustee, but that the latter shall not hold property for any religious or charitable purpose. This official may also be appointed under a power to appoint new trustees, and an executor or administrator may, after probate, with the consent of the Court, transfer the administration to the public trustee; and the Court may also order the retransfer of an estate to other trustees. Administrations and administrations *durante minore ætate* or *cum testamento annexo* may also be granted to the new official, who is also to be substituted for the Treasury solicitor as the Crown's nominee in the case of intestacies. It is probably in these instances that the new department will be most frequently and most usefully called into action. Public trust property may also be placed under the same authority. The trustee may also be appointed committee of a lunatic's estate, guardian of infants, or *ad litem* a receiver or manager. He is not to be required to give security, and may not act jointly with another, and he is not to hold property (except leaseholds) subject to liabilities. The commission chargeable and costs allowed are, of course, to be subject to rules framed under the Act. The Treasury is to make rules for the constitution of the office, the establishment of branch offices, the security to be given by the trustee and the other officials, the rate of commission, and the form and audit of accounts and balance-sheets. The new official may also advance money, repayable with 4 per cent. interest, for probate and other administration expenses. Any deficiency in the public trustee's account is to be made good out of the Consolidated Fund, into which also any excess is to be paid. There are also provisions for the recovery from the trustee of money improperly expended or not duly accounted for, and in respect of his liability for losses caused to his *cestuis que trust*. The last clause provides, as before stated, for the possible abolition of the office, in which event neither the trustee nor any official appointed under the Act is to be entitled to any compensation for the loss of such office.

## SERVICE OUT OF THE JURISDICTION IN ACTIONS FOR INJUNCTIONS.

IN the recent case of *Kinahan* v. *Kinahan*, 59 Law J. Rep. Chanc. 705; L. R. 45 Chanc. Div. 78, the principles upon which the Court ought to act when granting leave to serve out of the jurisdiction writs in actions for injunctions were clearly explained by Mr. Justice Kekewich. This is a jurisdiction which, to use his lordship's own expression, 'requires to be carefully watched and carefully exercised;' and the particular facts of each case have to be carefully weighed. Service out of the jurisdiction is an interference with the ordinary course of the law, and, apart from the Rules of Court, there is no power to give leave. Rule 1 of Order XI. of the Rules of Court, 1883, however, authorised service out of the jurisdiction of a writ of summons whenever, among other cases, any injunction is sought as to anything to be done within the jurisdiction. Rule 2 requires the Court or judge, in allowing service out of the jurisdiction, to have regard to the comparative cost and convenience of proceedings in England. But when an action is brought for an injunction it is not necessary that the injunction should be the only relief sought to bring the case within the order as to service out of the jurisdiction (*The Lisbon-Berlyn Gold Fields* v. *Heddle*, 52 L. T. Rep. (N.S.) 796).

Scotland and Ireland are both included in the order, and it extends not only to individuals but to foreign corporations. Before the writ is issued an application has to be made in chambers for leave to serve as well as to issue the writ. Where an *ex parte* application is made, the person making it must observe *uberrima fides*; otherwise, he is liable to have the order discharged at the instance of the person against whom it has been obtained (*The Republic of Peru* v. *Dreyfus Brothers & Co.*, 55 L. T. Rep. (N.S.) 802). Every such application has to be supported by affidavit or other evidence, stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place or country the defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made. No such leave is to be granted unless it shall be made sufficiently to appear to the Court or a judge that the case is a proper one for service out of the jurisdiction (Order XI., rule 4). A judicial discretion is thus afforded. What is a proper exercise of that judicial discretion has to be considered in granting or refusing applications under this order, which is a complete code on the subject of service out of jurisdiction.

In the case before Mr. Justice Kekewich the action was brought in England by a firm having places of business in Dublin and London, to restrain the defen-

dants, a limited company, having their registered office in Belfast, from infringing the plaintiff's trade-mark by the sale of goods under a similar trade-mark in England. The defendants had no agents or depôts in England, but supplied occasional customers here direct from Belfast. A motion was also pending in England by the plaintiffs, under section 90 of the Patents, Designs, and Trade-marks Act, 1883, to expunge the defendants' trade-mark, and it was proposed by the plaintiffs that the action and motion should be heard together. An order was obtained *ex parte* by the plaintiffs, under rule 1, Order XI., from Mr. Justice Kekewich in chambers, giving them leave to issue and serve the writ out of the jurisdiction. On reconsideration, however, of the matter in Court, the learned judge was of opinion that the action ought to be regarded as practically an Irish and not an English action, and accordingly that, notwithstanding the pending motion to expunge, the *ex parte* order ought to be discharged. On the question of convenience, to which, under rule 2 of Order XI., the Court is to have regard, his lordship thought that there was an extremely strong reason for proceeding in Ireland because of the necessity for having discovery. As the learned judge pointed out, the only place in which the defendants' books could be inspected was in Ireland; and the examination of the books, both for the purposes of the action and the trial, and still more for the purposes of account, if account were ordered, really went to the root of the action. It was not overlooked that the plaintiffs would have to take some witnesses over to Ireland; but, on the other hand, if the action proceeded in England, the defendants would have had to bring all their witnesses over here. The *ex parte* order which Mr. Justice Kekewich had made in chambers was therefore discharged, and the plaintiffs were left to their remedy of instituting an action in Ireland.

A case in many respects resembling *Kinahan* v. *Kinahan* (*ubi sup.*) was that of *In re Burland's Trade-mark; Burland* v. *The Roxburn Oil Company* (*Lim.*), 58 Law J. Rep. Chanc. 591; L. R. 41 Chanc. Div. 542. But there Mr. Justice Chitty considered that the plaintiff was entitled to an order for leave to serve the writ out of the jurisdiction—namely, in Glasgow. The action was brought for an injunction to restrain the defendants, a limited company, from infringing the plaintiff's registered trade-mark. The registered office of the defendants was in Glasgow, but they had branches in London, Manchester, and Hull. The plaintiff's place of business was within a short distance of the last-mentioned town. According to the plaintiff's evidence the defendants were supplying the goods of which he complained as infringing his trade-mark from their branches at Manchester and Hull, and he proved the execution from Manchester of an order given by one of his own customers. The plaintiff also showed that it would be necessary to call in support of his case a considerable number of witnesses, all of whom were resident in England. In the result Mr. Justice Chitty, as we have already remarked, gave leave to serve the writ in Glasgow. His lordship thought that it would be more convenient that the action should proceed in this country because the wrong had been committed here, the business of which the plaintiff complained having been done in Manchester and Hull. Mr. Justice Chitty pointed out that the case before him was distinguishable from *Marshall* v. *Marshall*, L. R. 38 Chanc. Div. 330, which had been relied upon by the defendants. There the Court of Appeal under somewhat similar circumstances declined to grant leave to serve the writ in an action out of the jurisdiction on the ground that the injunction could not be enforced against the defendant personally. But in *In re Burland's Trade-mark*, as Mr. Justice Chitty observed, the injunction, if obtained, could be enforced by writ of sequestration against the property of the defendant company in England, so that, if that were the test of convenience, the test was satisfied. Moreover, the plaintiff was resident in England. In that respect the case resembled *Tozier* v. *Hawkins*, L. R. 15 Q. B. Div. 680, which case shows that no hard-and-fast rule can be considered as laid down by *Marshall* v. *Marshall* (*ubi sup.*).

Briefly stated, the facts in *Marshall* v. *Marshall* were these: A summons by the defendant, a manufacturer resident in Scotland, for leave to register a trade-mark, was pending before Mr. Justice North, and was opposed by the plaintiff, also resident and carrying on a similar business in Scotland, on the ground that the mark was similar to one belonging to the plaintiff. The plaintiff applied for leave to issue a writ against the defendant for an injunction and damages, on the ground that the defendant was selling his goods in England in such a way as to lead the public to believe that they were the plaintiff's goods. The plaintiff deposed that the same witnesses would be required on the summons and in the action, and that it would be most convenient and would save expense if the action was brought in England, so that the summons and action could be tried together. It was held by the Court of Appeal, affirming the decision of Mr. Justice North, that as an injunction in England could only be enforced against the servants and agents of the defendant, who were not the persons primarily responsible, and not against the defendant himself, leave ought not to be given to issue the writ, the matter being one which was better left to the Courts of Scotland.

On an application for leave to serve a writ out of the jurisdiction it is not sufficient that the form of the action and the nature of the relief sought bring the case within Order XI. The plaintiff must show to the satisfaction of the Court that he has a probable cause of action; and the Court, in exercising its discretion, will consider the facts of the case appearing on the affidavits so far as may be necessary for that purpose (*Société Générale de Paris* v. *Dreyfus Brothers*, 57 Law J. Rep. Chanc. 276; L. R. 37 Chanc. Div. 215). In reference to this requirement, Mr. Justice Kekewich, in *Kinahan* v. *Kinahan* (*ubi sup.*), said that, in his experience, it very seldom happened that the affidavit in support of the *ex parte* application under the order strictly or satisfactorily complied with the exigencies of the order. In that particular case there was the omission in the affidavit of the statement, which it ought to have contained, of the belief that the plaintiffs had a good cause of action. This is a point, therefore, to be borne in mind.

## STUDENTS' QUERIES.

A. Z. desires an opinion on the following point:—

'A. sold to B. a piece of freehold land forming part of his estate, on which B. subsequently built. A. covenanted with B. to make a road in ten years on land adjoining the properties of A. and B. This land also formed part of A.'s estate. B. covenanted to pay A. a moiety of the expense of the construction of the road,

which was to be for the mutual benefit of A. and B. and their heirs, &c. A. has since sold the residue of his estate to C. The ten years have expired, and the road has not yet been made. B. wishes to enforce the covenant. How is he to do this, and who is liable—A. or C.?'

# Correspondence.

## MAGISTRATES' CLERKS CONDUCTING PROSECUTIONS.

SIR,—With regard to the present crusade against magistrates' clerks conducting prosecutions, does it not come to this?—that (unless these solicitors are to be judged by a different standard than the rest of the profession) no solicitor ought to be allowed to act for any plaintiff in any case in which he has advised that proceedings ought to be instituted, because his advice may be influenced by the consideration that he will earn a guinea or two by issuing the writ? H.

# Unreported Cases.

## COUNTY COURT.

### LIABILITY OF BAILEES FOR DETERIORATION OF GOODS WHILE IN THEIR POSSESSION.

AT Evesham County Court his Honour Judge Sir R. Harington recently gave the following judgment in the case of *Williams* v. *The Great Western Railway Company*: This case, which was tried before me at the Court holden here on October 10 last, raises a question of considerable importance to carriers and their employers. The action was brought to recover 10*l.* 13*s.* 8*d.*, the alleged value of a hogshead of claret entrusted to the defendants for conveyance from the premises of the British and Foreign Dock Company in London to Evesham. The defence was that the defendants had been guilty of no breach of duty which entitled the consignee to sue for the whole value of the wine, and admitting that they were responsible in nominal damages, they counter-claimed a sum of 12*s.* 9*d.* for the carriage of the wine in question. No question was raised by the plaintiff as to the propriety or reasonableness of this charge. The facts, as I find them on the evidence before me, are as follows: On May 27 last two hogsheads of wine, one of which is the subject-matter of this action, were delivered to the defendants in London sound and in good condition for conveyance to the premises of the plaintiff in Evesham, and the defendants accepted them as common carriers to be so conveyed. On May 28 the two hogsheads were tendered by the defendants to the plaintiff at those premises. One was accepted and no question arises upon it; the other was found to be slightly leaking. No evidence was given me by the plaintiff as to how much wine had escaped, nor, except inferentially, as to the condition of the remainder. He said himself, it is true, that this was unmerchantable; but if by this he means absolutely valueless, I find against him on the facts. I am not satisfied that the wine was necessarily so much deteriorated in quality as to have ceased to be of value as wine or to be unsalable as such. That it was deteriorated in value and rendered less fit for the purpose of being bottled and sold in the course of the plaintiff's trade I do find; but to what extent this deterioration had proceeded the plaintiff has left me n the dark, and I have no means of judging. The defendants, who might in my opinion, so far as was necessary for raising the point submitted to my decision, have safely left the case as it stood on the conclusion of the plaintiff's evidence, proceeded, in spite of my intimation to the above effect, to call witnesses to show that a few days afterwards the cask was apparently sound. This evidence carried the case no further, and, after the admission of a liability for nominal damages which it would have been hopeless on the facts proved to deny, I regret that my notes should have been burdened with this evidence. Indeed the plaintiff rested his whole case on the contention that, the goods having been damaged in transit, he was entitled to refuse them, and throw them back in their then condition on the hands of the defendants without giving any evidence as to the extent of that damage. Unfortunately, notwithstanding the general importance of the proposition contended for, neither of the parties thought it necessary to instruct learned counsel to appear before me, the consequence of which is that I cannot feel sure that authorities which the industry of gentlemen of that branch of the profession, instructed in due time, might have laid before me may not have been overlooked. And I myself labour under the disadvantage, which I share with the majority of my country brethren, of having convenient access to no library much better than my own. The assistance which I did receive, however, from the solicitors engaged in the case has not, nor has my own research, enabled me to discover any authority binding on me precisely in point, or even nearly analogous to the present case, although some Scotch cases, to which I will refer more particularly, and a case which came before a late brother-judge of mine, were laid before me, not in any authorised report, but in the shape of memoranda which had been collected and preserved by some railway authorities for their own purposes. Two of these cases—*Gavin, Paul & Sons* v. *The Caledonian Railway Company* and *Hutton* v. *The North British Railway Company*—did, indeed, decide the point now in question. In the former no reasons for the decision are given; but it appears to have proceeded on the authority of the latter. Except, however, as regards the *argumentum ab inconvenienti*, the reasons stated for the judgment in that case—which appears to have been in an inferior Court, and not the Court of Session—are such as cannot be adopted in an English Court of justice. The sheriff-substitute, who appears to have been the judge, in giving judgment, says: 'A carrier is to almost every effect an insurer. The obligation upon an insurer is to compensate the owner of goods for all damage done to goods so long as they are covered by the insurance. The obligations laid upon carriers are construed strictly against the carrier, but the extent of his obligations must not be strained. It would surely be wrong to hold that, if a carrier, in the course of conveying, for example, a valuable brougham, broke a linch-pin or the spoke of a wheel, the owner would be entitled to demand that he keep the brougham and to sue him for its value. It has never been heard of that the insurer of a vessel was bound to take the vessel at the insured price if she lost a spar or sustained partial injury.' In using these expressions the learned sheriff-substitute seems to have forgotten that, in a contract of insurance, the obligations of the parties are to a great extent defined by the contract, and not wholly left to the inference of law, the contract being silent, as in this case, and that, in the case of marine insurance, the insured can in many cases, by giving notice of abandonment, convert an average into a constructive total loss, and thus do exactly what the learned sheriff says is unheard of. In my opinion the common expression that a carrier is an insurer is not a happy one. It is used, no doubt, as a brief and compendious way of saying that a carrier is responsible for injury to goods in his charge without actual default on

his part. In point of fact, he is exempted by the common law from the perils most commonly covered by marine insurances—namely, the act of God and the Queen's enemies, and it seems to me to be pursuing a false analogy to liken him to an insurer in any other respect than that of the absence of actual default as an ingredient in his personal liability. The case in the County Court, *Hammersley* v. *The London and North-Western Railway Company*, only comes to this—that, in a case before the late Judge Spooner, a learned counsel admitted that he could not successfully contest the point now raised by the plaintiff. It remains then to deal with this question as one of principle, and to consider whether any light is thrown on it by the English authorities which I have been able to find, none of which unfortunately were cited before me at the trial. The true relation between a carrier and his customer is beyond all doubt that of bailee and bailor. Now, the essence of the contract of bailment, and that which distinguishes it from a contract of sale, is that the general property in the goods remains in the bailor, and that the bailee, unless he has some lawful excuse for failing to do so, is bound to return the goods bailed to the bailor on the determination of the contract of bailment. This obligation is universal, and subject only to exception when by the terms of the contract the nature of the article bailed is to be altered by the bailee, as in the case of cloth delivered to a tailor to be made into a coat, or the like. And if the bailee, without such excuse, fails to fulfil this obligation he is liable to the bailor either in detinue or trover, as the case may be. The difference between the incidents of the obligations of the various descriptions of bailees in relation to the return of the goods bailed arises from the various natures of the excuses which are accepted by the law as lawful excuses for failure to return them, of which the two extremes may be put perhaps as on the one side that of pawn, when non-payment of the loan at the stipulated time is a sufficient excuse, and that of a contract of carriage when no excuse avails the carrier except the act of God, the Queen's enemies, or the proper vice of the thing carried. It follows logically that, as there is an obligation on the part of the bailee to return the goods there must be a corresponding obligation on the part of the bailor to accept them on the determination of the bailment; otherwise he would at will be able to turn the contract of bailment into a contract of sale by the simple expedient of declining the goods and suing for their value—a proposition which carries its own absurdity on the face of it. The question then is, Has the bailee in this case constructively refused to deliver the goods bailed on the determination of the bailment so as to entitle the plaintiff to sue in detinue or trover? Now, no question of detinue, as distinguished from trover, can arise in this case, because it is now impossible for the defendants to satisfy the terms of the judgment, which, according to the rules of practice of this Court, I should give for the plaintiff in an action of detinue—viz. either for a specific return of the goods, or for their value to be reduced to a less sum on their return within a limited time. A tender of the goods in the condition in which they were on May 28 would, *ex hypothesi*, not satisfy the plaintiff, who would immediately contend that it was no performance of the order of the Court. He must, therefore, now contend that there has been a conversion of these goods by the defendants whilst bailees, and I proceed to consider whether there has been any such conversion. Now the nearest authority I have been able to find on the subject is that of *Richardson* v. *Atkinson*, decided at Nisi Prius before two judges—Eyre and Fortescue—and reported 1 Strange, 576. The marginal note in that case states its substance very pithily: 'Trover lies against him who takes part and spoils the whole.' In that case it appeared that the defendant had been bailee of a pipe of port wine, from which he, or someone for whom he was responsible, had abstracted a quantity and supplied its place with water. It is obvious, however, that it was the spoiling of the whole, and not the abstraction of part, which constituted the conversion. This is clearly the view taken in the later case of *Philpot* v. *Kilby*, 3 A. & E. 106, by Mr. Justice Patteson and Mr. Justice Coleridge, who there held that a misappropriation by the bailee of part of a stock of wine intrusted to him was no conversion of the whole, so as to make the Statute of Limitations begin to run from the date of the misappropriation. *Richardson* v. *Atkinson*, therefore, fails to benefit the plaintiff, because the facts are distinguishable. In this case I find that, though there was taking of a part, there was no spoiling of the whole. On the other hand, in the case of *Heald* v. *Cary*, 21 Law J. Rep. C. P. 97, Mr. Justice Maule says that a negligent dealing with goods by a bailee does not amount to a conversion. This, it is true, is a mere *obiter dictum*; but in this inferior Court it would, I think, be binding on me unless I believed that it had escaped the learned judge *per incuriam*, or unless it had been overruled or questioned by some later authority. Neither of these conditions has happened so far as I can learn. Having thus dealt with the authorities, let me consider for a moment to what extent the plaintiff must go to support his contention. He must go the length of saying that in the case of any bailee (for his argument must extend to every description of bailee as well as to a carrier), if the goods bailed are damaged to any extent, however slight, by reason of a default for which the bailee is in law responsible (as, for example, if one lends a carriage to a friend by the admitted negligence of whose coachman a little paint is scraped off one of the panels), he can force the bailee to become the involuntary purchaser of the thing bailed. Such a proposition is very startling, and I decline, without authority binding on me, to hold that the law is so. On the other hand, the obligation of the bailee (subject to the exception to which I have above referred, and which does not arise in this case) is to return the thing bailed, and not what is actually or substantially something else. For example, if a man bails a horse to a bailee, he cannot be bound to receive back a carcase of dead carrion, nor a carcase of beef instead of an ox, nor a cask of vinegar instead of one of wine, nor a horse with a broken leg (which motives of humanity must compel him immediately to convert into a dead carcase) instead of a sound one. In all these cases, either the thing bailed is not returned in specie, or (as in the case of the broken-legged horse), though returned in specie, it is of no value, so that the measure of damages would be the same as on a conversion, and the refusal to accept would be immaterial. The conclusion, then, which I draw on the whole case is, that whenever goods bailed are restored by the bailee still in ordinary parlance in specie and of some value the bailor must accept them subject to any right he may have to sue for the damage done; and his refusal to accept them does not create a constructive conversion by the bailee. In this case, therefore, I am of opinion that the plaintiff is entitled only to the damages occasioned by the deterioration of his wine. As he has given me no evidence on which I can rely of the money loss occasioned by that deterioration, those damages must in this case be nominal. And as the counter-claim is practically undisputed, the defendants must succeed upon that. I give judgment, therefore, for the plaintiff on the claim, damages 1*s.*, and for the defendants on the counter-claim for 12*s.* 9*d.* And, inasmuch as the defendants have succeeded on the merits and by reason of the counter-claim, it would have been a mere idle form to pay money into Court, I think they are entitled to the general costs of the cause if they think proper to ask for them. It will be a matter for them to consider whether

they will in such a case as this insist on their right. Payment of the sum due to the defendants to be made in fourteen days.—Thomas Cox, for Mr. G. L. Eades, represented the plaintiff, and Bentley (Worcester) the defendants.

## MAYOR'S COURT.

### A CURIOUS CLAIM.

On December 6, in the Lord Mayor's Court, a curious claim for damages came before the Assistant-Judge (Mr. Roxburgh) and a jury. The action was brought by Mr. A. F. Woodward, a compositor, against the Imperial Strength-Testing Machine Company (Lim.), to recover damages under somewhat peculiar circumstances. The defendant company are the proprietors of a patent machine which will test the strength of persons, who, after placing a penny in the slot, punch a pad provided for the purpose. The plaintiff on July 10 last was at Southend, where, at the entrance to the pier, was one of the defendants' machines. He read the directions upon it, which were: 'Place a penny in the slot and punch.' He placed a penny in the slot and punched, but the spring behind the pad would not move, and the effect of the blow was that his wrist was broken. He was unable to follow his occupation, and had lost his situation. This action was now brought to recover compensation for the injuries caused, on the ground of the negligence of the defendants in not keeping the machine in proper order, and also on the ground of warranty and of a promise of performance of a contract on the payment of a penny. Dr. Beswick, the medical attendant of the plaintiff, said that plaintiff had met with a serious accident, because he had dislocated the wrist. The ligaments were torn away. The pad which was on the machine to receive the punch was produced and handed to the witness, who gave it as his opinion that, if it were stationary, anyone punching it would break his wrist. For the defence technical evidence was given that the machine was so simple in construction that it was impossible for it to get out of order. The pad was in the nature of a buffer, and it would go back when punched, whether a penny was put in or not, the only work which the penny did being to put an indicator into motion showing the force of the blow struck. The owners of premises on which machines were placed were supposed to give notice to the company if any machine got out of order, and no such notice had been given. It was further suggested that the plaintiff had not struck the pad on the machine properly, and that the accident might have occurred in that way. The learned judge, in directing the jury, said if the defendants provided a machine which in itself was a source of danger, or contained a latent danger, so that anyone using it, at the invitation of the defendants, would be injured, then the defendants would be liable. The jury found for the plaintiff for 50*l*.

## THE COST OF LOCAL GOVERNMENT.

ACCORDING to the annual report of the Liberty and Property Defence League the increase of local taxation caused by the excesses in 'social reform' committed by county councils and other district departments like the School Boards is already pressing heavily on the minority who pay the rates. In every American city such abuses have long ago necessitated the formation of ratepayers' protection societies for the purpose of curbing local expenditure. The need for some similar check in this country is beginning to be widely felt by the chief sufferers from municipal extravagance. With the object of assisting in the formation of some such system of self-defence here the League has opened communications in several directions. The dissatisfaction of those who foresee the mischief of all this 'municipal socialism' for the working classes themselves, and who, in spite of this, are forced to be its financiers against their better judgment, make it very probable that the action of the League in this matter will contribute to a practical result.

Local government exists by sufferance of the Imperial Government. It is everywhere exercised within the limits laid down by Parliament in statutes and charters. Among the duties of late taken up with much energy by municipalities is that of the free supply of books and newspapers to the working classes. In this case, the most important point in which the State has seen fit to use its right of restriction is that of expenditure. The Public Libraries Act of 1871 conferred upon localities the privilege of self-government in this matter on the condition that it should not cost the ratepayers more than a fixed fraction in the pound. Following this precedent, and in response to the request of an influential portion of ratepayers, the chairman of the League Council has given notice that he will at an early date ask Parliament to safeguard the rights of the minority against the abuse made of their powers by the County Council and School Board of London and other metropolitan municipalities by fixing a maximum to the rates leviable by them.

## SIR ALFRED LYALL AND INDIAN MARRIAGE CUSTOMS.

SIR A. C. LYALL, K.C.B., member of the Indian Council, and formerly Lieutenant-Governor of the North-Western Provinces, contributes, says the *Times*, to the January number of the *Indian Magazine and Review* an article on infant marriage and widow remarriage. It is a distinct advantage to the Indian people, he points out, that they should be connected with a nation in which the standard of liberality, the habits of thought, regarding such matters, are much higher than in Asia generally; nor can their institutions long withstand the slow but sure attractions of the superior civilisation. Nevertheless, we have always to remember the nature of the power thus exerted by England over India. It is employed in the main, indirectly, by example, persuasion, and the steady inflow of larger ideas, which is produced by gradual changes in the material condition of the people. He is disposed to suggest to the National Indian Association—not to be confounded with the 'National Congress'—and to others who have, in England, so warmly taken up the questions referred to, that enough has been done for the present towards giving currency and movement to active measures for promoting reforms of child marriage and enforced widowhood in India. 'We have heard,' the writer goes on to observe, 'that the Government of India contemplates the early introduction of a bill to raise the legal age of consent, an amendment of law which I should thoroughly approve. The law as it stands is of our own making; so we are free—we are, indeed, bound—to alter it if we think right so to do.' While we have good ground for continuously loosening the bonds imposed by our own Legislature, we must act with the greatest circumspection. After alluding to the difficulties of interfering with early betrothals and the obstacles to widow remarriage, he continues: 'From the first there has been ground for the apprehension that anything like agitation on this subject in England would arouse opposition and set on foot a counter-movement in India, thereby embarrassing progress and turning discussion into controversy; and there are signs that this prognostication is being fulfilled. The influential meetings of Conservative Hindus at Madras and elsewhere, headed by men of weight, rank, and experience, like Sir Madahava Rao, are indications

that must be taken into account.' Sir Alfred Lyall concludes as follows: 'There are certain cases in which it is the duty of the English Government to overcome friction and to push forward measures in which the safety of the country or the happiness of the people may be seriously involved. But the questions of child marriage or widow remarriage do not belong to that category, and when we have clearly explained the general principles upheld in England upon these very complicated social problems, we may well be content so to guide our further proceedings as to avoid any risk of a collision between the public sentiments of two friendly and associated nations.' Coming from an official of Sir A. Lyall's experience and authority, the suggestions in this article will, no doubt, receive the careful attention of the distinguished committee formed by Mr. B. M. Malabari, of Bombay, during his recent visit to this country.

## THE YEAR'S INSOLVENCY.

WE said last year, in reviewing the statistics of failures for 1889, that 'It seems pretty certain that we are now entering upon a period of prosperity, or, as we may put it, a cycle of good business.' The figures for the year 1890 show that this view has so far been correct, as it is confirmed by the decrease in the various totals of insolvency. The statistical abstract is very satisfactory as far as it goes, and it may be taken to be a very fair indication of the improvement in the state of trade which the past year has shown in all departments of commercial activity. It is, of course, always to be remembered that these are only the official figures as contained in the *Gazettes* and records of the Bills of Sale Office, and that they, therefore, only show what may be called the public failures and the published insolvency, leaving out of account all really private arrangements with creditors, and also all the similar secret shifts in regard to loans of money by which the registration required by the Bills of Sale Acts is evaded. There are, of course, no means of knowing whether or not that class of insolvency has fallen in the same way as has the other. But it probably has done so, while it may be mentioned that the later decisions of the Court of Appeal, overruling some earlier cases, have put an end to hiring agreements as securities in any form, and so have stopped this very easy and private evasion of the Bills of Sale Acts, at all events for the future, and until some newer and wider scheme can be devised.

Taking open bankruptcies to begin with, we find a decrease during 1890 amounting to 10 per cent. upon the total for England and Wales for 1889, or about double the rate of decrease shown in 1889 upon the year 1888, which is certainly remarkable. Nor is this all, for we find that this decrease has been growing with greater force each year from the year 1886, although the falling-off during the last twelve months is far in advance of former improvements. For there to be over 500 less public bankruptcies in one year than in the year preceding is assuredly a striking fact, and one which should be a sign of a genuine revival in trade prospects. Then, again, we now have the figures for deeds of arrangement registered during the three years since the Act of 1887 came into operation, and these, too, are encouraging. Here also there has been a decline, smaller in 1889, but much larger in 1890, the decrease in the former year being only 38, as against about 180 in the last twelve months. Seeing how popular this form of arranging with creditors has become, it is clear that there must have been much less general insolvency to be dealt with during the latter period. It is true, of course, that numerous cases of small arrangements with creditors are carried out upon receipts for composition or dividend, and so without any formal deed or agreement that can be registered. But this has been the same for the last three years, speaking broadly, so that for purposes of comparison the figures above given offer reliable data, upon which we may base our conclusions.

If there had not been this striking decrease in registered deeds of arrangement as well as in bankruptcies, it might have been thought that many traders, instead of becoming bankrupt, had failed by deed. But when both have so rapidly fallen, there is only one deduction that can fairly be drawn from the statistics, and this is, fortunately, very favourable to a continuance of trade prosperity. It is curious that, in regard to bills of sale, the decrease has not kept pace with the decline in actual failures, nor has it maintained the high rate of diminution arrived at in 1889, when the total fall as compared with 1888 reached the large figure of 2,191. Of course, the decline of 1890, amounting to about 880, is upon a smaller number, but, in proportion to the decrease of 1889, it only amounts to about half. There is a possible explanation for this odd discrepancy in the fact that during 1889 the security of hiring agreements for loans was thought to be sound, and were doubtless largely used on the strength of a decision of the Court of Appeal. But in May of 1890 all this was upset, and these agreements were found to be worthless, so that it may possibly have tended to increase the total of bills of sale by driving all borrowers to give that form of security as the only one which lenders could safely accept. In Ireland, we notice, the falling-off in bills of sale during 1890 was well maintained, while it should be explained here that the increase in deeds of arrangements is only apparent in this country, and was entirely caused by the new Act of last session requiring the filing of petitions for arrangement in Dublin, with results that account for the rise.

In Scotland there has been but little change either one way or the other, for better or for worse, either in failures or in bills protested during the year, of which we give a table, as it affords some indication of commercial stability. But in Ireland the improvement in trade, as reflected in these figures, still continues. Thus there was a further decrease in the total bills of sales registered there, and also in the totals of bonds and judgments filed. This was, again, shown to be greatest amongst farmers, which tends to prove a better tone in agricultural matters. But this improvement in farming extends over the whole of the three kingdoms, and is very remarkable. Since 1886 the figures of official failures have been steadily falling, while during 1890 the decline upon the total for 1889 was as much as 30 per cent., which should certainly be a striking proof of better times in agriculture generally.—*Kemp's Mercantile Gazette.*

## OBITUARY.

MR. WILLIAM BULKELEY GLASSE, Q.C., died at Chettle, Blandford, Dorset, on December 30, 1890, at the age of eighty-four. He was called to the Bar at Lincoln's Inn on November 18, 1834, and was one of a batch of nearly thirty barristers whom Lord Truro, Lord Chancellor, made Queen's Counsel in July, 1851. Mr. Glasse ranked as a bencher of Lincoln's Inn at the time of his death immediately after the Earl of Selborne. Sir James Bacon stands senior, Mr. Walpole next, and Lord Selborne next. His name stands fourth in the list of Queen's Counsel for the present year, the names above his being those of Mr. Walpole, Mr. F. Calvert, and Mr. W. T. S. Daniel, and next to him stands Lord Grimthorpe. Mr. Glasse attached himself to the Court of Vice-Chancellor Kindersley, where he divided the leading practice with Mr. John Bailly, Q.C. He subsequently practised before Vice-Chancellor Malins. Some years ago Mr. Glasse retired to his estate at Swaffham, Norfolk, but he afterwards sold it and removed to Chettle.

# CAUSE LISTS.

## SUPREME COURT OF JUDICATURE.

*Hilary Sittings*, 1891.

### THE COURT OF APPEAL.

SPECIAL NOTICE.—During Hilary Sittings, until further notice, the Queen's Bench New Trial Paper will be taken every week, but not in the same Courts—that is to say, one week in Court I. and the next week in Court II., commencing the first week of the Sittings in Court I. Subject to the above arrangement, Chancery Final Appeals, Palatine Appeals, Chancery Interlocutory Appeals, and Lunacy Matters will be taken on the usual days in Court II. Queen's Bench Final Appeals, Bankruptcy Appeals, Admiralty Appeals, and Queen's Bench Interlocutory Practice Appeals will be taken on the usual days in Court I. The detailed order of Appeal Court work is given in the Hilary Sittings Paper.

Admiralty Appeals (with Assessors) will be taken in Court I. on days specially appointed by the Court.

Lunacy matters will be taken in Court II. on every Monday, at 11, until further notice.

### APPEALS FOR HEARING.

(SET DOWN TO THURSDAY, JANUARY 1, INCLUSIVE.)

*From the Chancery Division, the Probate, Divorce, and Admiralty Division (Probate and Divorce), and the County Palatine and Stannaries Courts.*

FOR JUDGMENT.

In re Standard Manufacturing Co. (Lim.), Lancaster Acts, and Co.'s Acts

FOR HEARING.

*General List.*

1890.

E. E. Warter, an infant, by her guardian *v.* H. de G. Warter, an infant, by his guardian
In re J. K. Mainwaring, dec. / Crawford *v.* Royal Infirmary and other charities / In re J. K. Mainwaring, dec. / Crawford *v.* Forshaw
Earl of Ilchester *v.* Raishley
Martin *v.* Heath (2)
In re Shipley Estates and Mundy's Settlement Trusts and Settled Land Act, 1882
In re Liverpool Household Stores Association (Lim.) & Co.'s Acts
Apollinaris Co. *v.* Snook
Attorney-General *v.* Morgan
Bellamy *v.* Debenham
In re Dick, deceased / Lopes *v.* Hume-Dick
E. M. G. De Vere Beauclerk, petitioner *v.* A. De Vere Beauclerk, respondent
Bown *v.* Centaur Cycle Co.
Elve *v.* Boyton
In re Jordan, deceased / Serjeantson *v.* Stokes
Vine *v.* Raleigh
In re Contract dated November 6, 1890, for Sale of Real Estate made between Eugene Arbib and C. G. Glass and another and Vendor and Purchaser Act
In re same Contract
Williams *v.* Marshall
Saxby *v.* Thomas
In re Sir E. H. Page-Turner, Bart., dec. (construction) / Maberley *v.* Blades
In re Woollcombe's Will Trusts / Woollcombe *v.* Woollcombe
Richards and others *v.* Butcher
In re Walbrum's Registered Trade-marks, 28,593, 28,594, and Trade marks Act
In re Halifax Sugar Refining Co. (Lim.) & Co.'s Acts.

*From the County Palatine Courts.*

FINAL LIST.

1890.

Cheetham *v.* Oldham and Fogg

*From Orders made on Interlocutory Motions in the Chancery Division.*

SEPARATE LIST.

1890.

Burn *v.* London and South Wales Coal Co. (Lim.) and another Company
Welbourne *v.* Porter
Tussaud & Sons (Lim.) *v.* De Pinna
In re Thos. Owens, dec. / Owens *v.* Green
In re Messrs. Taylor, Stileman & Underwood, solicitors, ex parte A. M. L. Payne-Collier
Hamilton *v.* Brogden
Jenkins *v.* Bushby
In re Wm. Heseltine, dec. / Woodward *v.* Heseltine
Cox *v.* Bennett
J. W. Sey *v.* W. Griffith & Co.
Daniel *v.* Ferguson
In re Ormerod, Grierson & Co. (Lim.) and Co.'s Acts, ex parte Official Liquidator
Barney and Birmingham, &c. Banking Co. (Lim.) *v.* Joshua Stubbs (Lim.) and another, in re Joshua Stubbs (Lim.) and Co.'s Acts
Jones *v.* Watts

*From the Queen's Bench and Probate, Divorce, and Admiralty (Admiralty) Divisions.*

FOR HEARING.

*Final List.*

1890.

Williams *v.* Buchanan (Alexander 3rd party)
Cronheim *v.* Sedgwick
Whitehaven Ship Building Co. (Lim.) (in liquidation) *v.* Russell and others
Davis (trading, &c.) *v.* Rogers and another
Mason & Barry (Lim.) *v.* Comptoir d'Escompte de Paris
Steinman & Co. *v.* Angier Line (1887) (Lim.) (damage to cargo)
Jones *v.* Williams
Winfield & Sons *v.* Snow Brothers
Dobell & Co. and others *v.* Steamship Bencroy Co. (Lim.)
Smith *v.* Northern Enamelled Iron Co. (Lim.)
Farnham *v.* Peel
Lawder *v.* Goucher
Irish *v.* Clayson
Europaische Wassergas Actien Gesellschaft *v.* London and Colonial Finance Corporation (Lim.)
Beckett and another *v.* Tower Assets Co. (Lim.)
South Staffordshire Tramways Co. *v.* Sickness and Accident Assurance Association
Overseers of Parish of Putney *v.* London and South-Western Railway Co.
Urmston (Treasurer, &c.) *v.* Whitelegg Bros. (Q. B. Crown Side)
Oakley *v.* Marston
Neil and another *v.* Hayward
North-Eastern Railway Co. *v.* Mayor, &c. of Kingston-upon-Hull
Fulton *v.* Pipe
Clink *v.* Radford & Co.
Shepherd *v.* Berger (Q. B. Crown Side)
Moir *v.* Marten and others
Hendry *v.* Von Weissenfeld
Lessing *v.* Horsley
Stogdon *v.* Lee / Same *v.* Same
Evans *v.* Newfoundland Railway Co. and others
Howlett, on behalf, &c. *v.* Mayor, &c. of Maidstone
Smith, Hill & Co. *v.* Pyman, Bell & Co.
Condy *v.* Blaiberg
A. Lavesseur and another, Liquidators of La Société Industrielle et Commerciale des Métaux *v.* Mason and Barry (Lim.)
Lewis *v.* Pontypridd, Caerphilly and Newport Railway Co.
Baylis *v.* Hall, Son and Lord
De Souza *v.* Cobden
Murray *v.* Warren
Tyneside Steamship Co. (Lim.) *v.* Newcastle-on-Tyne Home Trade Insurance Association
Unwin *v.* Hanson
Newman *v.* London and South-Western Railway Co.
Kinnell & Co. *v.* Clements & Co.
Pyke *v.* Day and another

1891.

Armour *v.* Bate

*From the Queen's Bench Division.*

NEW TRIAL PAPER.

*(For Hearing before the Court of Appeal.)*

1890.

Taylor and another *v.* Wheatley / Same *v.* Cragg
Terriss *v.* Cornwell and Empire Printing and Publishing Co. (Lim.)
Dibley *v.* Victoria Steamboat Association
Semmens *v.* Bute Docks Co. and Edward Robertson & Co.
Pittard *v.* Oliver
Lund *v.* Brocklesby and another
Heath *v.* Moore / Same *v.* Same
Bolander *v.* Davies
Webley *v.* Lowe
Evens *v.* Fenton
Robinson & Co. *v.* Ricardo
Williamson *v.* Savill Bros.
Horsman *v.* Croaker
Lamley *v.* Mayor, &c. of East Retford
Evans *v.* Langley
Gibbins *v.* Cumberland and another
Carey and wife *v.* Long's Hotel (Lim.)
Ball *v.* Corbett
Hayes *v.* Burgess / Same *v.* Same
Gower *v.* Tobitt and another
Steel *v.* Dartford Local Board
Phelps, James & Co. and others *v.* C. G. Hill and others
Turner *v.* Goldsmith
Stevens *v.* J. Hinshelwood & Co. / Same *v.* Same
Bennett *v.* M'Donald
Joyner *v.* Weeks
Crumble *v.* Wallsend Local Board
Shrapnel *v.* Everett
Jamieson *v.* Jamieson
Same *v.* Carden and others
Sheppards, Pelly & Co. *v.* Wilkinson
Foreign Wine Growers' Co. (Lim.) *v.* Hopkins

Taylor v. London and North-Western Railway Co.
Bonas & Co. v. Alderson
Johnson v. Taylor
Blahton v. Hill
Knowles v. Duncan
Greaves v. Sykes
Speight v. Gosnay
Bradney v. Sanger
Stuart v. Bell
Brown & Co. v. Shropshire Iron Co. (Lim.)
Hammond v. Waterton
Allcock and others v. Hall and others
Heckscher v. Crosley & Burn and another
Pickett v. Lyon
Thomson v. Isaacs & Son
Union Bank of London v. Sweeting
Medawar v. Grand Hotel Co. (Lim.)
Hale v. Waterburg Prospecting Syndicate
Watkins v. Meek
Dobbin v. Wickes
Harris v. Gordon
Same v. Grindley
Heath v. Stokes
Mayfield v. Sheppard
Todd v. Sheppard
Gray v. Jones
Patmore (executors, &c.) v. Bell
Burriss v. Davis & Co. (Lim.)
Dickens v. Metropolitan Electric Supply Co. (Lim.)
Schroder v. Merchant Marine Insurance Co. (Lim.)
Wolff v. May
Walklin v. Johns
Carruthers v. Fisher
Saqui and another v. Lovering
Armitage v. Hornsby & Sons (Lim.)
Tucker v. Tucker
Corporation of the Hall of Arts and Sciences (commonly known as the "Royal Albert Hall") v. Dowager Countess of Winchelsea and another
Fox v. A. J. White (Lim.)
Drake v. Birchall
Hargraves v. Walker

1891.

Eslman v. Hassall

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*From Probate, Divorce, and Admiralty Division (Admiralty).*

FOR HEARING.

*(With Nautical Assessors.)*

1890.

Great Grimsby Ice Co. (Lim.) owners of the smack Almoner and others v. Owners of the General Gordon
Elmore & Scott v. Owners of Steamship Dione
Stoomvart Maatschappy Nederland and others v. Owners of the Marpessa and freight
Owners of Ship Ovington v. Owners of ss. Queen Victoria and freight
Owners, Masters, and Crews of Steamships Inverness, Flying Scud, Heather Bell, and Spurn v. Owners of Ship Accomac, Cargo and Freight
Owners of Ship Accomac, Cargo and Freight and Owners of Ship Albert Edward and others v. Owners of Ship Accomac, Cargo and Freight

N.B.—Admiralty Appeals *without Assessors* (if any) are taken in order of date of setting down in the Queen's Bench Final List.

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*From the Queen's Bench Division, sitting in Bankruptcy.*

1890.

In re Prince Alexis Soltykoff, ex parte H. G. Margrett

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*From the Queen's Bench Division.*

INTERLOCUTORY LIST.

1890.

Roberts v. Tyser, and in re judgment obtained by Roberts against Tyser, dated May 19, 1888
Showers and others v. Chelmsford Union Assessment Committee (Q. B. Crown Side)
Pratt and another v. Russell

1891.

Armour v. Bate

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SUMMARY OF APPEALS.

| | Final | Interlocutory | Total |
|---|---|---|---|
| From the Chancery Division | 23 | 14 | 37 |
| From County Palatine Courts | 1 | — | 1 |
| From the Queen's Bench Division | 43 | 4 | 47 |
| From the Probate, Divorce, and Admiralty Division, Admiralty with Assessors | 5 | — | 5 |
| From the Queen's Bench Division sitting in Bankruptcy | 1 | — | 1 |
| New Trial Paper | 73 | — | 73 |
| Totals | 146 | 18 | 164 |

# HIGH COURT OF JUSTICE.

## CHANCERY DIVISION.

*Hilary Sittings*, 1891.

## CAUSES FOR TRIAL OR HEARING.

*(Set down to Thursday, January 1, inclusive.)*

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Motions, Petitions, and Short Causes will be taken on the usual days, as stated in the Hilary Sittings Paper.

Mr. Justice CHITTY will take Witness Actions on the following days—viz. February 3, 4, 5, 10, 11, 12, 17, 18, 19, 24, 25, 26. His Lordship will sit in Chambers every Monday during the Sittings. In the weeks when Non-Witness Actions are taken Further Considerations will be taken on Tuesdays. In the weeks when Witness Actions are taken, Further Considerations will not be taken on Tuesdays, but may be taken on Saturdays.

Mr. Justice NORTH will take Witness Actions on Tuesday, January 20, and continue them on Tuesdays, Wednesdays, and Thursdays, until further notice.

Mr. Justice STIRLING will take Witness Actions on days to be appointed by his Lordship, after the commencement of Sittings. His Lordship will sit in Chambers every Monday during the Sittings.

Mr. Justice KEKEWICH will take Witness Actions on days to be appointed by his Lordship, after the commencement of the Sittings. His Lordship will sit in Chambers every Monday during the Sittings.—Liverpool and Manchester Business will be taken as follows: Motions on days appointed for Motions. Petitions, Short Causes, and Adjourned Summonses, on Saturdays. Summonses in Chambers on Friday afternoons, Liverpool and Manchester Summonses being taken on alternate Fridays, commencing with Liverpool Summonses on Friday, January 16.

Mr. Justice ROMER will taken Witness Actions every day in the order as they stand in the Cause Book.

Adjourned Summonses will be taken as follows: Mr. Justice CHITTY, with Non-Witness Actions, except Procedure Summonses, which (if any) are taken every Saturday; Mr. Justice NORTH, on Fridays and Saturdays; Mr. Justice STIRLING also on Fridays and Saturdays; Mr. Justice KEKEWICH on Saturdays.

N.B.—The above note as to Adjourned Summonses is subject to alteration as their Lordships may direct.

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### BEFORE MR. JUSTICE CHITTY.

*Causes for Trial (with Witnesses).*

Freemantle v. Lafitte
Thompson v. M'Murdo
In re W. Rackham, dec.
Ormandy v. Rackham
Same Action, trial of third party
Boyle, Campbell & Co. v. Sacker
Western Wagon and Property Co. (Lim.) v. West
Hyslop v. Morel Bros.
Bolton v. Salmon and others
Chapman v. Caledonian Insurance Co.
Morris v. Bebro
Same v. Same
In re Hudson, dec.
Harris v. Strachan
M. Melacrino & Co. v. B. M. Melacrino and others
Holly v. Emmett
Blaydes v. Selby
Ramuz v. Earl Sondes
Arnold & Sons v. Lynch & Co.
Same v. Same
Sampson v. Royal Aquarium and Summer and Winter Garden Society (Lim.)
Creasy v. Dunmere
In re Robert Millard, dec.
Millard v. Millard
In re Harrison, dec.
Smith v. Allen
In re R. Harrison, dec.
Allen v. Cort
Birmingham Canal Navigations v. Tupper & Co.
Guardians of St. Saviour's Union v. Stanhope Co. (Lim.)
London, Tilbury, and Southend Railway Co. v. East and West India Dock Co. and London and East India Docks Joint Committee
Taylor v. Buzzard
In re John Lane, dec.
Hiscock v. Bankes
Dale v. Dale
Small v. Chapman
Fuller v. Impey
Hancock & Co. (Lim.) v. Fry
Inventions Trust Association (Lim.) v. Cole & Co.
Waugh v. Peacock
Anderson v. Lansdown
Dando v. New La Plata Mining and Smelting Co. (Lim.)
New La Plata Mining and Smelting Co. (Lim.) v. Dando
In re Baroness Craignish, dec.
Craignish v. Hewitt
Thomas v. Hume, Webster, Hoare & Co.
Wood v. Williams
Thornton v. Daniel
Bryen v. Glyn
Mapleson v. Boosey & Co.
Worthington v. Moore
St. Clair v. Manica Oplin Mining Co. (Lim.)
Lodge v. Ainley Sons & Co.
Leech v. Lewis (Lim.)
Nichols v. John Lewis & Co.
Boursot v. Boursot
Midland Railway Co. v. Metropolitan Railway Co.

Pink *v.* Pink
Matthew *v.* Munday
Hubbard *v.* Elverston
Eves *v.* Cook
Matthews *v.* Sanders
Fourth City Mutual Benefit Building Society *v.* Wood
Smith *v.* Bowler
Phillips *v.* Jones
Wigan *v.* Hoppe
Rickard *v.* Macalister
Lockyer *v.* Powell
Cameron *v.* Jones
In re Robson, dec. } Robson *v.* Hamilton }
Davies *v.* Plain
Singleton *v.* Mitchell
Oppenheimer *v.* Quinn
Redfarn *v.* Prime (2)
Sir W. G. Armstrong & Co. (Lim.) *v.* Pitkin
In re Thomas Price, dec. } In re E. B. Edwards, dec. } In re L. Price, dec. } Price *v.* Pontypool Gas and Water Co.
King *v.* Harry
Charsley *v.* Harris
Turner *v.* Elliott
Defence Vessel Construction Co. (Lim.) *v.* Scott
Hill *v.* Bischofswerder
Crossley Bros. *v.* Andrews & Co. (Lim.)
Andrew & Co. (Lim.) *v.* Crossley Bros. (Lim.)
Colman *v.* Colman
Jones *v.* Beard
Hartley *v.* Dearden

*Causes for Trial (without Witnesses).*

Saxby *v.* Farmer
In re R. Davidson, dec. } Davidson *v.* Creek }
In re Symonds, dec. } Symonds *v.* Tuke }
In re Poor Allotments of the Parish of Walton-on-Thames and Trustee Relief Act (ex parte Hewitt and others) } In re Same Poor Allotments (ex parte Scott) }
Wearmouth Permanent Benefit Building Society *v.* Brown
Ratcliff *v.* Jowers
Ward *v.* Royal Exchange Shipping Co. (Lim.) (ex parte Lancaster, Speir & Co.)
Bush *v.* Smith
Rogers *v.* Hewitt
In re Earl of Abingdon, dec. } Bertie *v.* Abingdon }
In re J. Wicks's Estate } Wicks *v.* Wicks }
In re R. Woolfall's Estate } Caffull *v.* Woodfall }
Myers *v.* Myers
In re R. O. Perkins's Settlement Trusts } Jefferson *v.* Perkins }
Dean *v.* Dean
Perry *v.* Eames
Salaman *v.* Eames
Mercers' Co. *v.* Eames
Fareham Local Board *v.* Smith
In re Earl of Caithness's Estate } Leslie *v.* Caithness }
Witherby *v.* Rackham
In re B. Hodgkins's Estate } Boswell *v.* Pratt }
In re W. S. Dible, dec. } Rodgers *v.* Dible }
In re J. Eagling's Estate } Mines *v.* Walton }
In re W. Armitage's Estate } Holt *v.* Holt }
In re Davy's Trusts, ex parte A. B. Willoughby and Conveyancing Act, 1881
In re Drummond and Davies's Contract and Vendor and Purchaser Act
In re Howard's Settlement Trusts } Paget *v.* Castle Rising Hospital (ex parte Settlement Trustee) }
In re J. Stanger's Estate } Moorsom *v.* Tate }
In re W. Salmon's Estate } Bush *v.* Bush }
Armstrong *v.* Armstrong
In re Bullimore's Settlement } Willis *v.* Burchell }
Walker *v.* Walker } Same *v.* Same } Same *v.* Same } Same *v.* Same }
In re Moore and Burton's Contract and Vendor and Purchaser Act (ex parte Purchaser)
In re T. V. S. Gooch, an infant, and Guardianship of Infants Act, 1886 (ex parte Lady Goooh)
In re V. Nevin, an infant, and Guardianship of Infants Act, 1886
In re S. Lawson, dec. } Birt *v.* Hinton }
Twynam *v.* Neath Harbour Commissioners
In re M'Gregor and Ratcliffe's Contract (ex parte Vendors)
In re H. A. Gwynne, dec. } Brooks *v.* Gwynne }
In re Samuel Gurney's Trusts } Gurney *v.* West Ham School Board (ex parte Residuary Legatees) }

*Procedure Summons.*

Jones *v.* Insole

*Further Considerations.*

In re S. Hurst, dec. } Addison *v.* Topp }
In re W. B. Taylor, dec. } Stephenson *v.* Taylor } Loder *v.* Loder
In re Hawkins, dec. } Walker *v.* Smith }
Forster *v.* Forster
In re John Betts, dec. } Jones *v.* Butt }

## BEFORE MR. JUSTICE NORTH.

*Causes for Trial (with Witnesses).*

Graeme *v.* Walker
Bentinck *v.* London Joint Stock Bank (Lim.)
Parnell *v.* Halkett } Halkett *v.* Parnell }
Bruce *v.* Watling
Fletcher *v.* Golland
Lescher *v.* Hart
Gas Patents Syndicate (Lim.) *v.* Lindsay
Willoughby *v.* Paulet } Brandon *v.* Willoughby }
Philippe *v.* Whitehead
Smith *v.* Hanbury
In re Harrison } Usher *v.* Harrison }
Sunley *v.* Spratt
In re Webster } Webster *v.* Webster }
Low *v.* Bouverie
Lane *v.* Godfrey
In re Lawes } Baylis *v.* Rees }
Stuart *v.* Hobson
Davidier *v.* M'Murdo
Hards *v.* Ford, Lloyd & Co.
Ilbert *v.* Norris
Smith *v.* Andrews
Zeffertt *v.* Park
In re Sharpe } In re Bennett } Masonic, &c. Assurance Co. *v.* Sharpe }
Cossey *v.* Roper
Chester *v.* Harris
Cowley *v.* Stocken
A. Pirie & Sons (Lim.) *v.* Goodall & Son
Commercial Bank of Scotland (Lim.) *v.* Sanders
Burgess *v.* Van Hoydonck
Matthews *v.* Martin
Sladen *v.* Shemwell
Garner *v.* Coad
Russell *v.* Sudeley
Beecham *v.* Turton
Parrot *v.* Burnett
Kenrick *v.* Danube Collieries, &c. Co. (Lim.)
Bullock *v.* Jones
Grosvenor *v.* White
Knowles *v.* Scott
Barker *v.* Furlong
United Friendly Societies Building Society *v.* Hobbs
In re G. Walker } Walker *v.* Walker }
Sykes *v.* Wigfield
Woolner *v.* Miskin
In re Grazebrook } Coxwell *v.* Paine }
Woodcock *v.* Parkyn
Tarbutt and others *v.* Holland
Faulders Brewery Co. (Lim.) *v.* Bownass
Tippett *v.* Strutt
New Land Development Association (Lim.) *v.* Lewisham District Board of Works
In re W. Giles } Real and Personal Advance Co. (Lim.) *v.* Giles }
In re Walker } Turley *v.* Walker }
Hardwick *v.* Morton
Zuccato and another *v.* Young
Wilkinson and another *v.* Griffiths Bros. & Co.
Moore *v.* North-West Bank (Lim.)
In re Aspinall } Hudson *v.* Warburton } Collinson *v.* Hudson }
Mackenzie *v.* Newton
Cole *v.* Cole
Llewellyn *v.* Simpson
Mineral Residues Syndicate *v.* Levant Mine Adventurers
Potter *v.* Glover
Thomson *v.* Hughes
Jackson *v.* Pegg
Beadell *v.* Beadell
Rose *v.* Ainge
Holland *v.* Wilson
Stuckey's Banking Co. *v.* Cohen
Lindoe *v.* Alexander
Leveson-Tower *v.* Jarrett
National and Provincial Bank of England (Lim.) *v.* Daniel
Pritchard & Co. (Lim.) (in liquidation) *v.* Pritchard
In re M'Murdo } Penfield *v.* M'Murdo }
British Water Gas Syndicate (Lim.) *v.* Nottingham and Derby Water Gas Co. (Lim.)
Nicholaz *v.* Development and Investment Co. (Lim.)
Bright *v.* Eckersley
Newman *v.* Yeats
Walker *v.* Higgins
People's Co-operative, &c. Building Society *v.* Shaw
Showell *v.* Perrins
Merridew *v.* Morris
Hamilton *v.* Hamilton
Crawshay *v.* Cartland
Capel *v.* Brown
Filden *v.* Bond
In re Rendle } Rendle *v.* Rendle }
Danks *v.* Jones
Taylor *v.* Taylor
In re Bliss } Bliss *v.* Bliss }
Automatic Weighing Machine Co. (Lim.) *v.* National Exhibitors' Association (Lim.)
Rayner *v.* Winstanley
Jensen *v.* Hilder
Wilkinson *v.* Jennings
Booty *v.* Goodwin
Lincoln Brick Co. (Lim.) *v.* Handley
Manning *v.* Freshwater, &c. Co.
Oldham *v.* Metherell
Wilson *v.* Queen's Club (Lim.)
Alliance Pure White Lead Syndicate (Lim.) *v.* Melvor's Patents (Lim.)
Morris, Wilson & Co. *v.* Coventry Machinists' Co. (Lim.)
Viney *v.* Lewis
Tims *v.* Schell } Schell *v.* Cutler }
Thesiger *v.* York
Lloyd *v.* Clingo
Belsey *v.* Brooks
Westinghouse Brake Co. (Lim.) *v.* Williamson
Norton *v.* Burr
T. & W. Smith *v.* Bullivant and others
Brett *v.* Bowles
Fielding *v.* Earl Northbrook
Beaumont *v.* Provident Assurance Co. (Lim.)
Ward *v.* Langdon
Farrell *v.* Joint Stock Association
Langham *v.* Hedges & Abell
Faull *v.* Harding
In re Stevens } Stevens *v.* Stubbington }
In re Clench } Draper *v.* Clench }

*Causes for Trial (without Witnesses).*

Charles *v.* Fuller
In re Gatward } Gatward *v.* Gatward }
Hunter *v.* Union Finance Co. (Lim.)
In re Keeley } Keeley *v.* Courtney } Woodhouse *v.* Bellairs
In re Cooper } Cooper *v.* Cooper }

*Adjourned Summonses.*

In re Earl of Leven and Melville
Deacon v. Earl of Leven
In re Barton-upon-Humber and District Water Co. (Lim.) and Co.'s Acts
In re Burfield
Dean v. Burfield
In re Birmingham Concert Halls (Lim.) and Co.'s Acts, ex parte Boord & Sons
In re Same, ex parte J. J. Nunn
Elliott v. Steel
Gedye v. Commissioners of Her Majesty's Works and Public Buildings
In re Muspratt
Muspratt v. Blake
In re Cox & Neave and Vendor and Purchaser Act, 1874
In re Crawshay
Dennis v. Crawshay, &c.
Handley v. Hazlehurst
In re Wright
Whitehead v. Stares
In re Radcliffe
Radcliffe v. Bowes
Harper v. Eyre
Badeley v. Consolidated Bank (Lim.)
In re Harris
Fitzroy v. Harris
In re Thomas
Richard v. Thomas
In re J. T. Marshall, &c.
In re Rees
Williams v. Lloyd
Brown v. Clark
In re West
West v. West
Haseldine v. Haseldine
Same v. Same
Kennedy v. Smith
In re Miller
Bevan v. Miller
In re Portuguese Consolidated Copper Mines (Lim.) and Co.'s Acts
In re Nathage
Ellis v. Barfield
In re Capstick
Capstick v. Simmonds
Hamilton v. Brogden
In re Brace
Welch v. Colt

*Further Considerations.*

In re Stevens
Stevens v. Kelly
Page a. Page
In re Lockerby
Lockerby v. Muir
Stead v. Harper
In re Elliott
Elliott v. Johnson
Rowley v. Fiennes
Ager v. Blacklock

## BEFORE MR. JUSTICE STIRLING.

*Causes for Trial (with Witnesses).*

In re J. Davis
Joseph v. Davis
Denman v. Batten
Lowther v. Caledonian Railway Co.
General Auction, Estate and Monetary Co. v. Smith
In re Robertson
Moir v. Moir
Reid v. Ellis
Goodall, Backhouse & Co. v. Wilkinson
Mears v. Mockford
In re Brooke
Crosby v. Brooke
Hedger v. Hedger
In re Jennings
Jennings v. Jennings
Scott v. National Finance Corporation (Lim.)
Hornley v. Richards
Dodd v. Scholding
Burton v. Dodd
Armstrong v. Owray Gold Mining Co. (Lim.)
Edwards v. Beckett
Sebright v. Fitzgerald
Gledhill v. Maude
Hunt v. Parry
In re Parry
In re Pierce
Hunt v. Parry
Crump v. Minter
Keighley, Maxsted & Co. v. Bakewell
Laing v. Walker
Couling v. Gell
In re Fox
Fox v. Fox
Hill v. Bishton
Canning v. Stone
In re Hodgson
Thompson v. Wilson
Wilson v. Thompson
Fuller v. Duncan
New Asbestos Co. (Lim.) v. Same
Hyde v. New Asbestos Co. (Lim.)
Masters, &c. of the Skinners' Co., London v. Leadenhall Market, &c. Co.
Colchester Brewery Co. (Lim.) v. Harwood
Simmons v. Henderson
In re Cooper
Greaves v. Cooper
Parnell v. Pitman
In re Nesbitt
Nesbitt v. Freeman
Faulkner v. Stevens
United Telephone Co. (Lim.) v. Lancashire, &c. Railway Co.
Same v. London and North-Western Railway Co.
O'Shea v. Wood
Staffordshire, &c. Bk. v. Partridge
In re Owen
Owen v. Allman
Benham v. Clarkson
Baring v. Abingdon
Whately v. Rippon
Birmington v. Hill
Morley v. Brodhurst
Ramsbotham v. Fielding
Turney v. Turney
Whitby v. Whitby
Pedder v. Pedder
Stephenson v. Ovington
Davies v. Gibson
Hooper v. Cullener
Cross v. Mein
Gavin v. Hughes
Robertson v. Hughes
Heathcote v. Blair
Steinwald v. Van Raalte
Rippon v. Brushfield
Buller v. Strange
Abbott v. Howard
In re Park
Cole v. Park
Park v. Cole
Brunton v. Red Moss Works Co.
Coombs v. Wilks
Lloyd's Bank (Lim.) v. Keen
In re Casey's Trade-marks, &c. and Patents, &c. Act
Stewart v. Casey
Duke of Sutherland v. Heathcote
Woodman v. Knowles
Cox v. Holman
Jones v. Merionethshire, &c. Building Society
Froude v. Wilberforce
Western Counties Railway Co. v. Anderson & Co.
Rugby Portland Cement Co. v. Rugby and Newbould Cement Co. (Lim.)
Birch v. Egan
Campbell v. Tate
Moul v. Douglas
In re Rudd
Peal v. Rudd
Adney v. Adney
Vernall v. Reed
Cunliffe v. Bellite Explosives (Lim.)
Best v. Dodd
Municipal Permanent Investment Society v. Pollington
Farbenfabriken Vorm Fried Bayer & Co. and others v. Bowker
Atkinson v. Bower
In re Bayley
Worthington v. Bayley
Hampton v. Davis
Wrensted v. Rede
Wagner v. Costeritz
Jones v. Wemyss
In re MacIvor's Patent & Co.'s Acts
Lewis v. Oldroyd
Lloyd v. Fox
Price's Patent Candle Co. (Lim.) v. Price & Co.
In re Heywood
Heywood v. Heywood
Leach v. Hearn
Williams v. Gregory
In re Carruthers
Talbot v. Carruthers
Simeon v. Freshwater, &c. Railway Co.
Wroath v. Coathupe
Newton v. Cohen
Bank of British North America v. Anderson & Co.
Pender v. Brass
Young v. Harris
Twyeould v. Chamber Colliery Co. (Lim.)
Coombs v. J. Jones & Son
Render v. Macpherson
In re Wells
Molony v. Brooke
Radway v. Titmas
Sykes v. Crust
Norfolk v. Harvey
Fritchley v. Marshall
In re Walsh
Underwood v. Haiden
Cunningham v. Todd
Willcox v. Black
Crowder v. Cooper
Farr v. British Sublimed Lead, &c. Co.
Beecham v. Fisher
Jackson v. Snell
In re Edgar
Edgar v. Edgar
Lampard v. St. George's House, (Lim.)
Foster v. Rowe
In re Bowman
Bowman v. Bowman

*Causes for Trial without Witnesses and Adjourned Summonses.*

In re Credit Co. (Lim.) and Co.'s Acts
In re Blumberg & Co. (Lim.) and Co.'s Acts
In re Aurum Co. (Lim.) and Co.'s Act, ex parte Sulybach
Griffith v. Pound
Robertson v. Harlopp
In re Low
Gamble v. Low
In re Broughton
Barnard v. Stockton
In re Credit Co. (Lim.) and Co.'s Acts, ex parte Liquidator
Barrow v. Barrow
In re Goodbody
Williams v. Roddand
In re W. J. Cross
Cuturi v. Cross
Stone v. Lickorish
Newby v. Richmond
In re Helen's and District Trams Co.
Watkins v. The Co.
Chalk v. Abethell
In re Reeve
Reeve v. Reeve
Wills v. Lycett

*Further Considerations.*

In re Forster
Forster v. Budd
Tayler v. Bell
Styles v. Stafford & Guy (Lim.)
In re Longley
Longley v. Wheater

## BEFORE MR. JUSTICE KEKEWICH.

*Causes for Trial (with Witnesses).*

In re Metropolitan Coal Consumers' Association (Lim.) and Co.'s Acts, ex parte Edwards
In re Same and Co.'s Acts, ex parte Hy. Dunkley
In re Same and Co.'s Acts, ex parte J. K. Aston
In re Same and Co.'s Acts, ex parte R. V. Green
In re Same and Co.'s Acts, ex parte R. Lord
In re Same and Co.'s Acts, ex parte A. A. Lord
In re Same and Co.'s Acts, ex parte Perry
In re Same and Co.'s Acts, ex parte Kirkmann
Rendall v. Blair
London and North-Western Railway Co. v. Evans & Co.
Richards v. Butcher
In re R. Perry
Walker v. Walker
Wentworth v. Hull and North-Western Junction Railway Co.
In re Roper
Buxton v. Sheldon
Read v. Nesling
Hair v. Geddes
Sykes v. Burr
Provan v. Paterson
Smith v. Rogers
Reed v. Wollranch
Lucas v. Gillett
M'Clintock v. M'Clintock
Ashling v. Boon
Freeman v. Cheesman
Cheesman v. Freeman
Riddle v. Trim
Millen v. Gatfield
In re Fuente & Pinto and Trade-mark No. 67,419, &c.
In re Same and Trade-mark No. 65,643
In re Same and Trade-mark No. 67,418
Mackenzie v. Mackintosh
Ricketts v. Ricketts
Bythesea v. Bythesea
Wyatt v. Earl Cadogan
Pullin v. Reffell
Cronbach v. Uranium Mines (Lim.)
Same v. Same
In re Mountain
Beckett v. Mountain

Carter v. Sillier
Wertheimer v. Cohen
Holtz v. Couper
Hanley, &c., Coal Co. (Lim.) v. North Staffordshire Railway Co.
Crown Bank (Lim.) v. Newman
Perceval v. Burnett
Dixon v. Garnish
Fleetwood Estate Co. (Lim.) v. Drummond & Sons
Sanderson v. Allen
Westmoreland Green, &c., Slate Co. (Lim.) v. Feilden
Bower v. Tomkinson
Steel v. Evans
Gardiner v. Frith
Earl of Shaftesbury v. White
London Founders' Association (Lim.) v. Commercial Trust, &c. (Lim.)
Thomas v. Christmas
In re Yorath
Hughes v. Davies
Horsman v. Shorney
Hinde v. Burr
Smyrke v. De Peyer
Thornley v. Lupton
Cubitt v. New Land Development Association (Lim.)
Gray v. Purves
Holland v. Skidmore
Marshall v. Borrowdale Plumbago &c. Co. (Lim.)
Ward v. Miles
Lloyd v. Margrave
Nuttall v. Hargreaves
Beard v. Margrett
Margrett v. Beard
In re Joel's Letters Patent, &c. v. Petition
Haley v. Metcalfe
Jope v. Pountain
Jones v. Steamship Cairngoun (Lim.)
Edwards v. Covell
Campbell v. Skewis
London, Brighton, and South Coast Railway Co. v. Reeves
Lewis v. Morgan
Meux v. Cobley
Blackman v. Fysh
Baily v. Icke
Lawson v. Holt Bros.
Handley v. Willson
Bellite Explosive (Lim.) v. Belite Co. (Lim.)
Sawkins v. Stratford, &c. Junction Railway Co.
In re Whiteley and Roberts, arbitration, &c.
Brandon v. Viscount Bury
Godfrey v. Walker
Burroughs & Watts v. Orme & Sons
Denney v. Frisby
Alcock v. Smith
Klein v. Wagner
Dawson v. Church
In re Parker
Lowe v. Parker
Schott Bros. (Lim.) v. Wharfedale Fancy Knitting Wool Co.
Nicol v. Charaley
Horwood v. Milkins
Leach v. Gough
Munns v. Howard
Benson v. D'Arcy
In re Johnson
Johnson v. Johnson
Nokes v. Prior
In re Lyle & Kinahan's Trade-Mark, &c.
Coulson v. Lock
Savoy Publishing Co. (Lim.), &c. v. O'Reilly
Henry Clay & Co. v. Litsica Marx & Co.
Bendall v. A. D. Selfe & Co.
Duncan v. Baird
Wood v. Lamplough
Motum v. Wilmot
I'Anson v. Turner
Lewis v. Ellis
Richards v. Whitham
Marsden v. Thorne
In re Ewing
Beckett v. Small

*Causes for Trial (without Witnesses).*

In re Davidson
Faija v. Davidson
In re Fitzgerald
Fitzgerald v. Cary-Elwes
Greenwood v. Turner
Banks v. Scovell
Welchman v. Creigh
In re Wynn
Wynn v. Wynn
Lusk v. Plumbly

*Adjourned Summonses.*

Griffin v. Bishop's Castle Railway Co.
Haslehurst v. Rylands
In re Stephens
Warburton v. Stephens
In re Gartside
Taylor v. Butterworth
In re Newman
Bleste v. Slidolph
In re Darby
How v. Draper
In re Heathcote
Trench v. Heathcote
In re Same
Butchart v. Heathcote
In re Trade Investment Trust (Lim.) and King and Vendor and Purchaser Act, 1874
Stewart v. Bessler
Langdon v. Grange
In re Hartley & Chirnside and Vendor and Purchaser Act, 1874
Slater v. Slater
Hope v. D'Hedouville
In re Isaac
Cronbach v. Isaac
Cooke v. Smith
Windham v. Cooper
In re Garston, an infant
In re Same
In re Tutill
Storey v. Bridgland
In re Earl of Lisburne, &c. and Settled Lands Acts
Cox v. Bennett
In re Stuckey
Prankerd v. Roach
In re Croom
England v. Provincial Assets Co. (Lim.)
In re Pearce
Smith v. Arnold
In re Beresford
Beresford v. Beresford
In re Same
Same v. Same
Hicks v. Rose

*Further Considerations.*

Re Boultwood
Attorney-General v. Solicitor to Treasury
Pennington v. Smith
Griffith v. Mayhew
London, Chatham and Dover Railway Co. v. South-Eastern Railway Co.
In re Robson
Larkman v. Robson

## BEFORE MR. JUSTICE ROMER.

*Causes for trial (with Witnesses).*

Scott v. Snyder Dynamite Projectile Co. (Lim.)
Van Gelder Assurance, Simon & Co. v. Sowerby Bridge United District Flour Society (Lim.)
Roberts v. Lewis
Jones v. Dinas Steam Colliery Co. (Lim.)
Same v. Same

*Transferred from Justices* CHITTY, NORTH, *and* STIRLING, *for trial or hearing only, by order dated September* 2, 1890.

Smiley v. Primery
Scholes v. Brook
Howard v. Golland
Potter v. Passburg Grains Syndicate
Bigwood v. Same
J. B. Orr & Co. (Lim.) v. J. B. Orr
British Tanning Co. (Lim.) v. Groth
Hornsey Local Board v. Elder
Cooper v. Power
Barnhard v. Cumming
Steers v. Rogers
Gisborne v. Shipping Appliances Co. (Lim.)
Clifford v. Wilmot
In re S. Rees
Rees v. Jones
Hart v. Hyde
Haseldine v. Haseldine
Rickett v. Bennett
Harrison, Ainslee & Co. v. Mayor, &c. of Barrow-in-Furness
Riche v. Erlam
Ballard v. Hover
Gathorne-Hardy v. Rogers
Cochrane v. Stone
Gardner v. Cowcher
London, Edinburgh, and Glasgow Assurance Co. v. Turner
Veness v. Geary
Ellis v. Amhurst
Amhurst v. Ellis
Countess de Galve v. Forwood Brothers
South Staffordshire Water Works Co. v. Marquess of Anglesey
In re S. S. Smith
How v. Mee
Buckland v. Mills
In re Sir R. H. K. Lacon
Lacon v. Lacon
Martin v. Hemsworth
Tucker v. Kaye
Woolranch v. Woolranch
Barran & Sons v. Atkinson
Eves v. Tooth
Gilson v. Cheeswright
Sparrow v. Swiss Milk Powder Co. (Lim.)
Bristol Brewery, Georges & Co. (Lim.) v. Gillings
Avery v. A. Wood & Sons
Prew v. Sanders
Tweed v. Death
Griffith v. Evans
T. W. Mansell & Co. v. British Linen Co. Bank
Halford v. Hyam
Wright v. Law
Lee v. Smart
Cummins v. Sargent
Roberts v. Peckham
Alexander v. Wolsey
Dairy v. Bailey & Co.
Stavert v. Passbury Grains Syndicate

Jones v. South Staffordshire Coal, &c. Syndicate (Lim.)
Harbertson v. Bowser, Ounston & Co.

## SUMMARY.

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| 1.—Mr. Justice CHITTY—Witness Actions | | 103 |
| Non-Witness Actions, including Summonses | | 41 |
| Further Considerations and Procedure Summons | | 7 |
| | | 151 |
| 2.—Mr. Justice NORTH—Witness Actions | | 117 |
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| Adjourned Summonses | | 30 |
| Further Considerations | | 7 |
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| 3.—Mr. Justice STIRLING—Witness Actions | | 126 |
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| 4.—Mr. Justice KEKEWICH—Witness Actions | | 111 |
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| 5.—Mr. Justice ROMER—Witness Actions | | 56 |
| Total Causes and Matters for Hearing in the Chancery Division | | 667 |

## SPECIAL PAPER.

FOR ARGUMENT.

*Set down October* 31, 1890, *due November* 6, 1890.

Metropolitan Railway Co. v. Fowler

*Set down December* 6, 1890, *due December* 12, 1890.

Lister v. Wood

## OPPOSED MOTIONS.

FOR ARGUMENT.

Orisford *v.* West Lancashire Railway Co.—Stand over till January 13
Owen *v.* Stark
In re M. E. E. Brandreth—Stand over till notice given to Law Society
Fisher, Meinhardt & Co. *v.* Hutchins & Co.
Weight *v.* Perrin
Davis *v.* Paris
East Acton Brick, &c. Co. (Lim.) *v.* Hammer
Edleston *v.* Siddall and another
Morrison, Kekewich & Co. *v.* Baring Brothers and another
Hornfall *v.* Seal & Co.
In re Arbitration between Hendon and Ballard
Sarell *v.* Duke of Westminster
Curson *v.* Shillito and another
Dimsdale and others *v.* Wilkinson & Jarvis
Ward *v.* Proctor
Delta Metal Co. (Lim.) *v.* Maxim Nordenfeldt Gun, &c. Co. (Lim.)
Greenwell & Co. *v.* Linton and another
In re a Solicitor, ex parte Incorporated Law Society
Hartley *v.* Rickerby
Hobbs *v.* Gaskell and others
Selig *v.* Lion & Sons
Westacott *v.* Bevan and another
Hartcup *v.* Dealtry
Brandon and another *v.* M'Henry
Hills *v.* Rolls
Williams *v.* Mills and others
Nelson and another *v.* Taylor
In re Arbitration between Von Schoeller and others and Lorenz Ordnance Co.
Potts *v.* Russell
Ward *v.* Proctor
Roberts & Sons *v.* Wohlgemuth & Co.
Poulter *v.* Cowper and another
Assicurazioni Generali and others *v* SS. Bessie Morris Co. (Lim.)
Tanner & Co. *v.* Radclyffe and others
In re Arbitration between Thames Iron Works, &c. Co. (Lim.) and Barry Docks and Railway Co.
Drew and another *v.* Lewis
Street *v.* Doody
Same *v.* Same—Part heard before Pollock, B. and Cave, J.
Strauss & Co. *v.* Goldschmid
Williamson *v.* Ingham
Perry *v.* Pitt
Price *v.* Evans
Sykes's Brewery Co. (Lim.) *v.* Chadwick
Pasmburg Grains Syndicate (Lim.) *v.* North
Scott *v.* Potter
Anderson *v.* Tennant
Usher *v.* Porteous
Buckler & Co. *v.* Great Western Railway Co.
Hurd *v.* Morris
Humphreys *v.* Jude and others
Wilson *v.* Ellis
Hamerton *v.* Bradley
In re Griffith, Eggar & Griffith, gents. (delivery of documents)
In re W. A. Watts, gent. (costs)
Bennet *v.* Justices of the County of Northampton
Capel, Cure, and another *v.* Investors' Union (Lim.)
London and Universal Bank (Lim.) *v.* Abbott and another
Hammond *v.* Schofield and another
Nugent and others *v.* Leonard
Attenborough *v.* Hawker and another
Harrison *v.* Vergis
Gunn *v.* Tucker
Flower & Sons and others *v.* Rose and others
Hughes *v.* Sawrey
Bates *v.* Taylor
Hughes and others *v.* Howes and another
Hills *v.* Midgley & Sons
Massey *v.* Turner
Sheffield *v.* Trevor
Evans and another *v.* Davies
Reeve and another *v.* Gibson
Davey *v.* Thompson
New Westminster Brewery Co. *v.* Sanders
In re Blair & Girling, ex parte Grant
Tanner & Co. *v.* Radclyffe & others
Same *v.* Same
Jones *v.* Pontypool Guardians
Cumberland Union Banking Co. (Lim.) *v.* Caird
Archer and another *v.* Hobbs & Co. (Lim.)
Bloxsome *v.* Flinn
Cooke and another *v.* Hamlyn
Hughes & Kimber (Lim.) *v.* Popular Publishing Co. (Burgess and another third parties)
In re Arbitration between Jones and Davies
West and others *v.* Marks and another
Cave *v.* Leslie and others
In re Arbitration between Gollings and Tradesmen's Friendly Society, Peterborough
Aitken *v.* Batchelor
Collings *v.* Hawkins
Hutchinson and another *v.* Reid and others, trustees (urgent)
Barclay and others *v.* Seton, Karr, and others
Same *v.* Same
Same *v.* Same
Fowler and another *v.* Bowles (Bowles, claimant)
In re Adolphus Herman Louis, an unqualified person, ex parte Incorporated Law Society
Morgan *v.* Harrison
Ross *v.* Bourke
Giddy & Giddy *v.* Benham
Prado *v.* Chamberlaine
Dreyfus *v.* Biedermann
Wood and another *v.* Bathe
Penberthy *v.* Venezuelan, &c. Co. (Lim.)
Snell, Son & Greenip *v.* Foakes
Devon and Cornwall Banking Co. (Lim.) *v.* Prior
Barlow and another *v.* Forbes, Munn & Co.
Haughton *v.* Hartmann and others
Newbigging *v.* Kirby
Joicey & Co. *v.* Allan & Co.
Sutton & Co. *v.* Zuccani (urgent)
In re an Arbitration between Williams and Stepney
Milisich *v.* Spottiswoode
In re a Solicitor, ex parte Incorporated Law Society
In re a Solicitor, ex parte Incorporated Law Society
In re a Solicitor, ex parte Incorporated Law Society
In re a Solicitor, ex parte Incorporated Law Society
In re a Solicitor, ex parte Incorporated Law Society
Trotter *v.* Fox
Day *v.* Moss

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## CROWN PAPER.

FOR JUDGMENT.

Middlesex (Clerkenwell)—Brown *v.* Hawkes (*cur. adv. vult.* June 25; *coram* Cave, J. and Smith, J.)
Dover—In re Local Government Act, 1888 (ex parte Council of the Borough of Dover (*cur. adv. vult.* November 24; *coram* Stephen, J. and Williams, J.)

FOR ARGUMENT.

Metropolitan Police District—Fortescue *v.* Vestry of St. Matthew, Bethnal Green
Durham—Regina *v.* Felling Local Board, ex parte Davidson
Somersetshire (Yeovil)—Wilmot *v.* Darby and another
London—Smith *v.* Barber
Surrey (Croydon)—Moore *v.* East Surrey Iron Works
Middlesex (Bloomsbury)—Ashford *v.* Lonsdale and another
Monmouthshire (Newport)—Brace *v.* Abercarne Coal Co.
Monmouthshire (Newport)—Higgins *v.* London and South Wales Coal Co.
Cumberland / Westmoreland — Regina *v.* Joint Committees of Quarter Sessions and County Councils of Cumberland and Westmoreland (ex parte Bertram)
London—Regina *v.* Assessment Committee of St. Mary Abbot, Kensington (ex parte Trickett)
London—Jones and others (trading, &c.) *v.* Dobson and others (trading, &c.)
Derbyshire (Derby)—Vernon and others (trustees, &c.) *v.* Watson
London—Regina *v.* Assessment Committee of St. Mary Abbot, Kensington (ex parte Preston)
Metropolitan Police District—Noble *v.* Killick and others
Surrey (Croydon)—Pelton *v.* Harrison
Nottinghamshire (Nottingham)—Beeston Urban Sanitary Authority *v.* Cotton
Warwickshire (Birmingham)—Surman *v.* Wharton
Middlesex—Lea Conservancy Board *v.* Tottenham Local Board of Health
Lancashire (Liverpool)—Shea *v.* Stanley and others (trustees, &c.)
Nottinghamshire (Nottingham)—Webster *v.* Wainwright
Middlesex (Clerkenwell)—Eagland and another *v.* Searle (Hoddinott and another, claimants)
Northamptonshire (Towcester)—French *v.* Imperial Livestock Insurance Association
Wiltshire (Swindon)—Large *v.* Munson
Middlesex (Edmonton)—Cornell *v.* May
Dover—Westmore *v.* Paine
Metropolitan Police District—Smith *v.* Bushel
Gloucester—Underwood *v.* Jones
Hertfordshire (Royston)—Favell *v.* Wright
Surrey (Lambeth)—Rathbone *v.* Long and another
Staffordshire—Wells *v.* Hill
Middlesex (Westminster)—Nicholls *v.* Chapman
Surrey (Southwark)—Moss *v.* Fisher
Cheltenham—Brydges *v.* Dix
Staffordshire (Cheadle)—Waring *v.* Seal & Co.
Carnarvonshire (Portmadoc and Festiniog)—Roberts *v.* Blaenau Festiniog, &c. Industrial Society
Middlesex—Regina *v.* Mitcheson, Esq. and another, Justices, &c. and Tyler (ex parte Kearley and another)
Birmingham—Proprietors Birmingham Canal, &c. *v.* Churchwardens, &c. Birmingham
Cambridgeshire (Ely)—Eaves *v.* Rickwood

Brecknockshire—Regina v. Doyle, Esq. and another, Justices, &c. (ex parte Price)
Durham (South Shields)—Crosthwaite v. Ainsley and others
Middlesex (Westminster)—Pelberman v. Rayner
Sussex (Brighton)—Wenman v. Lyon & Co. (Honeywill, claimant)
Macclesfield—Oldham and others v. Sheasby
Middlesex (Bow)—Fairweather and Wife v. North London Railway Co.
Metropolitan Police District—Regina v. Bros, Esq. Metropolitan Police Magistrate, and Miller (ex parte London County Council)
Essex—In re Local Government Act, 1888 (ex parte County Council of Essex and others)
Pembroke—Regina v. Morison, Esq. and others, Licensing Justices, &c. (ex parte Miles)
Lancashire (Blackpool)—Regina v. Birley, Esq. and others, Licensing Justices, &c. (ex parte Shepherd and another)
Middlesex (Bloomsbury)—Hunt v. Great Northern Railway Co.
Worcestershire (Kidderminster)—Stooke v. Mutual Providence Alliance
London—Stephens v. British Bechuanaland Co.
Middlesex (Clerkenwell)—Boydell v. Millar
Hertfordshire (Watford)—James v. Robinson
Salford—Hancock v. Haynes
Surrey (Croydon)—Oldaker v. Strutton
Coventry—Budd v. Lucas
Middlesex (Shoreditch)—Lane v. Ewin Brothers
Lancashire (Manchester)—Morris v. Kanfman
Cheshire (Chester)—Hopkins v. Hopkins
Middlesex (Brompton)—Searles and another v. Finch and another
Middlesex (Clerkenwell)—Bex v. Godfrey
London—Nash v. Cunard Steamship Co.
Middlesex (Clerkenwell)—Prime Brothers v. Slatford
Somersetshire (Wells) { In re Agricultural Holdings Act, 1883 / Gough and others v. Gough and others
Surrey (Wandsworth)—Third Perseverance Ballot, &c. Building Society v. Keogh
Cumberland (Carlisle)—Dixon v. Thompson and others
Kent—In re Local Government Act, 1888, ex parte Kent County Council and Borough of Sandwich
Leicestershire—Regina v. Judge of County Court of Leicestershire, holden at Ashby-de-la-Zouch, and Gill and another (ex parte Taverner)
Hampshire (Andover)—Kercher v. Portal
Cheshire (Hyde)—East End, &c. Permanent Building Society v. Slack and others
Hampshire (Bournemouth)—Bance v. Saunders
England—Regina v. Smith, Esq. and another, Commissioners, &c. under Boiler Explosions Act, 1882 (ex parte Tyne Coal Co.)
Middlesex (Westminster)—Briton Medical and General Life Association v. Asher
Sussex (Brighton)—Hora and another v. Holdaway
London—Panton v. Cosh & Co.
Yorkshire (Sheffield)—In re County Courts Act, 1888, and In re Trusts of Will of G. Whitehead, dec.
Middlesex (Whitechapel)—Standing v. Briggs
Yorkshire (West Riding)—Regina v. Kirkheaton Local Board
Middlesex (Westminster { Beasley v. Roney / Lilley v. Roney
London—Regina v. Registrar of City of London Court and Sibley (ex parte Davey)
Middlesex—Regina v. H.M.'s Secretary of State for War (ex parte Mitchell)
Yorkshire (Halifax)—Regina v. Judge of County Court of Yorkshire, holden at Halifax and Bairstow (ex parte Sutcliffe)
Lancashire (Manchester)—Jackson v. M'Gowan
Durham—Bell v. Bruce and others
Sunderland—Slaughter v. Mayor, &c. of Sunderland
Middlesex (Clerkenwell)—Reason v. Lewis
Middlesex (Bloomsbury)—Purser v. Holme and another
London—Regina v. Gregory (ex parte Hastie)
Middlesex (Clerkenwell)—Saunders v. Legg
Middlesex (Bloomsbury)—Landsberg and another v. Moses
Surrey (Kingston)—Wimbledon Local Board v. Underwood (Simmons, claimant)
Lancashire (Bury)—Bailey v. Slatter
London—Abbott and another v. House Property and Investment Co.
Devonshire—Murch and another v. Baker
Monmouthshire—Bound v. Lawrence
Worcestershire (Great Malvern)—Jones v. Foley and another
Bedfordshire (Bedford)—Brightman v. Stafford and another (Gery, claimant)
Yorkshire (Bradford)—Lord v. Hobson and another
Dorsetshire (Blandford)—Butt v. Blandford Oddfellows' Lodge
Glamorganshire (Pontypool)—Edwards v. Lewis and others
Norfolk—Regina v. County Council of Norfolk (ex parte Marshland and others, Commissioners)
Middlesex—Barry and another v. Leycester and others
Middlesex (Bow)—Lowe v. Barralet (Barralet, claimant)
Surrey (Lambeth)—Croft (suing, &c.) v. Ward, Lock & Co.
Monmouthshire—Regina v. Carnegy and others, Justices, &c. and overseers of Llanfoist (ex parte Abergavenny Rural Sanitary Authority)
Northumberland (North Shields)—Taws v. Knowles
Shropshire (Shrewsbury)—Wardle (trading, &c.) v. Wanstall and another
Yorkshire (Doncaster)—Lamb v. Great Northern Railway Co.
Carlisle—Regina v. Dixon, Esq. and another, Justices, &c. (ex parte Dunn)
London—Brighton Guardians v. Strand Union
London—Williams v. Line
Middlesex (Clerkenwell)—Clark v. Finsbury Park Brick and Tile Co.
Metropolitan Police District—Regina v. Bros, Esq. Metropolitan Police Magistrate, and Jacobson (ex parte Allery)
Warwickshire (Birmingham)—Cottrell v. Hudson
London—Webb v. Sutton
Surrey (Wandsworth)—Bishop v. Taylor & Co. (Harris, claimant)
Middlesex (Clerkenwell)—Isaacs & Co. v. Spero
Warwickshire (Birmingham)—Ebrey v. Rowbotham
Middlesex (Bloomsbury)—Manning and others v. Hine
Middlesex (Clerkenwell)—Haynes v. North Metropolitan Trams Co.
Cambridgeshire (Cambridge)—Benton (trading, &c.) v. Mason (Booth and another, trading, &c. claimants)
Metropolitan Police District—Fletcher v. Fields
Devonshire (Newton Abbot and Torquay)—Davis v. Ferris
Kent (Greenwich)—Diprose v. Norfolk (Norfolk, claimant)
London—Regina v. Governor, &c. of Bank of England (ex parte Terrell)
Cheshire (Chester)—Jones v. Turner
Surrey (Wandsworth)—Erwin v. Wilson (Brackley, claimant)
Staffordshire (Lichfield)—Wellings v. York (York, claimant)
Surrey (Southwark)—Bransgrove v. Woodward and another
London—Kutner v. Phillips
Lancashire (Liverpool)—Clarke & Co. v. Widdowson (Palmer, claimant)
Surrey (Wandsworth)—Farnfield v. Lavers
Middlesex (Whitechapel)—Mills v. Steward
Glamorganshire (Merthyr Tydfil)—Knight v. Jones
Shropshire (Shrewsbury)—Bevington v. Marriott
Essex—Guardians of Cardigan Poor Law Union v. Guardians of West Ham Poor Law Union
Middlesex (Westminster)—Great Western Railway Co. v. White & Co.
Middlesex (Shoreditch)—Brown v. Lilley (Chopping, claimant)
England—Regina v. Morgan
Middlesex (Brompton)—London General Omnibus Co. (Lim.) v. Aspinall & Co.
Surrey (Southwark)—Page v. Leach & Co.
Monmouthshire (Newport)—Jones v. Commissioners of Sewers of Levels of Hundreds of Caldicot and Wentloog
London—Pollock v. Glover (James, claimant)

## REVENUE PAPER.

CAUSES FOR HEARING.

Attorney-General v. Mayor, &c., of Hythe and another
Same v. De Burton and others

CASES AS TO INCOME-TAX, STAMP, AND CORPORATION DUTIES.

FOR JUDGMENT.

Bank of Mexico, &c. appellants, and Apthorpe (Surveyor of Taxes), respondent

FOR ARGUMENT.

Whitehead, appellant, and Wilson (Surveyor of Taxes), respondent
In re Duty on the Bootham Ward Strays, York
Dillon (Surveyor of Taxes), appellant, and the Corporation of Haverfordwest, respondents
Cawes (Surveyor of Taxes), appellant, and the Committee of the Lunatic Hospital, Nottingham, respondents
Bowers (Surveyor of Taxes), appellant, and Harding, respondent
Reid's Brewery Co. (Lim.), appellants, and Male (Surveyor of Taxes), respondent

Motions for Attachment for Contempt, 3

*Divisional List.*

SUMMARY.

| | |
|---|---|
| Special Paper | 2 |
| Opposed Motions | 117 |
| Crown Paper | 143 |
| Revenue | 12 |
| Total | 274 |

## QUEEN'S BENCH DIVISION.

*Hilary Sittings*, 1891.

## APPEALS AND MOTIONS IN BANKRUPTCY.

*Appeals for hearing before a* DIVISIONAL COURT *sitting in Bankruptcy.*

In re Greaves, ex parte Official Receiver
In re Kennedy, ex parte Kennedy
In re Spencer, ex parte Dewhurst
In re Manning, ex parte Giles
In re James, ex parte James
In re Kirby, ex parte Wykes
In re Sartoris, ex parte Ross

In re Merritt, ex parte Chandler & Co.
In re Williams, ex parte Evans
In re Hulton, ex parte Manchester and County Bank (Lim.)
In re Poulton, ex parte Williams, W.
In re Sarl, ex parte Sarl
In re Entwistle, ex parte Turner
In re Ashton, ex parte M'Gowan
In re Tobias & Co. ex parte Tobias, A. H.
In re Same, ex parte Same (cross appeal)
In re Jenkins, ex parte Jenkins
In re Porteous, ex parte Brocklesby
In re Gold. ex parte Gold
In re Smith, ex parte Smith

*Motions in Bankruptcy for hearing before*

MR. JUSTICE CAVE.

In re Easton, ex parte Elliott v. Cope
In re Clift, ex parte Colquhoun
In re Pooles, ex parte Andrews v. Viney
In re Ridgway, ex parte Robinson and another
In re Frankenheim, ex parte Bohm v. Hardy
In re Deerhurst, ex parte Seaton and others v. Foreman
In re Frankenheim, ex parte Ehrlicksohn v. Hardy
In re Biennerhasset, ex parte Biennerhasset
In re Howard & Dorrell (joint estate), ex parte Board of Trade v. Trustee
In re Howard (separate estate), ex parte Same
In re Cornford, ex parte Same
In re Calderwood, ex parte Same
In re Dodds, ex parte Brown and another v. Coates
In re Braun, ex parte Sasson v. Official Receiver and others
In re Bates, ex parte Official Receiver v. Bates
In re Pollard, ex parte Official Receiver v. Hill
In re Gadda, ex parte Board of Trade v. Watkins
In re Duncan, ex parte Official Receiver v. Duncan
In re Trevor, ex parte Singleton v. Smith
In re Duncan, ex parte Official Receiver v. Gronow
In re Kirby, ex parte Hart v. Lescher
In re Raw, ex parte Trustee
In re Dodds, ex parte Appleton v. Browne and another
In re Newsom, ex parte Allen v. White

MATTERS IN BANKRUPTCY.

Total Appeals and Motions . . . . . 44

## RAILWAY AND CANAL COMMISSION COURT.

Pelsall Coal and Iron Co. (Lim.) v. London and North-Western Railway Co.
Same v. Same and Great Western Railway Co. (No. 2)
Maidstone Town Council v. South-Eastern Railway Co., and London, Chatham, and Dover Railway Co.
Winsford Local Board v. Cheshire Lines Committee
Stratford-upon-Avon, Towcester, &c. Railway Co. v. East and West Junction Railway Co.
Rhymney Railway Co. v. Bute Docks Co.
North Lonsdale Iron and Steel Co. (Lim.) v. Furness Railway Co. and others
Sowerby & Co. (Lim.) v. Great Northern Railway Co.

NOTICE.—The Court will sit on Monday, January 12, at 10.30, and on the following days. The first three Cases will be in the Paper for hearing on Monday, the 12th inst.

**The following Courts will sit until Saturday, January 17, for the trial of the following classes of actions:—**

Three Courts for Middlesex Special Juries.
One Court for Middlesex Common Juries.
One or Two Courts for Actions without Juries.
Two Courts for London Special Juries.

## MIDDLESEX.

SPECIAL JURY ACTIONS.

Actions beyond No. 561 in this List will not be taken before Monday, January 19.

142 Paine v. Chisholme
309 Goater v. Godfrey
23 King and another v. Sedgwick and another
36 M'Call v. Sheppards, Pellys, Scott & Co.
81 Fuller v. Longcroft
229 Lorck v. Kean and others
357 Dewey v. Windover
364 Gerrard v. Benda
370 Foot v. Elton
371 Same v. Lawson
379 Warton v. Parrott and another
87A Hudson & Sons v. Schadelooek
154 Mosdell v. Mitchell and others
155 Same v. Oldrey & Co.
391 Broughton v. Ocean Railway, &c. Co. (Lim.)
397 Terry v. Thomas
398 Lloyd v. Bowly
401 Lee v Hill
407 Couper, Millar & Co. v. Holtz & Co.
409 Higgs and others v. Vestry of Parish of Lambeth
415 Darley and another v. Reeves
417 Barker and Wife v. Bennett and others
418 Latimer, Clark, Muirhead & Co. (Lim.) v. Palliser
429 Lancaster Banking Co. v. Caird
435 Paxton and another v. Shillingford and others
436 Lound v. S. H. Lound
437 Same v. A. G. Lound
461 Cole v. Whitley
470 General Stock Exchange (Lim.) v. Baird
474 Chapman v. Morley
476 Courtney and another v. Guiness
478 Stapleton v. Beall
486 Hamlyn v. Fardell
496 Duncan v. Nicholson
19 Hannay's Patents Co. (Lim.) v. Harden Star, &c. Co. (Lim.)
28A School Board for London v. C. Wall
30A Wallis v. Nash
37 Orr v. Barwell
39 Walker v. Brown
50 Dawes v. Pilcher
69 Friend v. Morgan & Co.
82 Mooney v. Newman
204 Wynne-Roberts & others v. Manning and others
245 Southern Counties Dairies Co. (Lim.) v. Oldacres and another
288 Morgan v. Tennant
322 Maxim-Weston Electric Co. v. Palmer's Shipbuilding Co.
330 Wilson's Victoria Hansom Cabs Co. (Lim.) v. London General Omnibus Co.
369 Walker v. Crystal Palace District Gas Co
389 Matthews v. North Metropolitan Tramways Co.
412 Ogilvie & Co. v. Hyde & Son
440 Turnock v. Spence & Co.
441 Williams v. Weston-super-Mare Commissioners and another
442 Stark and another v. Same
504 Deverson v. Shepherd, Neame & Co.
522 Bannister v. Great Western Railway Co.
523 Turner v. Golden Valley Railway Co. and others
526 Holmes v. Moreira
533 Walker v. Collins
535 Ballard v. Weber & Sons
536 Lyndall v. Greenfield
551 Bendit v. Goldberg
559 James and others v. Carr and others
564 Jacks and Wife v. Owners of Darfield Main Colliery
574 Terry v. Hughes-Hallett
576 Creasey v. Ellis
585 Barnes and others v. London and County Banking Co. (Lim.)
597 Jeffreys v. Skeate
598 Waldron v. Pinkerton
180A Clark v. Hallam
602 Dale v. New, Prance & Garrard
606 Driscoll and others v. Hale and another
608 Hobbins v. North Metropolitan Tramways Co.
636 Whitney v. Molgnard
641 Lees v. King
642 Egan v. Francis & Co. (Lim.) and another
647A Margetson and others v. Glynn and others
651 Adams v. Austin
653 Hindes (Lim.) v. Singleton
654 Same v. Cowell
656 Lyons v. Beaumont
662 Favets v. Austin & Co.
663 Stratton and others v. Golden Valley Railway Co. and others
665 Bartlett v. Betts and another
678 Ford v. Blest
684 Winter v. Lyon and Wife
686 Lobb v. Stanley
698 Carrington v. Tank Storage and Carriage Co.
702 Robinson and another v. Heritage
708 Hunt v. Hairs and another
726 South v. Brighton Alhambra (Lim.)
729 Leitner v. Chambers
732 Druce v. Levy & Co.
735 Taylor v. Bowen
735 Turner and Wife v. Metropolitan Railway Co.
746 Lane v. Metropolitan Electric Supply Co. (Lim.)
749 Lewis v. Levy
761 Hawksley v. Norgate
765 Wilkinson v. Offord and another
768 Ives & Barker v. Cleveland Bridge Engineering Co.
770 Tipper v Mitchell
773 O'Reilly v. Matthews
778 Moore v. City of London and Southwark Subway Co.
780 Cleary v. Wakeley
781 Wiedemann v. Walpole
791 Campbell v. Golden Valley Railway Co. and others
811 Warne v. Linton
827 Fusee Vesta Co. (Lim.) v. Brown, Martin and others
836 Isaac and another v. Edwards and another
841 Wade-Gery and another v. Harrington
851 M'Lachlan v. Moorgate Street and Broad Street Buildings (Lim.)
880 Turney v. Side
881 Lotinga v. Sidebottom
884 Sullivan v. Allen
889 Crescitelli and others v. Monninger
890 Bird v. Swatheridge and another
895 Cookson v. Miller
896 Hacker v. Gosnell and another
897 Franks v. Viner
901 Wade v. Cookson
908 M'Manus v. United Printing, &c. Co. (Lim.)
913 Raw v. Lippert
916 Daye v. Kraus
917 Head v. Easton and Church Hope Railway Co.
918 Hick v. Rodocanachi, Sons & Co. and others
921 Moore v. Wheaton
922 Tax v. Hill
923 Crow v. North Metropolitan Trams Co.
924 Latimer v. Bathe and others
926 Green v. Briggs
946 Worswick v. Hobman & Co.
956 Butler v. Birnbaum
961 Mead v. Hughes and Wife
971 Sutherland v. Green
972 Read v. Boot
974 Figgis v. Bruce
979 Balls v. Reece
981 Whittaker v. Sitwell
995 Cox v. Lewis and others
997 M'Murdo v. Beall
999 Bowman v. Ackroyd and others

COMMON JURY ACTIONS.

Actions beyond No. 868 in this List will not be taken before Monday, January 19.

581 Horn and Wife v. London and North-Western Railway Co.
633 Richardson v. Davis
638 Lemaitre v. Cranfield
652 Pendergast v. Baker
660 Brown v. Humphreys
668 Schmidt v. Nottage
669 Monk & Co. v. Bartram
675 Flower v. Hamilton

691 Foah v. Youngs
1 Walker v. Burslem
4c Scargill v. Green
65 Crutcher v. Still
307 Samuel v. London Electric Supply Corporation (Lim.)
318 Pocock v. Preston
324 Cuthbe v. Wallis
406 Dale v. Coffin
456 Farrow v Hicklin
546 Ratliffe v. Preston
546 Stumore v. Same
624 Blake v. Brunton
643 Charnock v. Johnson
713 Vernon v. Green & Son
719 Jamieson v. Britton and another
728 Stratton v. Sumner
750 Lee v. Rumilly
756 Kerr v. Stephens
763 Shirley v. Purnell
790 Graham v. Scatterty
802 Hine v. Clements
805 Harraway v. Williamson
823 Keen v. Usher
825 Lloyd v. Eckersley
826 Drury v. Collier
831 King v. Porteous and others
834 Hiscocks v. Harris
842 Cross v. Thomas
845 Howard v. Williams
847 O'Brien v. Dumaresq and another
865 Hanberger v. Baars
868 Oakley v. Symes
869 Perryman v. Dunning
872 Winkworth v. Foy & Co.
882 Middleton v. Hill
883 Jelks v. Same
885 Brenchley v. Lawrence
887 Foreman v. London and Continental Association (Lim.)
891 Smith v. School Board for London
907 Blake v. Clifton
930 Nouvelle Banque, &c. v. Ayton
932 Taylor v. Marshall
949 Overton v. Robbins
955 Cotton v. Palmer
976 Guarneri v. Boisson
977 Same v. Same
982 Le Gros v. Pfahl
983 Same v. Roth
1010 Montmorency v. Lawrance and others
1015 Farrow v. Guarantee Society
1022 Jackson v. Reeve
1034 Kirby v. Elliott
1037 Young v. Pinn and another
1056 Warwick v. Fitter & Sons
1066 Horncastle v. Relph
1077 Tozer v. Short
1080 Jones v. Stotesbury
1094 Marquis de Leuville v. Hirst and Rennie
1096 Bishop v. Southern Counties Deposit Bank (Lim.)
1100 Beale v. Jewell
1101 Birchall v. Tylor and another
1106 Armstrong v. Watsak
1107 Williams v. Benning
1136 Curtler v. London Trams Co. (Lim.)
1139 General Stock Exchange, &c. Co. v. Newton
1151 Wilson v. Proprietors of "The Labour Elector"
1153 Rolfe v. Charrington
1157 Wright v. Harmer
1160 Brown v. Craig and others
1174 Crane v. Keane and others
1177 McElroy v. Thompson
1189 Somers v. Pocock

## ACTIONS WITHOUT JURIES.

Actions beyond No. 707 in this List will not be taken before Monday, January 19.

613 Hirst (part heard Day, J.) v. Sadler
31A Williamson, Rosksms & Co. v. Hicklin
657 Smith v Hutchinson
658 Bechervaise v. White
672 Pugh, Jones & Co. v. Ingrey
680 Lefever v. Taylor
685 Daniel v. Henry
687 Tyler v. Child
689 Ditton v. Verheyden
690 Bynoe v. Parrott
694 Henderson v. Marcussen
696 Rogers v. Rogers
700 Halpin v. McLaren
704 Harle v. Riebold
3 Boyd v. Farrar
4B Montgomerie v. Lamplough
5A Justices of Kent v. Sandgate Local Board
5B Mack v. Anderson
20A Anderson v. Hucks
21 Tilt Cove Copper Co. v. Comptoir d'Escompte de Paris and others
30 Hilder v. Hume, Webster & Co.
45A National Provincial Bank of England v. Chapman
46 Coffin v. Leslie
47 Same v. Same
60 East v. Levy and others
64 Oldrey v. Michell
76A Cox and another v. Kemp, Welch and another
93 North v. Fickus and another
102 Baldock v. Barling and another
1302 Same v. Betts
118A Thompson v. Cottam
130 Clapham and others v. Howse
138 Rudd v. Owen
170 Braunstein v. Lewis
185 Deep Navigation Collieries Co. (Lim.) v. Rhymney Railway Co.
217 Yates-Hayward v. Wall
240 Johnston v. Naylor
246 Eichols v. Allbutt
259 Ellis, Parr & Co. v. Wiener
270 London and North-Western Railway Co. v. Mayor, &c. of Salford
286 Brandon v. Charlton
291 Handyside v. Gentry
292 Norman & Stacey (Lim.) v. Sharland
299 Lamplough v. Temple and another
321 Groth v. British Tanning Co. (Lim.)
382 Lucas v. Regent's Canal, &c. Railway Co.
388A Benson and another v. Dames
394 D'Halluin Lepers v. Kain and Son
414 Bennett v. Broughton
416 Low v. Low
461 Emmott & Co. v. Emmott and another
475 O'Reilly v. Roe and others
481 Oppert v. Linklater
499 Coats's Iron and Steel Co. (Lim.) and another v. Hume, Webster, Hoare & Co.
506 Garland v. Oram and another
513 Watkins v. Smith
514 D. Radford & Co. v. Burnett and Sons
572 Woodfin v. Marston & Co. (Lim.)
573 Zoutpansberg Prospecting Co. (Lim.) v. Hill
589A Dawson v. Huribatt
616 Baker v. Nottingham, &c. Bank
617 Collins v. Farthing
634 Fenton v. Thompson and others
649 Bourke v. Le Fleming
664 Smith & Co. v. Pennell
673 Mercantile Investment and General Trust Co. (Lim.) v. International Co. Mexico
681 Orengo v. Levy
692 James v. Willis
697 Godfrey v. Scott
705 Measures Bros. v. Chappell
708 Davies and Hollies v. Wyatt
707 Las Casas v. Mapleson and others
716 Macfarlane and another v. Radford and another
718 Maison Helbronner (Lim.) v. Wileman
720 Reece v. Wood
727 Mitchell v. Bell
731 Lewis and another v. Gibson and another
733 Hoar v. Cantrell and another
739 Jacomb v. Lintott and others
742 Forbes v. Brunetti and another
751 Wheeler v. Hayter
753 Dreyfus Bros. & Co. v. Lamport and Holt
754 Penley and another v. Mahon
755 Henderson v. Henman
757 Stamford, Spalding and Boston Banking Co. (Lim.) v. Abel, Rey & Co.
759 Tylor and Sons v. Clark, Bunnett & Co. (Lim.)
760 Dimmock v. Joel and Levison
769 Mutual Loan Fund Association (Lim.) v. Wooster and another
775 Simpson v. Tobutt
776 Brown and others v. Miller and others
777 John v. Vickers
783 Wood v. Diprose
784 M'Ausland v. Waterhouse
789 Elise & Co. v. De Crespigny
793 Scott v. Anti-Friction Conveyor, &c. Machinery Co. (Lim.)
794 Dinn v. Sheppard
796 De Coninck v. Singer & Co. and another
797 Hammond v. Hart
801 Sprange v. Hannah
804 Maddock v. Devonshire
808 Harpley v. Swinburne
814 Joyce v. Beall & Mason
815 West v. Sartoris
816 Lambert v. Carden
817 Norris and Wife v. Consolidated Co. (Lim.)
818 Braithwaite v. Middleton
822 Smith and others v. Cox
832 Robinson v. Paulet
833 Hall v. Rayner and another
837 Nind v. Bicknell
838 Same v. Same
853 Ashford v. Richardson
856 Alias v. Roberts and others
857 Greenstreet v. Richardson
861 Wilkinson v. Girard Frères
864 Skeate v. Goldsmith
867 Mathews v. Allbutt
877 Hallett v. Baker
878 Hart v. Burroughs & Watts and another
879 Chetham v. Blofeld
886 Red Reef Gold Mining Co. v. North
892 Gush and another v. Noon and another
898 Fitz-Wygram v. Cole
905 Jarvis v. Union Deposit Bank
906 Backes & Strauss (Lim.) v. Allen
912 Lafone v. Ronaldson & Co.
914 Cox v. Vestry of Paddington
915 Neve v. Smith
920 Hubbard v. Bowyer
925 Thompson v. Woodhead
927 Chetwynd v. Fitzgerald
928 City Bank (Lim.) v. Siddaway & Sons
935 City Bank (Lim.) v. Chambers
936 Beatty v. Butcher
938 Planet Building Society v. Turnham and another
940 Raetzer v. Rotherham & Co.
943 Clements v. Richards
944 Lacy & Co. v. Honeywill Bros. & Co. and others
945 Kilkivan Mines (Queensland) v. Appleby
947 Dix v. Branson
948 Barnett v. Stowell
950 Fraser v. Genoa Waterworks Co. (Lim.)
952 Clark and another v. Brin's Metal Syndicate (Lim.)
953 Same v. Brin's Metal Foreign Syndicate (Lim.)
957 Wyman v. Burdus
958 Stroud Brewery Co. (Lim.) v. Stephens and another
959 Beasley v. Venables
960 McNay v. Alt
963 Ward v. Jones and another
964 Tucker v. Basil, James & Co.
965 Vautin v. De Wolf
967 Gatcombe and another v. Wallis
968 Hosegood v. Burton
970 Golding v. Clark
985 Pell v. Rosenberg
986 Hobson and others v. Morrison and others
987 Gregory v Casselden
988 Simpson and others v. Cleveland Extension Railway
990 Vang v. Evers
993 London Taverns Co. (Lim.) v. Farnan
1000 Hinder v. Aland
1001 Aland and others v. Simpson
1002 Hartmont v Dorsey
1004 Mendelssohn v. Birn, and another
1006 Hays v. Linton and another
1007 Davis v. Dorrian.
1012 Red Reef Gold Mining Co. (Lim.) v. Rawlins
1014 Parker v. Loyd
1017 Fry v. Benham
1019 Tubbs v. Tubbs
1025 Nokes v. Brin's Metals Syndicate (Lim.)
1026 Hester v. Schouten
1029 Bridger v. Cooper
1030 White and Price v. Miller
1031 Bishop of Bangor and others v. Parry
1032 Wright and another v. Hempsted and another
1039 Cornforth and Rescher v. Brodie
1042 Beckett v. Power
1046 Burton v. Lutman
1047 R. A. Mudie & Son v. J. H. Hind & Co.
1048 Westmacott v. Inglis
1049 Ward v. Inglis & Burr
1051 G. Kynoch & Co. (Lim.) v. Gatling Arms and Ammunition Co.
1053 H. Whitworth and others v. Megson
1057 Curtice v. Morgan and another
1058 Rio Tinto Co. (Lim.) v. Société Industrielle et Commerciale des Métaux
1059 Quebrada Railway Land and Copper Co. v. Same
1060 Newfoundland Consolidated Copper Mining Co. v. Same
1065 Salter & Sons v. Lee
1072 Lilley v. Best
1073 Ashmore & Co. (Lim.) v. Pini Roncoroni and Bonacina
1075 Boswell v. Copal Varnish Co. (Lim.)
1078 Lovering v. City of London and Southwark Subway Co.
1081 Dobson v. Cottam
1082 Emanuel v. J. Karpeles & Co.
1084 Mason v Dixie
1085 Bush v. Stamford
1086 Hansard Publishing Union (Lim.) v. Lazarus
1091 Duncan v. Lynch

1097 Morewood & Co. v. South Wales, &c. 88. Co.
1099 Bicknell v. Horsfall
1102 Jenner v. National Provincial Bank of England (Lim.)
1104 Morris v. Allison
1110 Dyer and another v. Kent
1111 Brown v. Melhuish
1114 Bartram v. Monk
1115 Hollebone Bros. and Trench v. Cloete
1117 Gregory v. Smith
1118 Gillingham and Oddy v. Headde
1119 Cross v. Roberts
1120 Laycock v. Manfield
1121 Morris v. Slade & Munk
1122 Rouet v. Railway Time Tables Publishing Co. (Lim.)
1125 Harris v. Pearless and others
1126 Whitmore v. Reade
1127 Société Continentale des Distributeurs Automatiques, &c. (Lim.) v. Willey
1128 Fahey v. Hansom and another
1135 Button v. Bain
1137 Grand Hotel, Prague (Lim.) v. Concessions Trust (Lim.)
1138 Ford and another v. Emerson and another
1140 Delta Metal Co. (Lim.) v. Maxim Nordenfelt Guns, &c. Co. (Lim.)
1141 Allen v. Turney and another
1145 Jewell v. Alexander
1148 Hinds v. Rawson
1154 Bell v. Emmott
1155 Lee v. Willett
1158 Warren v. Cox
1164 London Scottish Permanent Building Society v. Moss
1166 Dore v. Fletcher
1167 Armitage and another v. Royal Wax Candle Manufactory
1170 Eakon v. Favets and another
1171 Swears & Wells v. Blythe
1175 Fox v. De Veysy and another
1176 Mitchell v. Same
1178 Silveston v. Cohen
1180 Murphy v. London, Edinburgh, &c. Assurance Co.
1182 Waight v. French
1187 Freeth and another v. Middleton
1190 English, South American and Spanish Publishing Co. v. Johnson
1196 Danube Collieries, &c. Co. v. Ward
1200 Peat v. Webster
1203 Kennedy v. Morewood
1204 Bulman and another v. Beynon & Co. (Lim.)
1205 Lambourn Valley Railway Co. v. Billups
1206 James v. Rooper
1513 Patch v. Midland Railway Co.
1526 Harrison v. London and South Coast Land Co.
1528 Foley v. Turner and others
1534 Wilson v. Randt Mining, &c. Co.
1549 Pettit v. Southwark and Deptford Tram Co.
1570 Lobry v. Bown and another
1579 Brown v. Smith and another
1585 T. Wilson, Sons & Co. v. Gamman & Co.
1642 Coral Chocolate Co. (Lim.) v. Judge & Priestley & ors.
1647 Tufts and others v. Johnson
1654 Robson v. Tower Assets Co. (Lim.)
1663 Hollender and another v. Duke of Marlborough
1678 Roberts v. Harding
1681 Pinto v. Trott
1682 Same v. Badman
1705 Dangar, Grant & Co. v. Gospel Oak Iron, &c. Co.
1704 Scott v. Union Discount Co. of London (Lim.)
1718 Pasteur v. Skinner
1721 Jay v. Mockford

### SUMMARY.

Actions entered for Trial to January 12, 1891.

| | |
|---|---|
| Middlesex—Special Jury | 252 |
| Common Jury | 192 |
| London—Special Jury | 56 |
| Common Jury | 40 |
| Without Juries | 423 |
| Total | 963 |

NOTE.—This Summary shows the total number of actions for trial up to and inclusive of the above date, and includes the actions contained in the foregoing printed Lists.

## LONDON.

### SPECIAL JURY ACTIONS.

**Actions beyond No. 1528 in this List will not be taken before Monday, January 19.**

63 Paget v. Holland and others
178 Harris-James v. New Terras Mining Co. (Lim.)
555 Jackson v. Vickers
683 Bishop and another v. Tyser and another
715 Goldworthy v. Shavin
803 Lamb v. London and India Docks Joint Committee
880 Collins v. Levy
934 Castle Mail Packets Co. (Lim.) v. East and West India Dock Co.
984 Coban Shipping Co. (Lim.) v. London and India Docks Joint Committee
1055 Collins v. Hawkins
1082 Davis and another v. Gardner and others
1071 Shoetensack v. Heyl
1113 Grundy v. Mayer, &c. of London
1168 Wilson v. Proprietors of Fairplay
1169 Same v. Shipping Gazette
1217 Hutchinson v. Matthews and another
1263 Wilson v. Osborne
1275 Browning and another v. Samson & Co.
1283 Mora, Ona & Co. v. Watts, Ward & Co.
1323 Fisher v. Union Newspaper Co. (Lim.) and another
1324 Faulkner v. Law
1341 Bala Steamship Co. (Lim.) v. Powley, Thomas & Co.
1342 Garle and others v. Schoetensack
1349 Grant v. Denton and another
1363 Scott v. Harris
1368 Chatterton v. London and County Banking Co.
1374 Batney v. Piloher
1388 Iliffe v. Offroy et Cie.
1400 Garle and others v. Lance
1410 Jones v. Southwell & Co.
1416 Wilson, Sons & Co. v. Morgan
1450 Seamell and another v. Daniell & Sons' Breweries (Lim.)
1451 Curtis & Sons v. Same
1456 Gjersoe v. Southampton Naval Works (Lim.)
1492 Pickering v. Gun and Shot and Griffin Wharves Co. (Lim.)
1496 Raeburn & Verel v. North China Insurance Co. (Lim.)
1500 Ray & Son v. Mowll

## PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

### PROBATE CAUSES.

*Hilary Sittings*, 1891.

*A List of Actions in the order in which they are entered for Trial will be posted at the Registry, Somerset House, and Supplemental Lists will be printed from time to time.*

*Parties must be prepared to try their Actions ten days after the same have been entered for Trial.*

#### BEFORE THE COURT ITSELF—WITHOUT JURY.

Ashwin and Addis v. Addis (Addis and others cited)
Burchell v. Webber (Cowie and others cited)
Stephenson v. Bayliff
Birtwistle v. Horton
Metcalfe v. Webb
Shaw v. Heddle
Collier and Rashleigh (Scott and Guy's Hospital intervening) v. Collier and Collier (Collier and others cited)
Bolton and Eyton v. Hudson and others
Meanley and Parkinson v. Parkinson and Parkinson
Day v. Jennings (Jennings and others cited, &c.)
Hawes and Waller v. Hawes
Petitt and Woods v. Case
Kidd and Gray (executors of Gray) v. Sangster and others
Piper and others v. Beavan and others (Beavan and others cited)
Ogle and Kane v. Boam and others
Maxwell v. Maxwell and others (Cooper and others cited)
Fonnereau v. Dighton and others
Hilliard and Thomas v. Thomas and others (Outuri and others cited)
Heynes v. Heynes
Morgan and Jenkins v. Kitchen
Massey (formerly Rockett, formerly Amos, formerly Hanna) v. Massey
Ashton and Clay v. Morrison (Anderson and others cited)
Fairfax and Ramsay v. British and Foreign Bible Society and others (the Churchwardens and Elders of Garvald cited)
Taylor v. Taylor

#### COMMON JURY CAUSES.

Cooper and Nield v. Gaston and Dale
Church and Maskell v. Williamson

#### SPECIAL JURY CAUSES.

Hampson v. Guy and others
Ashton and Bayley v. McDermott (sued as Atkinson)
Forde v. Pennington
Budd-Budd (Catala and others cited) v. Budd and Dalzell
Powell v. Barlow
Fox v. Priestman and Horsfall
Smith v. Smith
Fisher and others v. Postlethwaite and Brothers
Lloyd (Lloyd cited) v. Lloyd and others
Brooks v. Ridley

#### SUMMARY.

| | |
|---|---|
| Before the Court itself—without Jury | 24 |
| Common Jury Causes | 2 |
| Special Jury Causes | 10 |
| Total | 36 |

### DIVORCE CAUSES.

*Hilary Sittings*, 1891.

#### PART-HEARD CAUSES.

*Notice to be given at Court when Parties are ready to proceed with the further hearing of these Causes.*

Jennings v. Jennings, White, and Callard (undefended)
Kalbitzer v. Kalbitzer (undefndd.)
Briscoe v. Briscoe and Dockerty (undefended)
Mattock v. Mattock and Spencer (undefended)
Thorn v. Thorn and Matthews (undefended)
Dedman v. Dedman (undefended)
Sanders v. Sanders (J.S.) (undefd.)
Matters (by her Guardian, Thos. James Harvey) v. Matters

BEFORE THE COURT ITSELF—UNDEFENDED.

Trubner v. Trubner and Oristiani
Duncan, F. E. v. Duncan, A. S. D.
M'Donald, otherwise Churcher v. M'Donald (N.)
Garth v. Garth
Agar v. Agar (stay commission)
Macdonald v. Macdonald and Bignell
Robertson v. Robertson
Sargent v. Sargent and Weaver
Draysey v. Draysey
Thornbory v. Thornbory and Yardley
Papayanni v. Papayanni and Routier
Poole v. Poole
Treliving v. Treliving
Hammonds v. Hammonds
Falcke v. Falcke
Freear v. Freear
Cawley v. Cawley and Randall
Newton v. Newton (R.C.R.)
Sandall v. Sandall and Russell
Turner v. Turner and Sawyer
Blake v. Blake
Howring v. Howring
Todd v. Todd
Clarke v. Clarke and Bond
Dicker v. Dicker
Jennings v. Jennings and Harper
Roberts v. Roberts
M'Queen v. M'Queen and Bythell
Pohl v. Pohl
Sleemin v. Sleemin
Ley v. Ley and Smith
Baker v. Baker (R.C.R.)
Pearson v. Pearson
Hand v. Hand and Harvey
Glanville v. Glanville
Brown v. Brown and Hickman
Webley v. Webley (J.S.)
Bridge v. Bridge
Haddon v. Haddon
Williams v. Williams (J.S.)
Woollams v. Woollams and Ings (otherwise Carleton)
Hoadley v. Hoadley
Leech v. Leech and Norman
Gilbert v. Gilbert
Dwyer v. Dwyer (J.S.)
Morley v. Morley and Margrett
Hindmarsh v. Hindmarsh
Cook v. Cook
White v. White and Trainer
Banks v. Banks (J.S.)
Danvers v. Danvers
Henderson v. Henderson
Smith v. Smith and Allison
Shadbolt v. Shadbolt
Griffiths v. Griffiths and Wren (pauper cause)
Hurst v. Hurst (J.S.)
Collins v. Collins and Fallon
Burnet v. Burnet and Merriman
Faulks v. Faulks and Stainton
Chapman v. Chapman
Willis v. Willis and Brading
Davies v. Davies and Smith (pauper cause)
Waine v. Waine and Stott
Moreton v. Moreton
Williams v. Williams
Unsworth v. Unsworth
Cooper v. Cooper
Robinson v. Robinson (pauper cause)
Sweet v. Sweet, Seaney, and Hunt
Davis v. Davis and Davis (pauper cause)
M'Lean v. M'Lean and Duckworth
White v. White
Wilson v. Wilson
Leuty v. Leuty and Burdell (pauper cause)
Smith v. Smith
Furby v. Furby and Nixon
Jago v. Jago and Gooding (pauper cause)
Kellett v. Kellett and Pratt (pauper cause)
Cartwright v. Cartwright and Randle
Shaw v. Shaw and Prince
Lock v. Lock
Sculthorpe v. Sculthorpe
Salt v. Salt
Harding v. Harding
Sargent v. Sargent and Weaver
Rust v. Rust and Dodd
Langrick v. Langrick and Clubley
Brinham v. Brinham and Clark
Loftus v. Loftus and Crane
Elliot v. Elliot
Nettleton v. Nettledon
Spencer v. Spencer and Lee
James v. James and Johnson
Woolley v. Woolley and Forrester
Hart v. Hart
Wight v. Wight and Holland
Longfield v. Longfield
Minchin v. Minchin
Stromgvist v. Stromgvist
Taylor v. Taylor and Parrott
Bibbey v. Bibbey and Sheridan
Newman v. Newman
Willatt v. Willatt
M'Kenzie v. M'Kenzie
Armstrong v. Armstrong and Whitley
Govier v. Govier and Tomlinson (otherwise Smith)

BEFORE THE COURT ITSELF—DEFENDED.

Titford v. Titford (stay security)
Payne v. Payne, Carter, and Fry (cited) (stayed)
Relph v. Relph (stay security)
Wood, H. v. Wood, John (stay security) (J.S.)
Holmes v. Holmes and Pearson (stay security)
McConachie v. McConachie and Beal (stay security)
Darvall v. Darvall, Scutter, and Curtis (stay security)
Arnott v. Arnott and Fox (stay security)
Bennett, D. v. Bennett, M. (stay security) (R.C.R.)
Purchase v. Purchase and Allsop (cited) (stay security)
Richley v. Richley and Tate (stay security)
Piggott v. Piggott, Ball, and Kimber (stay security)
Amos v. Amos and Harding (stay security)
Cripps v. Cripps and Boutellier
Nathan v. Nathan (stay security) (J.S.)
Larro v. Larro (J.S.)
Harris v. Harris (J.S.)
Higgs v. Higgs and Clarke
Bailey v. Bailey and Mills
Bendall v. Bendall, Parker and Todd
Sneddon v. Sneddon
Wooder v. Wooder
Flateau v. Flateau
Potter v. Potter
Broad v. Broad
Storr v. Storr
Hipwell v. Hipwell
Bucknall v. Bucknall
Bramhall v. Bramhall and Dinely
Dobie v. Dobie
Treleaven v. Treleaven and Watling (Queen's Proctor showing cause)
Hall v. Hall and Barnard
De Vear v. De Vear (R.C.R.)
Wild v. Wild (J.S.)
Vivian v. Vivian
Guttmann v. Guttmann
Johnson v. Johnson (stay)
Roberts v. Roberts
Taylor v. Taylor
Aarons v. Aarons and Wadmore
Jackson v. Jackson and Smith
Donkin v. Donkin, Salmon, Atkinson, Lusby, and Vivian
Jackson v. Jackson (R.C.R.)
Winter v. Winter and De Lara (cited as Cohen)
Taylor v. Taylor
Willcock v. Willcock (J.S.)
Willcock v. Willcock and Jenkins (stayed)
Murdoch v. Murdoch (J.S.)
Ellis v. Ellis (Queen's Proctor showing cause)
Clarke v. Clarke and Robinson
Frericks v. Frericks and Lynch
Campbell v. Campbell (J.S.)
Kavanagh v. Kavanagh and Nesbitt
Hopper v. Hopper (stay security) (J.S.)
Tapley v. Tapley and Cowen (Queen's Proctor intervening)
Izod v. Izod (J.S.)
Hicks v. Hicks and Smith
Forde v. Forde (J.S.)
Yorke v. Yorke, Izod, and Matthews
Webster v. Webster (J.S.)
Windsor v. Windsor and Olsen (otherwise Alston)
Sharpe v. Sharpe
Chadwick v. Chadwick
Vale v. Vale

SPECIAL JURY CAUSES.

Beer v. Beer, Bath, Thomas, and Cox (stay security)
Beer v. Beer
Scarratt v. Scarratt and Bullock (stayed)
Northover v. Northover (J.S.)
Wainscott v. Wainscott and Twynam
Judkins v. Judkins
Hall v. Hall and Kay
M'Dowall v. M'Dowall and Jacob

COMMON JURY CAUSES.

Prime v. Prime and Hewett (stay security)
Hobbs v. Hobbs and Murdock (stay security)
Francis v. Francis and Alderman (stay security)
Williams v. Williams and Hinton (stay security)
Corti v. Corti and Bruce (stay security)
Cardle v. Cardle and Jaggs (stay security)
Cairns v. Cairns, Stamford, and Binns (stay security)
Hodson v. Hodson and Seager (stay security)
Wakefield v. Wakefield and Patrick
Le Ball v. Le Ball and Carter
Edwards v. Edwards and Edwards (stay security)
Garwood v. Garwood and Harris
Goble v. Goble and Horne (pauper cause)
Sanders v. Sanders and Underwood
Pierce v. Pierce and Lockwood, Davies, Turner, and Greenwood
Aires v. Aires (J.S.)
Hirsch v. Hirsch and Adams
Fayers v. Fayers and Andrews
Best v. Best and Hirst
Stuart v. Stuart and Kirwan
Burnside v. Burnside and Hardy
Ward v. Ward, Pickworth, and Melville
Elliott v. Elliott and Dines
Park v. Park and Ashworth
Smalley v. Smalley, Dodds, and Charlesworth
Smith v. Smith and White
Hubbart v. Hubbart and Bond
Shemtob v. Shemtob and Vitali

SUMMARY.

| | | |
|---|---|---|
| Causes before the Court itself—Undefended | . . | 106 |
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| Common Jury Causes | . . . . . | 28 |
| Total | . . . | 204 |

CAUSES standing over by consent or otherwise; to be replaced in the List of Causes for Hearing on the Petitioner giving Ten Days' Notice in writing to the other parties for whom an appearance has been entered, and filing a Copy of such Notice in the Registry.

Constas v. Constas (J.S.)
Luck, S. v. Luck, W. V. (defended) (stay security)
Wood v. Wood and Brook (defended) (stay security)
Williams v. Williams and Young (defended) (stayed)
Bates v. Bates and Baker (C.J.) (stay security)
Crowe, May v. Crowe, Robert (undefended)
Browse v. Browse (defended) (stay security)
Worsnop v. Worsnop and Roulstone (defended) (stay security)
Dodson v. Dodson (undefended) (stayed)
Wilson v. Wilson, Rand, and Wardell (stay security) (C.J.)
Lee, E. M. v. Lee, F. (R.C.R.)
Bagge v. Bagge
Pereira v. Pereira
Fearn, A. E. v. Fearn, G. (R.C.R.)
Nicol, M. A. v. Nicol, A. (J.S.)
Bridge v. Bridge
Bevington v. Bevington and Jameson
Clark v. Clark
Tribe v. Tribe
Lynch Blosse v. Lynch Blosse

## ADMIRALTY CAUSES.

*Hilary Sittings*, 1891.

ACTIONS FOR TRIAL.

The Accomac (1890, Folio 376 and 372)
The Activity (1890, Folio 350)
The Argomene (1890, Folio 380)
The Acupart (1890, Folio 441)
The Alert (1890, Folio 474)
The Aston Hall (1890, Folio 306)
The Barnsmore (1890, Folio 458)
The Bellenden (1880, Folio 299)
The Biscaye (1890, Folio 373)
The Bleville (1890, Folio 406 and 407)
The Bluebell (1890, Folio 378)
The Blythwood (1890, Folio 242 and 235)
The Boston (1890, Folio 420)
The Bradley (1890, Folio 360)
The Brinio (1890, Folio 265)

The Christine Elizabeth (1890, Folio 414 and 391)
The Cobden (1890, Folio 412)
The Countess (1890, Folio 419)
The Cygnet (1820, Folio 381)
The David Davies (1890, Folio 409)
The Emilie (1890, Folio 385)
The Empress (1890, Folio 429)
The Ethiopia (1890, Folio 456)
The Everilda (1890, Folio 204)
The Fatfield (1890, Folio 365 and 366)
The George Livesey (1890, Folio 312)
The George Lockett (1890, Folio 456)
The Gipsy Queen (1890, Folio 451)
The Glen Gelder (1890, Folio 474)
The Glenmanna (1890, Folio 471)
The Hartside (1890, Folio 476)
The Indian Prince (1890, Folio 400)
The Isle of Cyprus (1890, Folio 433)
The Juan M. Bigorday (1890, Folio 375)
The Kairos (1890, Folio 309 and 316)
The Larpool (1890, Folio 434)
The Lisbon (1890, Folio 459)
The Morglay (1890, Folio 397)
The Mount Stewart (1890, Folio 389)
The North Cambrian (1890, Folio 370)
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The Olivia (1890, Folio 404)
The Osiris (1890, Folio 472)
The Pinzon (1890, Folio 470)
The Pallion (1890, Folio 418)
The Resolute (1890, Folio 457)
The Robert Eggleton (1890, Folio 321 and 322)
The Rothiemay (1890, Folio 280)
The St. Donato (1890, Folio 356)
The San Tomaso (1890, Folio 377)
The Science (1890, Folio 426)
The Sir Garnet Wolseley (1890, Folio 285)
The Solide (1890, Folio 295)
The Strathlyon (1890, Folio 466)
The Tweed (1890, Folio 483)
The Ursula (1890, Folio 398)
The Vildosala (1890, Folio 449)
The Vulcan (1890, Folio 348)
The Walker (1890, Folio 479)
The Wellington (1890, Folio 333)
The William Fairburn (1890, Folio 269)
The Wylam (1890, Folio 480)
The Yorkshireman (1890, Folio 399)
The Argomene (Liv. Dist. Reg.)
The Dungonnell (Liv. Dist. Reg.)
The Mangalore (Liv. Dist. Reg.)
The Talbot (Liv. Dist. Reg.)
The Laureano (Liv. Dist. Reg.)
The Michigan (Liv. Dist. Reg.)

APPEALS OF THE DIVISIONAL COURT.

Jobson Brothers v. The Poole, Baltic, and Quebec Timber Co. (Lim.), for judgt. (1890, Folio 199)
The Cressington (1890, Folio 195)
The Zweena (1890, Folio 343)
The Circassia (1890, Folio 184)

SUMMARY.

| | |
|---|---|
| Actions for Trial . . . . . | 69 |
| Appeal to the Divisional Court . . . | 4 |
| Total . . . . . | 73 |

MEMORANDUM.—No complete List of Actions to be tried in this Division during Hilary Sittings can be given in advance, as the number and order in which they will be tried is necessarily dependent on the presence in this country of Seafaring Witnesses whose movements are unavoidably uncertain. The List will therefore be subject to alterations and additions.

## NOTICES FOR THE WEEK.

### ROTA OF REGISTRARS.

MONDAY, January 12. — Court of Appeal No. 2: Mr. Godfrey. Mr. Justice Chitty: Mr. Farmer. Mr. Justice North: Mr. Lavie. Mr. Justice Stirling: Mr. Pugh. Mr. Justice Kekewich: Mr. Pemberton. Mr. Justice Romer: Mr. Clowes.

Tuesday, January 13.—Court of Appeal No. 2: Mr. Leach. Mr. Justice Chitty: Mr. Rolt. Mr. Justice North: Mr. Carrington. Mr. Justice Stirling: Mr. Beal. Mr. Justice Kekewich: Mr. Ward. Mr. Justice Romer: Mr. Jackson.

Wednesday, January 14.—Court of Appeal No. 2: Mr. Godfrey. Mr. Justice Chitty: Mr. Farmer. Mr. Justice North: Mr. Lavie. Mr. Justice Stirling: Mr. Pugh. Mr. Justice Kekewich: Mr. Pemberton. Mr. Justice Romer: Mr. Clowes.

Thursday, January 15.—Court of Appeal No. 2: Mr. Leach. Mr. Justice Chitty: Mr. Rolt. Mr. Justice North: Mr. Carrington. Mr. Justice Stirling: Mr. Beal. Mr. Justice Kekewich: Mr. Ward. Mr. Justice Romer: Mr. Jackson.

Friday, January 16.—Court of Appeal No. 2: Mr. Godfrey. Mr. Justice Chitty: Mr. Farmer. Mr. Justice North: Mr. Lavie. Mr. Justice Stirling: Mr. Pugh. Mr. Justice Kekewich: Mr. Pemberton. Mr. Justice Romer: Mr. Clowes.

Saturday, January 17.—Court of Appeal No. 2: Mr. Leach. Mr. Justice Chitty: Mr. Rolt. Mr. Justice North: Mr. Carrington. Mr. Justice Stirling: Mr. Beal. Mr. Justice Kekewich: Mr. Ward. Mr. Justice Romer; Mr. Jackson.

THE LEGAL OBITUARY FOR 1890.—Sir H. Manisty, Sir Barnes Peacock, Sir John Huddleston, Judge B. T. Williams, Serjeant Tindal Atkinson, Baron Dowse, Judge Naish (ex-Lord Chancellor of Ireland), Judge Litton, of the Irish Land Court; Judge O'Hagan; Mr. A. W. Simpson, Recorder of Scarborough; Judge Gillies, of New Zealand; Mr. T. W. Saunders, the Police Magistrate; Dr. Adam Thom, Judge of Rupertsland; Mr. George Francis, ex-Recorder of Faversham and Canterbury; Mr. Justice Reith, of Cyprus: Mr. David Buchanan, of Sydney; Mr. Ashurst Morris; Mr. John Clayton, Town Clerk of Newcastle; Mr. Clement Milward, Q.C.; Judge Molesworth, of Victoria; Judge Mein, of Brisbane; Judge Jackson, of Calcutta; Mr. John G. Hamilton, Advocate; Mr. Patrick Cumin; and Mr. Glasse, Q.C.

THE LAW COURTS.—The Law Courts, after having been closed for the Christmas vacation, will be opened for the Hilary sittings on Monday next, and these sittings will continue up to and include Wednesday, March 25. The winter circuits will commence in the early part of February, and by about the middle of that month thirteen of the judges of the Queen's Bench Division will have departed for the assizes, leaving two only in town to carry on the business of that division during the circuits, the work on which, it is expected, will fully occupy the judges until the end of the sittings. It will therefore be seen that, under present arrangements, about a clear month only can be reckoned upon during the sittings to dispose of the various causes and matters set down for hearing in the Queen's Bench Division. The business in the two Courts of Appeal, the Chancery Division, and the Probate, Divorce, and Admiralty Division will be carried on uninterruptedly during the sittings.

THE LATE MR. BARON HUDDLESTON.—The gross value has been sworn at 64,579*l.* 4*s.* 9*d.*, and the net value at 62,544*l.* 7*s.* 10*d.*, of the personal estate of the late Hon. Sir John Walter Huddleston, of 43 Ennismore Gardens, and The Grange, Ascot, one of the barons of Her Majesty's Court of Exchequer, who died on December 5 last, aged seventy-three years, and of whose will, dated August 7, 1888, the executors are his brother-in-law, the Duke of St. Albans, and the Right Hon. Sir Henry James. The testator confirms the settlement made in favour of his wife, Lady Diana Huddleston, on their marriage, and bequeaths to her 1,000*l.*, his pictures, plate, furniture, and household effects, horses and carriages, and the income for her life of all his residuary estate over which she is to have power of appointment. In default of such appointment the income of the residuary estate is, after the death of Lady Diana Huddleston, to be paid to the testator's sister, Miss Kate Huddleston, for her life, and on her death a legacy of 10,000*l.* is to be paid to the testator's nephew, Mr. Francis Heath. The remainder of the residuary estate is to be transferred to the trustees of the Barristers' Benevolent Association, to be used for the purposes of the association.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means: it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d.* DR. VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## CALENDAR OF THE COUNTY COURTS.

FROM JANUARY 12 TO JANUARY 17.

| No. of Circuit | His Honour | January 12 | January 13 | January 14 | January 15 | January 16 | January 17 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Runcorn | Northwich | Warrington | Birkenhead | — |
| 8 | Judge Heywood | — | Manchester | Manchester | Salford | Salford | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | Middlesbrough | York | Tadcaster | Easingwold | Knaresbro' | Ripon |
| 19 | Judge Barber | Derby | Derby | Matlock | Bakewell | Chapel-en-le-Frith | — |
| 22 | Judge Harington | Chipping Norton | — | Bromsgrove | Shipston-on-Stour | Evesham | — |
| 26 | Judge Jordan | Longton | Hanley | Lichfield | Burslem | Tunstall | Stone |
| 47 | Judge Powell | — | Lambeth | Greenwich | Lambeth | Lambeth | — |
| 54 | Judge Metcalfe | Bristol | Bristol | Bristol | Bristol | Bristol | — |
| 55 | Judge Macbonochie | Shaftesbury | Wincanton | Crewkerne | Yeovil | Salisbury | — |
| 58 | Judge Edge | East Stonehouse | East Stonehouse | East Stonehouse | East Stonehouse | East Stonehouse | Tavistock |

## HONOURS AND APPOINTMENTS.

MR. GEORGE EUGÈNE SOLOMON, of London and Newcastle-under-Lyme, has been appointed a Commissioner in England of the High Court of Judicature for the North-West Provinces of India, and of the Supreme Courts of the Leeward Islands, South Australia, and New Zealand respectively.

Mr. Aubrey William Rake (of the firm of Howe & Rake), of 22 Chancery Lane, W.C., and 171 Norwood Road, Herne Hill, S.E., has been appointed a Commissioner for Oaths. Mr. Rake was admitted in 1884.

Mr. Arthur Cuthbert Langham (of the firm of Langhams), of 10 Bartlett's Buildings, Holborn, E.C., has been appointed Deputy-Coroner for the City of London and the Borough of Southwark. Mr. Langham was admitted in 1884.

Mr. Benjamin Arthur Shires, of Leicester and Hinckley, has been appointed Clerk to the Guardians and Superintendent-Registrar of the Blaby Union. Mr. Shires was admitted in 1871.

THE HEARING OF PROBATE AND DIVORCE CAUSES.—The following are the arrangements made by the judges for hearing probate and divorce causes during the ensuing Hilary sittings, viz.:—Causes for hearing before the Court itself will be taken on Monday, January 12, and following days—first, probate; second, undefended divorce; third, defended divorce cases. Special jury actions will be taken on Wednesday, January 28, and following days, probate first and divorce second. Summonses will be heard in Chambers at a quarter-past ten, and motions will be heard in Court at eleven o'clock on Tuesday, January 13, and on every succeeding Tuesday during the sittings.

'WHAT is your proposition of law?' the late Lord Justice James would say to a counsel who was bungling his opening with a confused statement of facts. 'What is your proposition of law?' the distracted reader of the Chancery Law Reports might well exclaim in coming upon the portentous head-note of nearly two pages of small print to *The Sheffield Building Society* v. *Aizlewood*, L. R. 44 Chanc. Div. 412, and the exclamation might be repeated in a 'crescendo' of despair as case after case met his eye with nearly a page of head-note. An epitome of a case is not, as the editors of the law reports seem to think, a head-note at all. A head-note is or should be the key to the case, the clue of legal principle which we can follow as we progress through the intricacies of the report. On the clearness, the conciseness, and accuracy of the head-note, the value of the report very much, if not mainly, depends. It is, therefore, a great pity that more pains are not taken by those responsible for the law reports to give the 'legal pith' of the decision and no more. The latest law reports digest, it is only fair to say, shows a marked improvement both in brevity and arrangement.—*Law Quarterly Review.*

THE SITTINGS IN THE QUEEN'S BENCH DIVISION.—The following are the arrangements made by the judges of the Queen's Bench Division for holding their Courts during the ensuing Hilary sittings—viz. three Courts will be formed to sit *in banco*, the first of which will be formed by Justices Denman and Wills; the second will consist of Mr. Baron Pollock and Mr. Justice Charles; and the third of Justices Cave and Vaughan Williams. Eight Courts will be formed to try special and common and non-jury actions, the judges for that purpose being Lord Chief Justice Coleridge, and Justices Hawkins, Stephen, Mathew, Day, Grantham, Lawrance, and Wright. Mr. Justice A. L. Smith will be the judge at chambers.

## BIRTHS.

On Jan. 1, at Menai Dale, Bangor, North Wales, the wife of S. R. Dew, Solicitor, of a daughter.

On Jan. 2, at Clifton Villa, Plumstead, the wife of James Gault, Barrister-at-Law, of a daughter.

## MARRIAGES.

On Dec. 29, at Christ Church, Hampstead, Charles Edward Dyer, LL.M., Barrister-at-Law, to Frances Ann, widow of the Rev. H. St. John Reade.

On Dec. 31, at St. Paul's Church, Glenageary, Ernest Proctor, of Clifton, Bristol, Solicitor, youngest son of the late Robert Proctor, Esq., to Edith Player, daughter of Alexander D. Kennedy, Esq., of Glen-na-geragh Hall, Glenageary.

On Jan. 1, at St. Stephen's, Clapham Park, Basil Frederic Forrester Jackson, L.R.C.P., M.R.C.S., son of the late George Frederic Jackson, Esq., Solicitor, of Plymouth, and grandson of the late Samuel Jackson, Esq., J.P., of The Ferns, Mannamead, Plymouth, to Kate, only daughter of the late William Bennett, of Clapham Park, Member of the Institute of Painters in Water Colours.

## DEATHS.

On Dec. 4, Arthur Cæsar Hawkins, late Royal Scots, and subsequently Resident Magistrate at Natal, son of the late Sir John C. Hawkins, Bart., aged 74.

On Dec. 27, at 15 Alfred Place, Thurloe Square, S.W., Major Arthur G. Wyse, aged 60; for sixteen years in the 48th (Northamptonshire) Regiment, and subsequently Resident Magistrate in Ireland.

On Dec. 28, at Stoke Newington, N., Dorothy Nodes, widow of Frean Frederic Le Maitre, and second daughter of the late Frederick Wing, Solicitor, Bury St. Edmunds.

On Dec. 30, at Chettle, Blandford, Dorset, William Bulkeley Glasse, Esq., Q.C., aged 84.

On Dec. 30, John Marshall, Esq., Barrister-at-Law, Middle Temple, aged 70.

On Dec. 31, George Roots, Barrister-at-Law, late of Inner Temple, and Ashley Place, S.W., aged 85.

On Jan. 1, at his residence, 110 Elgin Crescent, Notting Hill, Herbert M. Low, of 12 Bread Street, E.C., Solicitor, aged 35.

On Jan. 1, at 6 Mount Royd, Bradford, Yorks, in his 69th year, David Little, of the firm of Taylor, Jeffery & Little, Solicitors.

On Jan. 2, suddenly, at Broomholm, Langholm, N.B., Harriette Elizabeth, widow of Henry West, Q.C., of Loughlinstoun House, co. Dublin.

On Jan. 3, at Diss, Norfolk, Eleanor Frances, widow of the late George Lyna, Solicitor, aged 83 years.

On Jan. 6, at Scarborough, in his 76th year, Benjamin Chadwick, Solicitor, late of Dewsbury.

At 10 Fernwood Road, Newcastle-upon-Tyne, aged 23, Dora Ethel, daughter of John Atkinson, Solicitor.

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# The Law Journal.

*SATURDAY, JANUARY* 17, 1891.


## 'OBITER DICTA.'

Two judges of the Queen's Bench Division were absent on the opening-day of the Hilary Sittings on Monday last. The Lord Chief Justice was detained at his country seat owing to indisposition, and Mr. Justice Denman had not sufficiently recovered from his recent attack of pleurisy to enable him to resume his judicial duties. All the rest of the common law bench were, however, available for work, and on Monday and Tuesday ten Courts (consisting of twelve judges) were formed—viz. two Divisional Courts and eight Courts for the trial of jury and non-jury cases.

BEFORE our next issue is in the hands of our readers, Parliament will have met again, and met with a better prospect of ability to accomplish useful work than has been offered for many years. Amongst Government measures the Tithes Bill, an Education Bill, and Private Legislation Bills will no doubt be pressed forward, and as that 'time for further legislation' spoken of in the Queen's Speech will now probably be available, a District Councils Bill, a Small Holdings Bill, an Employers' Liability Bill, a Public Health Acts Consolidation Bill, a Public Trustee Bill, a Friendly Societies Bill, and a Savings Banks Bill, all of which measures Her Majesty has already 'directed to be prepared,' may be expected to be brought forward. Amongst private members' bills, the Rules Publication Bill, the Solicitors' Magistracy Bill, the Law of Slander Amendment Bill, and Mr. Pitt-Lewis's bill to amend the law relating to forged transfers, may be mentioned as being fairly likely to pass. The only measure of importance as yet before the House of Lords is Lord Monkswell's comprehensive Copyright Bill, which, as it differs but little from the bill of a Conservative Government introduced by the Duke of Rutland when Lord John Manners, in 1879, and is founded on the report of a royal commission of which Lord Herschell, when Mr. Herschell, was a member, may be reasonably expected to pass the House of Lords at any rate; while the Public Health Bill and the Public Trustee Bill might very properly be introduced in that House in the first instance. Lastly, it may be suggested that, as a general election can at the outside be only two years distant, occasion may be at last taken to make the Ballot Act, which has now been continued no less than eleven times by successive 'Expiring Laws Continuance Acts,' a perpetual statute.

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MR. GLADSTONE, by his bill 'to remove the disabilities of Roman Catholics to hold the offices of Lord Chancellor of Great Britain and Lord Lieutenant of Ireland,' which is backed also by Mr. Campbell-Bannerman, Mr. John Morley, Sir Horace Davey, and Mr. Asquith, proposes to repeal so much of section 12 of 10 Geo. IV. c. 7 (the Roman Catholic Relief Act, 1829) as applies to those offices, and to enact that 'every subject of Her Majesty shall be eligible to hold and enjoy the said offices without reference to his religious belief,' an enactment which will remove all doubt as to the capacity of a Jew to hold the office of Lord Chancellor. Prior to the Oaths Act, 1888, an atheist would have been disqualified by his inability to take the official and judicial oaths, but the effect of that Act is, we think, to empower even a person having no religious belief to take those oaths. The 12th section of the Act of 1829 enacts that '*nothing herein contained*' [*i.e.* contained in the Act of 1829] 'shall be construed to enable any persons professing the Roman Catholic religion to hold the offices of guardians or justices of the United Kingdom, or of Regent, nor to enable any person *otherwise than as he is now by law enabled*' (whatever that may mean) 'to hold or enjoy the office of Lord High Chancellor of Great Britain or Ireland.' Mr. Gladstone further proposes that if the office of Lord Chancellor of Great Britain be held by any person not being a member of the Church of England, his ecclesiastical patronage shall be exercised by such person as Her Majesty may by sign-manual appoint, and his official trusts, if they be trusts of an endowment established for the benefit

of members of the Church of England, shall be performed by such judge of the Supreme Court, being a member of the Church of England, as Her Majesty may by sign-manual appoint. Under the existing law, the ecclesiastical patronage of any official professing the Jewish religion devolves, by 21 & 22 Vict. c. 29, s. 4, on the Archbishop of Canterbury; and that of Roman Catholics, by 3 Jac. I. c. 5, as amended by 12 Ann, st. 2, c. 14, on the Universities of Oxford and Cambridge; while Nonconformist patrons, whether official or private, labour under no disability whatever.

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FEW thing are less intelligible to a lawyer than the ingenuity with which otherwise well-informed lay journalists blunder when dealing with matters connected with the administration of the law. We do not refer merely to the invincible stupidity with which the penny-a-liner insists on misspelling where it is possible the names of Her Majesty's judges. Mr. Justice Stephen has been a judge of the Queen's Bench Division for the last twelve years, and was before that a well-known writer on jurisprudence, a professor of the Inns of Court, and at one time a Member of Council to the Governor-General of India; yet to this day he remains, and probably will remain until he retires, Mr. Justice Stephens. A similar fate has befallen Mr. Justice Mathew, who is sometimes Mr. Justice *Mathews*, sometimes Mr. Justice *Matthew*, but is rarely, except by professional reporters, allowed to spell his own name in his own way. If none of the other members of the judicial bench suffer from the same orthographic capriciousness, their immunity is attributable to the fact that their names do not admit of a dual spelling. Mr. Justice Wright, when at the bar, was distinguished from his forensic brethren with the same surname by the initials 'R. S.,' which stand for Robert Samuel; but to the penny-a-liner he was Mr. *Horace* Wright (Horace being the phonetic reproduction of his initials as pronounced). The other day Sir Alexander Miller, who, after having sat for years on the Railway Commission as legal member, gave place to Mr. Justice Wills, and was thereafter appointed a Master in Lunacy, was described in a Sunday paper (which has no excuse for ignorance) as one of the existing Railway Commissioners. The same paper, foolishly attempting to find a precedent for the proposal now before the Legislature to make a Roman Catholic eligible for the office of Lord High Chancellor, quoted the case of Lord Herschell, who, it said, was well known to be a Jew! The *St. James's Gazette*, the other day, going out of its way to say something smart at the expense of the artists and others who resent the conversion of their favourite suburb into a coal depôt for a Manchester railroad, sneered at the opposition for having allowed the time to expire for lodging their petition or memorial. The slightest inquiry in the proper quarter would have saved the flippant scribe from such an obvious blunder. The ratepayers of St. John's Wood and South Hampstead are opposing the scheme of Sir E. Watkin on its merits (or demerits), and not on technical grounds of non-compliance with the Standing Orders of the House. Their petition will be in time if it is lodged within ten days of the first reading of the bill. The same paper, with a perversity which is the outcome of long perseverance in ill-doing, startled its readers by confounding Mr. Underdown, Q.C., who is very well known in his own line, but would be very much surprised to learn that he had been sitting as deputy for Sir Peter Edlin at Clerkenwell, with Mr. Underhill, Q.C. (Recorder of Newcastle-under-Lyme), who has several times filled the position of deputy-chairman of quarter sessions with credit. It would really pay the directors of journals which aspire to instruct the public on legal matters to keep a lawyer on the staff to correct the blunders of their lay writers. He would earn his salary, we feel certain.

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OUR correspondent 'H.' (*ante*, p. 20) asks, 'with regard to the present crusade against magistrates' clerks conducting prosecutions,' whether, if the crusaders be right, it does not follow that no solicitor ought to act for a plaintiff whom he has advised to take proceedings, 'because his advice may have been influenced by the consideration that he would earn a guinea or two by issuing the writ.' Surely the two cases differ *toto cœlo*. In the one case the solicitor is chosen by the party supposed to be aggrieved; in the other, the party supposed to be aggrieved has no choice in the matter. In the one case it is a private person who suffers; in the other, it is the public administration of the criminal law which is brought into contempt. Of course, in neither case do improper motives exist, but the mere suspicion of their existence, in the case of magistrates' clerks, is sufficient, in the opinion of most persons who have thought upon the subject, to necessitate a remedy, the real strength of the argument for which, be it remembered, lies in section 159 of the Municipal Corporations Act, 1882. Does 'H.' think that section ought to be repealed?

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SOME of the Colchester town councillors have been much ruffled by the Lord Chancellor's appointment of six new borough justices without previously submitting to the council the names of the gentlemen proposed to be appointed, in accordance with the request of the council in that behalf. Alderman Wicks roundly abused the Lord Chancellor, who, he stated, was "the highest paid functionary in England, and received 20,000*l.* a year' for this so-called affront to the borough, and a petition to the Secretary of State was eventually determined upon. It need hardly be stated that the Municipal Corporations Act, 1882, contains nothing which subjects the appointing power of the Crown to the control, direct or indirect, of the town councils or any other authority. Section 157 of that Act simply enacts that 'it shall be lawful for the Queen from time to time to assign to any persons Her Majesty's commission to act as justices in and for each borough having a separate commission of the peace.' The salary of the Lord Chancellor, it may be added, is 10,000*l.*, not 20,000*l.* a year, nor is the Lord Chancellor the highest paid functionary in the kingdom, inasmuch as the Archbishop of Canterbury receives 15,000*l.* a year.

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IN the two last numbers of the *New York Medico-Legal Journal* there have appeared two able papers—one by Mr. T. H. Tyndale, of the Boston bar, the other by Mr. Clark Bell, president of the New York Medico-Legal Society—upon the approaching abolition of the office of coroner throughout the United States of America. A very brief critical survey of the evidence

on which the American indictment of 'crowner's quest law' is based and of the expedients which seem destined ultimately to displace it may be neither unseasonable nor uninstructive. The office of coroner, it should be premised, has no historic hold upon the affections of the American people; it is not, as in England, an outgrowth from early institutions; it is purely and simply a creation, intended to accomplish a certain result, and having no claim to preservation if it fails to do so. Again, the coroners of the United States have never been a homogeneous body, capable of organic action or of combined resistance to disintegrating influences. In Massachusetts they were nominated; in New York and other States they were elected. Their numbers were as capricious as the manner of their appointment. Boston alone had forty-three, many more than London, New York, Brooklyn, Philadelphia, New Orleans, Chicago, San Francisco, Baltimore, Washington, and Cincinnati put together. Once more, the coroner's inquest in an average American State seems to have been simply a costly and tedious way of doing nothing; the verdict of the jury was not only not conclusive, it was not even evidence, and the subsequent trial proceeded without any reference to it whatsoever.

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ONLY three systems of preliminary judicial investigation in criminal cases seem to be known among men. One is the old-fashioned coroner's inquest. The second is that adopted by Massachusetts in 1878. It consists in giving the initiative to qualified medical examiners, upon whose report the proper judicial authorities act or not, as they think fit. Every reliable indication points to the conclusion that the other American States will follow Massachusetts in adopting this method of procedure. The third system may not inaptly be described as the European. It prevails in Scotland, France, Germany, Russia, Denmark, and even in Turkey, and consists in enabling the public prosecutor of every district to inquire into all cases of sudden death occurring in his jurisdiction, with the assistance, if necessary, of a medical expert.

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Is there or is there not an appeal from a County Court judge upon interlocutory orders, such as an order against the defendant under the Debtors Act, 1869, for non-payment of the judgment debt? This very important question was raised, but not decided, in *Voysey* v. *Armitage* (Notes of Cases, p. 168), in which the Court heard an appeal on the merits, 'as the decisions seemed to be conflicting' (which, no doubt, they are), and dismissed it. The question depends on section 120 of the Act of 1888, which is wider in its terms than the repealed enactments which it replaces. A pretty confident opinion, after a careful review of the authorities, is expressed in favour of the appeal in Heywood's 'Annual County Court Practice,' vol. i., at p. 391, and with this opinion we are inclined to agree. It must be borne in mind, however, that, where the discretionary power of the County Court judge is brought to bear, the High Court, even if it should be held to have jurisdiction to reverse an order made in the exercise of such power, would be very reluctant to do so. It may be a long time before the point is decided; meanwhile, we commend it to the notice of the law students' debating societies throughout the kingdom.

THERE is no branch of the law which contains more anomalies than that relating to the taxation of costs. But, perhaps, the most curious anomaly is the allowance to scientific witnesses. The regulation amount per day is three guineas, though we believe Sir Frederick Bramwell is allowed five guineas. Of course the difference—a very large one—between the amount paid and the amount allowed falls on the client. It is ridiculous in these days that a larger sum is not allowed to scientific witnesses if they are necessary. We have no wish to encourage unnecessary evidence being tendered in our Courts, but it is very hard on successful litigants that they should be put to so much expense in regard to the fees of scientific witnesses. The latter class have sometimes charged a somewhat high fee, but it is not necessary that the whole of them should be allowed. But certainly a more adequate figure than the customary three guineas is desirable.

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IT is stated that the appellants in the intimidation (?) case arising under section 7 of the Conspiracy and Protection of Property Act, 1875, in which the recorder, Mr. Bompas, Q.C., affirmed a conviction, have applied to the recorder to state a case for the Court for Crown Cases Reserved, although the fines of two of the defendants have been paid, and although it was stated in Court that there would be no appeal. That a recorder has power to state such a case upon the trial of an indictment was decided shortly after the passing of 11 & 12 Vict. c. 78, in *Regina* v. *Masters*, 1 Den. C. C. 352, but an examination of that statute shows beyond doubt that the jurisdiction of the Court for Crown Cases Reserved does not extend to the appellate jurisdiction, but only applies to the original jurisdiction of a recorder. Could, however, the recorder state a case for the High Court otherwise than under 11 & 12 Vict. c. 78? This is a question of very great doubt and difficulty. We think, however, that recorders have, by section 165 of the Municipal Corporations Act, 1882, the same jurisdiction as county quarter sessions have in the matter, though we can find no instance of the jurisdiction being exercised by a recorder. But, no doubt, the usual course is for the sessions to give *judgment* 'subject to a case' (see *Regina* v. *Stoke-upon-Trent*, 13 Law J. Rep. M. C. 41), and not to entertain an application for a case after judgment given. If the appellants be not too late, it seems that the Court ought to state a case whenever a reasonable doubt exists on a point of law, and Lord Hardwicke a long time ago took occasion to say that if, when the matter is doubtful, the Court refuses to state the facts specially, this is very blamable conduct (see *Rex* v. *Preston-on-the-Hill*, Burr, S. S. 77). The case once stated may be taken from the High Court to the Court of Appeal and from the Court of Appeal to the House of Lords, as was held in the celebrated *Walsall Case*, 48 Law J. Rep. M. C. 65, where the whole subject of appeal by case from quarter sessions was carefully discussed in the House of Lords.

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LORD GRIMTHORPE has reviewed 'at great length' the Archbishop of Canterbury's judgment in the Lincoln case, and says that the first thing 'which strikes every lawyer' in connection with that judgment is that for the first time in legal history nearly every decision on

the points decided against the prosecutors, 'which are all now as much law as if they were in Acts of Parliament,' are reversed by one of the two inferior provincial Courts, which may also differ from each other, 'the Archbishop in that respect filling actually a smaller position than the Dean of Arches.' 'The Supreme Court,' says Lord Grimthorpe, meaning by this expression the Judicial Committee of the Privy Council, 'had always decided five points out of the seven one way; the inferior Court had now decided them the other way, and an appeal is pending.' It is indeed difficult to see how the Judicial Committee of the Privy Council can do anything else than follow its own decisions, and reverse the decision of the Archbishop's Court, leaving Parliament to alter the law if it be so minded, whether the result may be to split the Church of England in two, as some anticipate, or not, and whether the result may be to incarcerate the Bishop of Lincoln or not.

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INDIVIDUALISTS of the type of Mr. Herbert Spencer and Mr. Auberon Herbert would probably, if they acted up to their theories and had the power, restrain the Courts from interfering with the consequences of contracts entered into by free people. But 'our grandmother, the State,' as Lord Salisbury termed the powers that be, and her children, the Courts, exercise such a maternal care for contracting parties that they will sometimes refuse to enforce to the letter what has been previously agreed on. Purchasers have thus some grounds for their hopes that the stringent conditions to which their purchase is subjected, and the provisions as to their taking a title, which they afterwards discover to be a doubtful one, will not be rigidly enforced. There is a limit, however, to judicial interference, as the purchaser in the recent case of *In re Sandbach and Edmondson* (Notes of Cases, *ante*, p. 166) discovered to his cost. Certain houses were there put up for sale, and E. became the purchaser, subject to certain conditions, one of which provided that the purchaser should assume that a certain person, B., died intestate, and without an heir, before 1870. If B. did so die, then the property remained in his trustee, who would have the beneficial interest free from all trusts, under the law in force previously to the Intestates Act of 1884, and the vendor claimed through him. The purchaser, when he discovered the nature of B.'s interest, objected that the condition above referred to did not sufficiently disclose it, nor did the importance of the fact he was asked to assume appear from the conditions, and he required proof of it. The vendor stated his belief in the accuracy of the facts to be assumed, and offered to search for proof at the purchaser's expense. Some correspondence followed, and at length the vendor took out a summons for a declaration that a good title had been shown in accordance with the conditions. The Vice-Chancellor of the Duchy of Lancaster decided in his favour, and the Court of Appeal have upheld his decision. Their lordships said that a vendor was not compelled to point out the specific objection to his own title, provided that he did not intentionally mislead the purchaser or require him to assume that which the vendor knew to be untrue. The decision is certainly reasonable, for why should a vendor cry 'stinking fish' when he wishes to sell his property? On the other hand, it should be noted 'that a condition is bad as misleading (1) if it requires the purchaser to assume what the vendor knows to be false; or (2) if it affirms that the state of the title is not accurately known to the vendor when in fact it is known. And . . . a vendor is not at liberty to require a purchaser to assume as the root of his title that which documents within his possession show not to be the fact, even though these documents may show a title perfectly good on another ground' (Dart's 'Vendors and Purchasers,' 6th edit. p. 170).

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THE hospitable institution of 'lunching' the recorder and sessions bar prevails in most quarter sessions boroughs. At Southampton this function is undertaken by the sheriff of 'the county of the town,' the office being held at present by a gentleman who is deservedly respected by his fellow-townsmen and is well known as an ardent teetotaller and disciple of Canon Wilberforce. True to his principles the sheriff provided no alcohol at the luncheon which followed the duties of the recent sessions. Need it be said that the genial recorder (Mr. E. U. Bullen) was equal to the occasion and good-humouredly rallied his host on their both being men of 'convictions?' But what would some of his predecessors say could they bridge time and space and witness the edifying spectacle of 'bench and bar' washing down their luncheon with ginger-beer or other teetotal mixtures on one of the coldest days in this Arctic winter? Verily 'the old order changeth, giving place to new.'

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MR. SHERRARD, a justice of the peace, states in the *Times* that recently an incorrigible rogue was sentenced to receive thirty-six lashes—'whether with the birch or the rod he forgets'—after pointing out to a warder that he (the rogue) would be a fool to work, inasmuch as he could make more than a pound a week by begging. It may be doubted whether corporal punishment is frequently inflicted on 'incorrigible rogues' at the present day. The power to inflict it is undoubted, and is derived from 5 Geo. IV. c. 83, s. 10. By this enactment a Court of Quarter Sessions may order that an incorrigible rogue be imprisoned for not more than a year, and 'further, that such offender, not being a female, be punished by whipping at such time during his imprisonment, and at such place within their jurisdiction, as according to the nature of the offence they in their discretion shall deem to be expedient.' The effect of the Act appears to be to authorise *public* whipping, which would be in conformity with the repealed 39 Eliz. c. 4. By that ancient statute any 'scholler going about begging,' or other person declared thereby to be 'a rogue, vagabond, and sturdy begger,' was directed 'to be stripped naked from the middle upwards and openly whipped 'untill his or her bodye be bloudye, and forthwith sent from parish to parish the nexte streighte way to the parish where he or she was borne;' while dangerous rogues or 'such as would not be reformed of their rogish kinde of lyfe' by the provisions of the Act, might be banished from the realm or 'be judged perpetually to the galleyes.'

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THE *Law Quarterly* announces the commencement of a new venture by Messrs. Sweet & Maxwell (Lim.)—viz. the publication of a series of revised reports. That the idea is a good one and worthy of the support of the profession cannot be denied; but on the question

whether such an undertaking can be made remunerative we are somewhat sceptical. This, however, concerns nobody but the enterprising publishers, who can safely be trusted to take care of themselves. We wish them all success.

## THE LAW AND LAWYERS IN 1890.

WITH the year which has just passed the LAW JOURNAL has almost attained what, for anything legal in these days of incessant change, may be termed the patriarchal age of threescore years and ten. Its pages, from its foundation in 1822, when Lord Eldon was Chancellor and Sir Charles Abbott, afterwards Lord Tenterden, Lord Chief Justice, when Lord Eldon's scarcely less famous brother, Lord Stowell, was judge of the High Court of Admiralty, and Lord Lyndhurst, then Sir John Singleton Copley, who was actually born at Boston, now the intellectual centre of the United States, four years before the declaration of independence, was Solicitor-General, form almost the only continuous record extant of the growth and development of English jurisprudence during nearly the whole of the nineteenth century. This period in particular coincides with that remarkable expansion of our equity system which dates from the first Chancellorship of Lord Eldon and the appointment of Sir Thomas Plumer as Vice-Chancellor of England in 1813. It is an interesting study simply to glance at the names of the judges from the first volume to the last, and to note those whose memory is still fresh in our own times, and those whom posterity has been content to forget. In the list of gentlemen, also, who have contributed to the success of the 'Reports' will be found not a few who subsequently attained great distinction in the profession. Mr. Montagu Chambers, Q.C., was connected with our 'Reports' for more than half a century, and was one of the editors from 1834 to 1884; other former members of the staff were Mr. Herman Merivale, so long permanent under-secretary for India, Mr. Charles Beavan, Mr. Thomas Hare, Mr. G. M. Dowdeswell, Q.C., the present Mr. Justice Denman, Mr. Staveley Hill, Q.C., Sir A. K. Stephenson, Q.C., Sir William Markby, and Mr. Lumley Smith, Q.C. The lines originally laid down in 1822 have been faithfully followed for nearly three-quarters of a century, and the principles which guided the enterprise at its inception have been adopted and carried out by all the contemporary series of law reports and law newspapers. With a certain enlargement and greater fulness of detail, the aim of the LAW JOURNAL, as expressed in its first number, is its aim now, and the conscientious fulfilment of that aim has from the beginning to the present day been cordially recognised by both branches of the profession: 'To inform the profession of every change which takes place in the law; to present them with every species of information which the conduct of business can require; to afford to professional gentlemen resident at a distance from London faithful notes of the decisions of the Courts and a brief statement of the statutes made in Parliament; and to supply practitioners with an accurate account of all proceedings in any matter relating to legal business—are the objects contemplated by the proprietor of the *Law Journal* and the *Law Advertiser*.' The *Law Advertiser* was the precursor of the weekly newspaper now published under the title of the LAW JOURNAL, and probably the first legal newspaper ever published in this country.

Every spectator of the pageant of October 24 is led to consider the judicial changes which have taken place since the opening of the judicial year, and to speculate upon those which will probably occur in a year's time. Since the beginning of 1890 five new judges have taken their seats. Sir Edward Kay is a worthy successor in the Court of Appeal to Sir Henry Cotton, one of the most accomplished equity lawyers of our time; and the vacancy on the Chancery bench thus occasioned was filled up, to the general satisfaction of the profession, by the appointment of Mr. Romer, Q.C., whose judicial career may confidently be expected to be as brilliant as those of former senior wranglers who have reached the bench—Mr. Justice Maule and Baron Alderson and Mr. Justice Stirling. In February, Mr. Roland Vaughan Williams, Q.C., was appointed a judge of the Queen's Bench Division, in the place of the late Sir Henry Manisty, and later in the same month Mr. John Compton Lawrance, Q.C., M.P., was raised to the bench on the retirement of Mr. Justice Field, who was made a peer by the title of Baron Field, and has since occasionally sat in the House of Lords on the hearing of appeals. On the death, last month, of Baron Huddleston, Mr. Robert Samuel Wright, one of the junior counsel to the Treasury, was created a judge, and may be expected to crown a brilliant career at Oxford and at the bar by equal distinction on the bench. The death of Sir Barnes Peacock brings into operation section 14 of the Appellate Jurisdiction Act, 1876, and rumour has been busy as to the appointment of a new Lord of Appeal in Ordinary. Our Indian fellow-subjects would doubtless like to see some distinguished ex-Indian judge sworn of the Privy Council to assist in Indian cases on the Judicial Committee, as Lord Hobhouse and Sir Richard Couch are the only judges who have any experience of Indian affairs. The Lord Chancellor has been more than usually sparing in the appointment of Queen's Counsel; and of these Sir A. K. Stephenson and Sir William Hardman were not active practitioners. The other new silks were Mr. Macrory, Mr. A. V. Dicey, Mr. Cyril Dodd, Mr. R. O. B. Lane, Mr. Sidney Woolf, Mr. C. A. Cripps, Mr. Haldane, M.P., Mr. Asquith, M.P., and Mr. Lawson Walton. Lord Halsbury is apparently a strong believer in youth, as the new judges, with the exception of Mr. Justice Lawrance who is about fifty-eight, are all men barely exceeding fifty years of age; and the gentlemen called within the bar are mostly young men, notably Mr. Haldane, who was barely thirty-four on his appointment, Mr. Asquith and Mr. Lawson Walton. He has also shown a laudable disregard of political considerations, for Mr. Justice Lawrance is the only one of the new judges who had any political record, and Mr. Justice Wright (whose office, however, gave him a sort of title to a judgeship) was known to be opposed to the Government.

With respect to legislation, as we have before remarked, private members scored more than they have done for many years past, and more than the Government itself, which, oddly enough, did almost more work in the first fortnight of the present session than in the six months from February to August. Seventy-two public Acts were passed in the session ending in August and two in the short part of the present session before Christmas, both of them dealing with Irish affairs. Those which more immediately relate to the administration of justice are the Bankruptcy Act, introduced by Sir A. Rollit and adopted by the Government, the Chancery of Lancaster Act, the Colonial Courts of

Admiralty Act, the Commissioners for Oaths Amendment Act, the Companies (Memorandum of Association) and Winding-up Acts, the Deeds of Arrangement Amendment Act, Mr. Warnington's measure on Directors' Liability, suggested by the decision of the House of Lords in *Peek* v. *Derry*, the Elections (Scotland) (Corrupt and Illegal Practices), Foreign Jurisdiction, Lunacy Acts, the Lord Chancellor's Partnership Act, and Mr. Finlay's useful enactment, the Supreme Court of Judicature Act, by which motions for new trials in civil actions are heard by the Court of Appeal instead of a Divisional Court. Of measures of a constitutional character there were the Anglo-German Agreement Act, by which Heligoland was ceded to Germany, and the Western Australia Constitution Act. Allotment and Bills of Sale Acts are, of course, inevitable, and there are other measures dealing with Tenants' Compensation, Housing of the Working Classes, the Census (for which three Acts are necessary), Education, Intestates' Estates, the London County Council, Marriage of British Subjects outside the United Kingdom, Metropolis Management, the Police, Public Health, Public Libraries, Irish Railways, Irish Poor Law, Statute Law Revision, and Trustees Appointment for Lands held in trust for Religious or Educational purposes.

With respect to the decisions of the Courts, greater interest attaches to certain cases in the House of Lords and in the Privy Council on which judgment is reserved than to any actual judgments. The profession and the commercial community are awaiting with anxiety the decision of their lordships in *Vagliano* v. *The Bank of England*; the great licensing question, which in two successive years convulsed the country, is involved in *Sharp* v. *Wakefield*; the important question of employers' liability, the doctrine of *volenti non fit injuria*, and the supposed conflict of decisions of the Court of Appeal on these questions are awaiting the final pronouncement of the House of Lords; and the right of an Australian colony to exclude Chinese immigrants is to be settled one way or the other by the Privy Council in *Musgrove* v. *Chun Teong Toy*. Apart from sensational trials, such as *O'Shea* v. *Parnell* and the series of actions in which Dr. Barnardo has been involved, and cases of public rather than professional interest, like *In re The Earl of Radnor's Trusts*, involving the acquisition of great pictures for the nation, among the interesting cases of the year there were the celebrated judgment of the Archbishop of Canterbury in the *Bishop of Lincoln's Case*, *The St. Paul's Reredos Case*, *Knill* v. *Towse*, concerning the County Council Franchise, and *The Marquis of Northampton* v. *Pollock*, affirming in curious circumstances the ancient doctrine 'once a mortgage always a mortgage.'

The legal obituary is, as always, voluminous and melancholy. Mr. Justice Manisty died early in the year full of years and honours; the Irish bench sustained the loss of Baron Dowse, Lord Justice Naish, who was cut off at the early age of forty-nine, and Mr. Justice Litton, legal member of the Irish Land Commission. Sir Michael Westropp, Chief Justice of Bombay, died in his seventy-third year; Mr. Justice Molesworth, of Melbourne, expired at the ripe age of eighty-four; and the close of the year was marked by the death of Mr. Baron Huddleston, who had passed his threescore years and ten; and of Sir Barnes Peacock, who had reached the ripe age of eighty-six, and had sat in the Privy Council a few days before he died. The rapidly vanishing body of serjeants-at-law suffered diminution in the persons of Serjeant Tindal Atkinson, who was eighty-five, and the senior County Court judge; and of Serjeant Robinson, at seventy-eight, whose charming 'Reminiscences' will be fresh in our readers' minds. Other notable figures have disappeared in Sir J. T. Ingham, who had long passed eighty; Sir J. Blosset Maule, Q.C.; Mr. Glasse, Q.C., who took silk so long ago as 1851, and was for many years perhaps the most prominent leader of the Chancery bar; Lord Milltown; Mr. Charles Compton, Q.C., distinguished son of a distinguished father; Mr. Clement Milward, Q.C., whose sailorlike aspect was suited to the Court in which he practised; Mr. B. T. Williams, Q.C.; Mr. Swetenham, Q.C., M.P.; Sir William Hardman, Q.C., more of a journalist and politician than of a lawyer; Mr. T. W. Sanders; and Mr. A. W. Kinglake, the brilliant historian of the Crimean War. Other members of the profession who are no longer with us are Mr. Arbuthnot, the accomplished editor, in conjunction with Mr. Henn Collins, Q.C., of Smith's 'Leading Cases,' who died prematurely at the age of forty-six; Mr. Decimus Foulkes, a learned lawyer, long connected with this journal, who died at a still earlier age; Sir John Heron, town clerk of Manchester for nearly half a century; Master Francis; Mr. C. J. Baker, many years secretary of the Corporation of the Sons of the Clergy; Sir W. W. Streeten, formerly on the staff of the LAW JOURNAL, and late Chief Justice of the West African Settlements; Mr. David Pugh, many years M.P. for Carmarthen; Sir H. Connor, Chief Justice of Natal; Mr. J. Clayton, who reached the patriarchal age of ninety-eight, town clerk of Newcastle-upon-Tyne, and a learned antiquary; Mr. William Marshall, of Ely, an accomplished naturalist as well as a lawyer; Mr. J. J. Johnson, Recorder of Chichester; Mr. Edwyn Jones; Mr. Ashworth Briggs, who was killed on the railway; Mr. Arthur Macnamara, a promising young counsel, who was killed on the Alps; Mr. W. F. F. Bingey; Mr. George Mander; Mr. Anderson Rose; Mr. Ruscombe Poole, a well-known solicitor at Clevedon; Mr. Thomas Belk; Mr. Enoch Harvey, of Liverpool; Mr. J. Hensman, of Northampton; Mr. T. Cornish, of Penzance; Mr. William Genn; Mr. Thompson Richardson, of Barnard Castle; Mr. William Langdon, of Messrs. Goldberg & Langdon, solicitors to the German Government; Mr. George de Morgan; Mr. T. T. Weightman; Mr. George Burnett, Lyon King of Arms for Scotland; Mr. A. O. Rutson; Mr. T. Minshall; Dr. James Lorimer, Professor of Public Law at Edinburgh; and Mr. Savill Onley, of Stistead Hall, near Braintree, who had completed his ninety-sixth year.

## TAYLOR *v.* RUSSELL.

THE late case of *Taylor* v. *Russell*, 59 Law J. Rep. Chanc. 756, and on appeal 60 Law J. Rep. Chanc. 1; L. R. 1891, 1 Chanc. 8, is a striking example of divergence of opinion between judges of great eminence on the question in what cases a subsequent equitable incumbrancer, who has taken without notice of a prior equitable charge, can gain precedence by getting in the legal estate after receiving notice of such prior charge. The case involved, in the first instance, two questions—(1) whether, having regard to the conduct of the plaintiffs (the earlier incumbrancers), they were entitled to retain the precedence which would *primâ facie* result from priority of

time; and (2) whether, if they had such precedence, it was displaced by the fact that the defendant had, after notice of their incumbrance, got in the legal estate. Lord Justice (then Mr. Justice) Kay decided in favour of the plaintiffs on both points. The Court of Appeal gave judgment for the defendants on the second, but did not discuss the first. The judgment in the Court of Appeal, and also that of Mr. Justice Kay, will repay attentive perusal.

The property was originally vested in the trustees of a person named Surtees, and they, under a power, had mortgaged it, with other property, on November 19, 1862, by a legal mortgage to the trustees of one Legard, but the property in question was not originally intended to be included in this mortgage. Afterwards the then surviving trustee of Surtees (and who was one of those who mortgaged in 1862) conveyed it on a sale to Toward by deed of January 30, 1883, and covenanted that he had not incumbered. Toward mortgaged the property to the plaintiffs by deed of February 15, 1883, but made out to them another title to it; and, of course, did not deliver the proper deeds. He afterwards, by deed of October 20, 1887, mortgaged the property to the defendant, to whom the deeds were handed, but Legard's trustees, who held the legal estate, did not concur, and the defendant took without notice of the plaintiffs' incumbrance. Afterwards the defendant, having become aware of the mortgage to the plaintiffs, an arrangement was made under which Legard's trustees, who were satisfied of the sufficiency of the other property included in their mortgage to answer their own claim, conveyed the legal estate in that purchased by Toward to the Surtees trustees, but upon the express condition that they should forthwith convey the same to the defendant. This transaction was effected by a conveyance of November 21, 1888, from Legard's trustees to Surtees's trustees, and a conveyance of November 26, 1888, from the latter to the defendant.

Mr. Justice Kay observed (59 Law J. Rep. Chanc. 762): 'When Surtees' trustees obtained the legal estate,' after the conveyance from Legard's trustees, 'there was a duty incumbent upon them to convey it to Toward or to the assign of Toward, who had the best right to call for it;' and he referred to the facts in *Harpham* v. *Shackloch*, L. R. 19 Chanc. Div. 207 (November 18, 1881), citing the well-known remark of Sir G. Jessel, p. 214: 'Then, as regards the legal estate, nothing is better settled than that you cannot make use of the doctrine of *tabula in naufragio* by getting in a legal estate from a bare trustee after you have received notice of a prior equitable claim.'

The judgment of the Court of Appeal (Sir J. Hannen, Lord Justice Bowen and Lord Justice Fry) was read by Lord Justice Fry. That Court seems to rely in some measure on the fact that Surtees' trustees took the reconveyance upon a condition to convey it to the defendants. It is said in the judgment (60 Law J. Rep. Chanc. 4): 'Even if they ought never to have so taken the legal estate (which we see no reason to affirm), they could not, when they had taken it, refuse to perform the condition on which they took it without a gross violation of confidence and breach of good faith, of which no equity could, in our judgment, require them to be guilty.' Reliance was also placed on the ruling of Lord Selborne in *Blackwood* v. *The London Chartered Bank of Australia*, 43 Law J. Rep. P. C. 25, 29; L. R. 5 P. C. 92, 111, viz.: 'There is nothing more familiar than the doctrine of equity, that a man who has *bonâ fide* paid money without notice of any other title, though at the time of the payment he as purchaser gets nothing but an equitable title, may afterwards get in a legal title if he can and may hold it, though during the interval between the payment and the getting in the legal title he may have had notice of some prior dealing inconsistent with the good faith of the dealing with himself;' and on the following observation of Vice-Chancellor Wood, in *Bates* v. *Johnson*, Joh. 304, see p. 314: 'In every case down to *Peacock* v. *Burt*, 4 Law J. (N.S.) Chanc. 33, which is probably one of the most striking of the kind, it has been held that when once a subsequent incumbrancer, who, by advancing his money without notice of prior mesne incumbrances, stands in an equally good position with them in every respect, except as regards time, gets in the legal estate, he has a right to avail himself of that legal estate until the whole of his incumbrance is discharged.' But must not these observations be construed in connection with the facts then before the Court? And it is submitted that there are features in each case which, to some extent at least, distinguish it from *Taylor* v. *Russell*. Thus, in *Blackwood* v. *The London Chartered Bank of Australia*, the plaintiff's letter of deposit was, no doubt, first in point of time, but the bank registered *their* letter of deposit on July 15, 1870, at ten o'clock in the forenoon, while the plaintiff registered *his* at a later hour on the same day. In the Act of 7 Vict., No. 16, providing for registration of deeds and other instruments in New South Wales, priority seems to be given by mere registration. Indeed, it will be found that section 14 of this Act provides 'that upon the delivery into the Registrar-General's Office of any such certified copy or memorial' [as there mentioned of an original instrument] 'and verification of the same, the registrar shall grant and sign a receipt for such copy or memorial, in which shall be specified the certain day and hour on which the same shall have been delivered into the said office,' with other particulars. The receipt was to be endorsed on the original instrument, and 'the time so endorsed' is to be 'taken to be the time of the registration' of such instrument. In fact, the functions of the registrar seem to have been ministerial, and, as in *Dodds* v. *Hills*, 2 H. & M. p. 427, Vice-Chancellor Wood observed (in giving Smith priority), 'nothing but his own act was necessary to make him complete master of the shares' (in which he had previously only an equitable title), so with the bank the delivery at the registrar's office of the certified copy of their charge was a matter which depended *only upon their own act*. Thus in neither case could there have been any question who had the 'best right to call for the legal estate,' inasmuch as the persons who got the legal estate obtained it without any extraneous aid. But, in *Taylor* v. *Russell*, Russell required the assistance of both Legard's trustees and also of Surtees's trustees. Again, in *Bates* v. *Johnson*, Joh. 304, where a third mortgagee who had lent without notice of the second incumbrance took a transfer from the first mortgagee, and so acquired the legal estate, Vice-Chancellor Wood observes, p. 317: 'A first mortgagee is in the same position as any other unsatisfied mortgagee having notice of a subsequent incumbrance, and has a right to transfer the legal estate so vested in him to any person who will pay off his debt.' (It is suggested whether, as the law now stands, a first mortgagee would not, in case of re-

quisition by a second mortgagee, be bound under section 12 of the Conveyancing Act, 1882, to transfer to such second rather than to a third mortgagee.) But did not the Vice-Chancellor rely on the *payment* which the first mortgagee had *a right to receive*? Indeed, he himself seems (pp. 315, 316) to place a satisfied mortgagee on the same footing as the trustee of a satisfied term.

Allusion has been made to *Peacock* v. *Burt*; it may be worth while to refer to Lord Justice Lindley's criticism on this case in *The West London Commercial Bank* v. *The Reliance Permanent Building Society*, 54 Law J. Rep. Chanc. 1,081; L. R. 29 Chanc. Div. 963, where he observes: '*Peacock* v. *Burt* looks very like a conspiracy between the first and third mortgagees to cheat the second, which cannot be right. That, however, is the aspect which many of the old cases on the subject bear. Still, I am not at liberty to question those decisions; for, although they are opposed to my ideas of morality, they are nevertheless law. However, I am not going to make them the pretext for doing further wrong.' In *Peacock* v. *Burt* the first mortgagees received their debt; in *Taylor* v. *Russell* they might, it is presumed, have refused to release at all or to do otherwise than transfer; but if they consented to release a portion, did they not, *ipso facto*, admit that as to such portion they were in the position of satisfied mortgagees?

Lord Justice Fry, citing *Maundrell* v. *Maundrell*, 10 Ves. 270, seems to admit that circumstances may exist which give an incumbrancer a better right to call for an assignment of a legal estate; but said 'the defendants were perfectly innocent holders of the equitable estate; they clothed themselves with the legal estate without notice, in our opinion, of any equity in the plaintiffs to prevent them so doing, and we see, therefore, no reason to deprive them of the benefit they have acquired.'

The decision of the Court of Appeal is, of course, binding; but the case is an instance of the difficulties which arise in questions of this nature, and, in the absence of any system of general registration, it seems likely that the question which of two innocent equitable incumbrancers has the better right to call for the legal estate may yet have to be frequently discussed.

## THE TITHE BILL.

THE Tithe Rent Charge Recovery Bill, which it is proposed to call the Tithe Act, 1891, is a short but very important measure. All provisions as to redemption, and provisions for getting rid of small tithes, which, however well conceived they have been, formed a great impediment to the passing of previous tithe bills, have been entirely dropped, and the new bill becomes merely a measure for transferring the liability to pay tithe from the occupier to the owner, *notwithstanding any contract to the contrary*—a further invasion of freedom of contract between landlord and tenant which will be of great practical importance to estate agents and others. By clause (1), 'Tithe rent-charge, issuing out of any lands, shall be payable by the owner of the lands, notwithstanding any contract to the contrary between him and the occupier of such lands,' and where the occupier is liable under any contract before the Act to pay tithe, then 'he shall cease to be bound by that part of the contract, but in respect of the period during which his tenancy under such contract subsists, he shall, unless it is otherwise agreed between him and the owner, owe to the owner such sum as the owner has paid on account of' tithe, and 'such sums shall be recoverable from the occupier by distress in like manner as is provided by the Tithe Acts with respect to arrears of tithe rent-charge, and not otherwise.' Distress, therefore, for tithe is not to be abolished, but it is to be a distress at the suit of the landlord, and not at the suit of the parson or other tithe-owner. Such tithe-owner is, by clause 2, to recover his tithe, in case of default, from the land-owner by application to the County Court for a receiving order, which 'shall be executed by the appointment by the Court of a receiver of the rents and profits of the lands, and, unless the Court otherwise directs, also of the rents and profits of any other lands of the same owner which are occupied by the same occupier together with those lands.' This somewhat harsh provision in relation to 'other lands' is modelled on section 85 of the Tithe Commutation Act, 1836, so that it is not to be expected that any opposition to it will be successful. It only remains to notice that, by clause 3, the Court may order a remission of tithe when it exceeds two-thirds of the annual value of the land charged with it, and that by clause 5 the bill is to extend to every sum on account of tithe which first becomes payable on or after the half-yearly day of payment of such tithe which occurs next after its passing, but *not* to sums due on account of tithe which were in arrear before its passing. Such arrears, therefore, will still be recoverable by distress on the part of the tithe-owner on the goods of the occupier, in manner provided by section 67 of the Tithe Commutation Act, 1836.

The Tithe Rentcharge Owners' Union have just published the bill in pamphlet form, with very useful notes and criticisms by Mr. W. H. Squire, barrister, and Mr. E. W. I. Peterson, solicitor. The general contention of the tithe-owners is that one at least of the provisions of the bill will work injustice, that several others are unnecessary, and that the present procedure and remedies amply suffice, provided that those who have to work them are properly backed up by the authorities. That the property of tithe-owners is imperilled is undeniable, and the union must be vigilant in guarding their interests.

# Reviews.

## GARRETT'S LAW OF NUISANCES.

*The Law of Nuisances.* By EDMUND W. GARRETT, M.A., of the Inner Temple and the Midland Circuit, Barrister-at-Law. William Clowes & Sons. 1890.

THE aim of this book, the author tells us in his preface, is to collect and arrange for the first time in one volume the common and statute law as to nuisances. The subject of nuisances has lately been brought very prominently before the mind of the British public by the proceedings in the case against the Pelican Club, which, after occupying a large share of the time and attention of the vacation judge, became the subject of an elaborate hearing before Mr. Justice Romer. The Pelican Club case was a case of nuisance by noise, but nuisance, it is needless to remark, takes a great variety of forms, many of which are but little known except to trained lawyers, and the remedies which the law affords

are also various. Mr. Garrett first considers the subject as a whole. He then passes on to consider nuisances in connection with highways, bridges, and waters. Next we have the consideration of nuisances in connection with what is termed the 'interdependence of neighbouring properties'—a branch of law which is based largely on the principle expressed in the Latin maxim, 'Sic utere tuo ut alienum non lædas.' Here all the many authorities centring round the well-known case of *Fletcher* v. *Rylands*, 37 Law J. Rep. Exch. 161; L. R. 3 H. L. C. 330, are considered. The other forms of nuisance, beginning with the question of the responsibility of the owner of an animal for injuries inflicted by it, be it elephant, bear, or dog, or of whatever kind it may be, and ending with minor statutory nuisances, are next considered. We have then the subject of abatement in Chapter XII., and procedure in Chapter XIII., considered under the two heads: (1) 'On the Civil side,' (2) 'On the Crown side.' Among other useful points in the book may be mentioned an index to precedents of indictments, and the book concludes with an appendix of over a score of statutes bearing on the subject of nuisance. The work throughout is very carefully executed and the arrangement is good. It is admirably printed, and may be safely recommended to all who desire to master the subject with which it deals.

## THE HOUSING OF THE WORKING CLASSES ACT, 1890.

*The Housing of the Working Classes Act*, 1890. Annotated. With Appendices, containing the Incorporated Statutory Provisions, the Working Classes Dwellings Act, 1890, the Standing Orders of Parliament relating to Provisional Orders, and the Circulars, Memoranda and Orders of the Local Government Board under the Act. By the Author of 'The Local Loans of England and Wales.' London: Knight & Co. 1890.

THE object of this work is to provide local authorities, &c., with Mr. Ritchie's Act and a commentary thereon, the Acts incorporated with that important measure, the Standing Orders of Parliament relating to Provisional Orders confirming improvements, and the Circulars, Orders and Memoranda issued in connection with the subject. We have carefully looked through the manual before us, and it seems to combine a great deal of useful information in a handy form. A good specimen of the work is to be found at p. 117, where the authorities on the important subject of compensation are collected.

## BUCKLEY ON THE COMPANIES ACTS.

*The Law and Practice under the Companies Acts*, 1862 *to* 1890, *and the Life Assurance Companies Acts*, 1870 *to* 1872. Containing the Statutes, and the Rules, Orders, and Forms to Regulate Proceedings. By H. BURTON BUCKLEY, Q.C. Sixth Edition. London: Stevens & Haynes. 1891.

THE new edition of this, the leading text-book on company law, is doubly welcome, owing to the fact that it is entirely the work of the learned author, whose experience in this branch of law is probably unrivalled. The necessity for a new edition arose partly from the exhaustion of its predecessor, but chiefly from the necessity of incorporating recent legislative changes and judicial interpretation. It includes, as the author points out, three new Acts of Parliament of great importance. 'The first, commercial—to meet a recognised mercantile need, giving power, within limits and subject to control, to alter that which has been unalterable, to enlarge or restrict the objects specified in the memorandum of association. The second, administrative—intended to answer the demand for greater economy and more efficient control in winding-up, defining afresh the Court which shall have jurisdiction, and providing a new machinery for the appointment of the liquidator and the control of the funds. The third, deterrent—conceived as a terror to the prospectus-maker, and calculated to increase the income of the competent expert who has no scruples.' That the work of revision has been thoroughly done is assured by the fact, already mentioned, of its having been undertaken by the author. The Winding-up Rules, the tardy appearance of which somewhat delayed the edition, are included in the book, but for the purposes of pending liquidations the former Rules have also been retained. It was not to be supposed that there would not be some increase in bulk, and accordingly we find that from 734 in the fifth edition the number of pages in the present issue has increased to 867. Mr. Buckley acknowledges the assistance of Mr. Younger in revision for the press and in the correction of the indices. The value of the work would have been much enhanced if his assistance had further been enlisted for the purpose of extending the references to more than one set of reports.

## JOHNSON ON PATENTS.

*The Patentees' Manual.* A Treatise on the Law and Practice of Patents for Inventions. With an Appendix of Statutes, Rules, and Foreign and Colonial Patent Laws, International Convention and Protocol. By JAMES JOHNSON, of the Inner Temple, Barrister-at-Law, and J. HENRY JOHNSON, Solicitor, Assoc. Inst. C.E., Past President of the Institute of Patent Agents. Sixth Edition. Revised and Enlarged. London: Longmans, Green & Co.; Stevens & Sons (Lim.). 1890.

THE sixth edition of this standard work appears after an interval of six years. The fifth edition appeared soon after the Act of 1883, and during the time that has elapsed a great many important changes have taken place. Three supplementary Acts of Parliament have been passed in the years 1885, 1886, 1888. There have also been four new sets of official rules. Add to this that there have been a very considerable number of decisions, some of them of much importance. The fresh matter thus introduced into the law of patents has been carefully embodied in the present work. New chapters have also been introduced. We have tested the work in several places, and have found it brought down well to date. Part I. of the Appendix contains the statutes, international conventions, rules, fees, and forms. Part II. is devoted to the patent laws of foreign countries and of British colonies and possessions. The preface contains a useful summary of the effect of recent legislation, which is itself again summarised in the following words: The provisions of many earlier statutes were consolidated and amended; several

features hitherto unknown in our system were introduced; the procedure was simplified; the fees payable to Government on application for patents were reduced, and greater facilities for the payment of the subsequent fees were afforded. Some interesting statistics as to the practical working of the present system are also given. The hope that the inventive talent of the nation would be stimulated into more vigorous action has not been disappointed. The average number of patents sealed in the four years prior to 1883 was 3,928, while in the five years after 1883 it was 9,314. The average annual number of applications during the four years after 1883 was 17,108, but of these 7,792, or 45 per cent., failed in some way or another. The applications increase at the rate of about 1,000 a year.

## WILSON'S LEGAL HANDY BOOKS.

*A Handy Book on the Powers, Duties, and Liabilities of Directors.* Companies Acts, 1862 to 1890, including the Directors' Liability Act, 1890. By THOS. W. HAYCRAFT, Esq, B.A. (Oxon.), of the Inner Temple, Barrister-at-Law, Author of 'A Handy Book on the Bills of Sale Act.' Effingham Wilson & Co. 1891.

THE object of this book, the author tells us, is to place before those persons who are, or propose to become, directors of companies a brief but comprehensive sketch of the duties and liabilities attaching to their position. A new terror has been added to the law with regard to directors by the Directors' Liability Act, 1890, to which a chapter is devoted. This Act has, as our author puts it, 'created a statutory duty on the part of those who lend their names to a company towards those who are invited by its prospectus to subscribe for shares or debentures.' Attention is also directed to the Court's powers of dealing with delinquent directors under section 10 of the Companies (Winding-up) Act, 1890, which extends the provisions of section 165 of the Companies Act, 1862 (now repealed). The book is carefully written, and will be useful to the class of persons for whom it is intended.

*A Practical Treatise on the Law relating to the Sale of Goods.* Showing the Rights, Duties, and Liabilities of Buyers and Sellers as Wholesale or Retail Dealers or Consumers. With the Factors Act, 1889. By C. E. STEWART, M.A., of the Inner Temple and of the South-Eastern Circuit, Barrister-at-Law, Author of the 'Law of Wills' and 'Law of Water and Gas.' Effingham Wilson & Co.

THE law as to buying and selling goods is generally regarded as one of the subjects which is ripe for codification. A bill, as is well known, was introduced by Lord Herschell dealing with the subject, but the many difficulties which beset the path of legislation have hitherto defeated its progress. Meanwhile the author of the present little treatise thinks its desirable to collect the principles of this important branch of law in a moderate compass. His work will be found useful, for it is carefully executed. At p. 61 he ought to have alluded, under *Derry* v. *Peek*, to the Directors' Liability Act, and at p. 86 we ought to have been told that the Factors Act was last year extended to Scotland.

# Unreported Cases.

## VICE-CHANCELLOR'S COURT, IRELAND.

### CHARITABLE BEQUEST—LEGACY TO ANTI-VIVISECTION SOCIETY.

ON Thursday, May 1, 1890, the following judgment, in the case of *In re Vandeleur; Armstrong* v. *Reeves*, was delivered by Vice-Chancellor Chatterton: This is an action brought by the next-of-kin of the testator, Colonel Richard John Ormsby Vandeleur, for the purpose of charging the executors of his will with two sums of money—one 500*l.* and the other 784*l.* 12*s.* 1*d.*, the latter representing the residue of his personal estate—as having been improperly paid to persons who were not legally entitled to receive those legacies under his will. The question depends upon whether the two legacies in question were valid or not. The first bequest is in these words: 'I leave a legacy of 500*l.* to the Society for the Abolition of Vivisection, payable upon the receipt of the treasurer for the time being.' The other is the gift of the residue: 'I leave all the residue of my property to the Society of Carlsruhe for the Protection of Animals, to be paid to the treasurer for the time being of said society.' Those legacies were in due course paid by the executors to the persons authorised by the will to receive them, namely, the treasurer of the Society for the Abolition of Vivisection, and the treasurer of the Carlsruhe Society for the Protection of Animals. It is said by the plaintiffs that both of these legacies were void. Now, in the first place, we have to consider that we are dealing with two gifts which were of pure personal estate. There is nothing whatever to prevent any testator from disposing of his personal estate in any way he pleases, if he with sufficient clearness and certainty states the objects of his dispositions, if there is nothing illegal or immoral in those objects, and if he does not, by the terms of his gifts, delay the expenditure of the money beyond the legal limits of time. It is only in the case of uncertainty or perpetuity that it becomes necessary to consider whether the object of a bequest is charitable or not. In the present case, the subject of the bequests is pure personalty, and the objects are clearly stated—they are, in the one case, the Society for the Abolition of Vivisection, and in the other, a society in Germany for the protection of animals. Both of those societies were well known to the testator, and during his lifetime he appears to have been a supporter of both. He knew how to describe, and he did correctly describe, them. They were existing societies, although not incorporated. I assume the German society was not a corporation, because I have no evidence before me to show that it was. The Anti-Vivisection Society, of course, was not incorporated; so that I may deal with both alike in this respect, as being existing societies, but not incorporated. Another matter of importance in considering these gifts is that in each case there is a person designated by the testator, who is to be paid the amount of the legacies, and to give receipts, which he intends to be valid discharges to his personal representatives for such payment. In each case the bequest is directed to be paid 'to the treasurer for the time being of the said society;' the same words occur in both cases. The testator must be presumed to have known the constitution of the societies when he designated the treasurers as the fit and proper persons to receive payments. Now, the first question that arises is the validity of a gift to an existing unincorporated society, such as those with which we are now dealing. I have been urged with several arguments on behalf of the plaintiffs that the bequests are invalid, on the grounds of un-

certainty and perpetuity, and that it would be impossible for this Court, were we called upon to undertake to discharge those trusts, to decree their performance. The societies are both existing societies, both capable of applying the money according to their respective rules and constitutions, and there would be no occasion whatever for the Court to interfere, unless, perhaps, a case might arise of an attempt at misappropriation of the money, after it had reached the hands of the persons to whom it was directed by the testator to be paid. That, however, is an equity that would not be enforced in an administration suit like the present. If anything of the kind arose it could, if attempted at all, be listened to only at the instance of those who are the objects of the charity—which in neither of these cases are capable of making such an application; or of the Attorney-General, as to the English Society, on behalf of the Crown. How it could be done in the case of the German society I do not know. This, however, is a point which, I think, need not be considered in the present case. It is admitted that if these were gifts to the members of the societies, which they could apply for their personal benefit, they would be valid; and I am entirely at a loss to understand why they should be rendered invalid if they apply them to the purposes and objects of their respective societies. I put aside, for the present, the consideration of the question of perpetuity. I am assuming there is no element of perpetuity involved in the case—I shall consider presently whether there is or not—but, assuming that there is no element of perpetuity, it is very clear, in my opinion, that the purposes of these societies are neither illegal nor immoral. The objects of the bequests are clearly stated, as being these two existing, known, and defined societies, each having an officer designated by the testator to receive the legacy and give a discharge for it. I am, therefore, at a loss to see in what way the element of uncertainty exists as applied to these institutions. *Cocks* v. *Manners*, 40 Law J. Rep. Chanc. 640; L. R. 12 Eq. 574, contains that important opinion of Vice-Chancellor Wickens, that those persons, if they would have a right to receive the money, supposing they could spend it for their own purposes, are not less entitled if they put the money into a common chest. When it gets there it becomes freed from the trusts connected with it, and, unless there is something in the terms of the bequest to the contrary, it may be expended *in presenti*, as part of the current income of the society. Looking at the constitution of these societies, there is nothing that I can find that in the slightest degree obliges them to capitalise these funds. Of course it cannot be contended for a moment that the treasurer of either of them could apply the money for his own private benefit, or that the persons who happened to constitute the societies at the time of the death of the testator would be allowed so to apply it; but that depends upon the internal constitution and regulations of the societies. All that the testator required was that the money should go to the societies, and that receipts for it should be given by the treasurer of each society. As soon as ever the gifts reached the proper hands, in my opinion, they ceased to be affected by the trusts of the will, and each society was at liberty to apply the money at its discretion in accordance with its own constitution and rules. I am of opinion that the Court has no duty imposed upon it to investigate the constitution and rules of a society, where a person is expressly designated and authorised to receive payment and give a receipt. It is not the practice of this Court—the practice is the other way—where a bequest is given to a society, whether charitable or not, where the money has been paid to the person expressly designated by the terms of the gift as the proper person to receive and give a discharge for it—it is not the practice of the Court to look beyond that; the moment the Court pays it over to that person it has done its duty, and the responsibility then rests upon those to whom it was given by the testator. As I have already said, there is nothing either illegal or immoral in the objects and purposes of either of those societies; but it was contended on behalf of the plaintiffs that there was an element of perpetuity in them, and that on that account the bequests were invalid. Now, in the first place, there is nothing whatever in the gifts themselves tending to perpetuity; and it is in my opinion a fallacy to incorporate into a bequest the rules and regulations of a society, which indicate that it is intended to have a permanent existence, in order to invalidate a gift in itself clear and free from any element involving that question. But even supposing that we were called upon to look at the rules, and to ascertain whether there was anything perpetual in them, I cannot yield to the arguments addressed to me on behalf of the plaintiffs and hold that, because they provide for an annual election of officers, and other matters implying permanence to some extent, that that indicates an intention that the gifts received by the society shall be applied in a manner exceeding the limits which the law prescribes with regard to perpetuity. Every society must, in its nature and constitution, contemplate some continued existence; and, of course, whether it is to continue one year, or ten, or 500 years, there must be some regulations and bye laws as to appointment of officers and other matters that must occur from time to time in the transaction of its affairs. It would be a monstrous proposition to hold that because we find, in a society to which an absolute gift of this kind is given, provision made in its bye-laws for keeping up the necessary officers, and other matters, as long as it continues to exist, those are to raise the question of perpetuity, and to invalidate a gift to such a society although the gift in itself contained no element of perpetuity. There is nothing in the rules of either society expressly providing for any period of duration. If the contention of the plaintiffs was to prevail, the Court would be bound to hold that a bequest to any society which did not contain in its constitution and rules a term indicating that it was intended that it should terminate within the legal limits of time, would, on that ground alone, be invalid. I do not think anybody ever saw or heard of a society whose constitution contained any limit of time of that kind, and in my opinion it would be absurd that it should. I am clearly of opinion that, where there is nothing in the subject of the gift involving the application of the mortmain doctrines affecting land, and where existence in perpetuity is not a necessary part of the constitution of the society, that the Court should not invalidate it merely because the rules and regulations of the society contain no express provision for the termination of its existence within the legal limits of time, and hold that the society must necessarily continue to exist beyond the legal period, or that every specific gift to it must remain applicable for the purposes of the society during its entire existence. The authorities which have been referred to—*Obert* v. *Barrow*, 56 Law J. Rep. Chanc. 913; L. R. 35 Chanc. Div. 472, and *Thomson* v. *Shakspeare*, 29 Law J. Rep. Chanc. 140, 276—are distinguishable from the present case. In the first, from the very nature and terms of the gift, it was to be taken as intended for a perpetual institution. *Thomson* v. *Shakspeare* was the same thing; it was a gift for the perpetual keeping up of the house in which Shakspeare resided, and a museum, to last for all time, of interesting articles connected with Shakspeare. Those cases have no application to the gifts here. I am of opinion that the element of perpetuity does not exist in the present case, and that the objection on that ground cannot operate to invalidate the bequests. Even if I were

wrong in this, the question would still arise whether these gifts are charitable or not. If the element of perpetuity is introduced in a gift, it fails, unless it be charitable; and in like manner, if there be uncertainty, it fails, unless it be a charitable gift; but if the gift be for a charitable purpose, then the objections founded upon perpetuity and uncertainty have no application. Now, is the bequest to the Anti-Vivisection Society a charitable gift? The rules of the society, so far as they apply to this question, are very short. They state that the object of the society is the total abolition of vivisection or putting animals to death by torture upon any pretext whatever; and this object is to be carried out (1) by procuring by legislative enactment the entire suppression of vivisection, and (2) by enforcing by legal process the provisions of any statute prohibiting or regulating the practice of vivisection. There is nothing in the remainder of the rules affecting the question I am now considering, which is, whether this is a society for charitable purposes or not. This point was not actually decided in *Obert* v. *Barrow*, as it did not become necessary there to decide the question, but there were intimations from the judges who decided the case that a gift to a society for procuring the abolition of vivisection would in their opinion be a charitable gift; and in *Purdy* v. *Johnson* it was expressly ruled that a gift for this object was a charitable one. It is said that there is something illegal in the nature of the society, which, it is stated, has been instituted for the purpose of interfering with the operation of an Act of Parliament. I cannot yield to that argument. The society does not profess to interfere in any way with the Act of Parliament. It is a society for the purpose, by legitimate means, by bringing public opinion to bear upon the Legislature, of inducing them to make certain alterations in legislation; and, instead of regulating the practice of vivisection, to procure a law abolishing it altogether. The statute at present allows vivisection to be carried on, under certain restrictions and limitations, for scientific purposes, and the object of the society, which is to influence the Legislature, by legitimate means, to make certain alterations in the law, does not contain in itself any element of illegality. I am not called upon *de novo* to pronounce a decision as to whether the Society for the Abolition of Vivisection is a charitable institution or society; because, as I have said, it has been ruled already that it is; but certainly, if I had to consider the question for the first time, I should say that it was clearly within the legal definition of a charitable society. The statute does not in the slightest degree profess to enumerate all the different charitable purposes which come within its scope; it only gives some, to be used as analogies; but in every case the Court has to consider whether there is some public benefit to be derived from an institution in order to determine whether its objects are fairly to be considered charitable or merely benevolent. Now, in the present case, I am of opinion that anything that tends to prevent the demoralisation of public opinion which would be caused by an unauthorised and unnecessary practice of dissection of living animals would be for the public benefit, as tending to correct and prevent cruelty or carelessness in reference to the sufferings of brute beasts. I do not mean in the slightest degree to express any opinion, I really do not entertain any opinion on the question of the total abolition of vivisection; but even if I differed in that respect from the objects of the society—which perhaps I might do as an individual—that is not the question. The question is whether the object in view is such as may fairly, within the principle of decided cases, be deemed a charitable purpose. The cases I have referred to show that it is. I may also observe that there is a strong tendency in our law, both statute and outside the statute law, against the practice of cruelty to animals; and if vivisection be, as it must, a cruelty to animals, it can only be justified on the ground of being attended with beneficial public effects of such importance as to render it desirable that the cruelty should be excused in view of the public benefits to be derived from such investigations. I have not myself formed any decided opinion on the subject; but if the members of this society honestly believe, as I have no doubt they do, that vivisection is a practice involving unnecessary cruelty to animals, I see nothing in their desire to procure its abolition by legal enactment either illegal or taking it out of the principle of those cases, which I think show it to be, in their view, a charitable institution. I have, therefore, no difficulty in holding that this legacy of 500*l.* to the Society for the Abolition of Vivisection is a good and valid legacy, whether on the grounds on which I first put it, as not open to objection for uncertainty or perpetuity, or on the ground that it is a charitable gift. [His lordship then proceeded to consider the bequest to the Carlsruhe Society, and said he failed to discover anything in the rules of the society which would show that its objects were not charitable.] The prevention of cruelty to animals has not only been a matter of legal decision, but it is a subject of statute. One of the arguments used on behalf of the plaintiffs was that I must take the statute for the prevention of cruelty to animals as the measure of what the limit is to be of the class of cruelty of which the law takes notice; and that, as the statute is confined to animals useful to man, so in every case, if you go outside the bounds of the statute in that respect, you go beyond the limit of what is a charitable purpose. That, in my opinion, is an entire fallacy. The statute, no doubt, enumerates certain animals, describing them as animals useful to man, and it confines the criminal prosecutions which it authorises, and the punishments which it enacts, to cruelty to animals of that class, and that class alone, but it does not in the slightest degree interfere with the general moral principle that cruelty to animals of every kind, whether useful to man or not, is a thing that is to be prevented and suppressed, as far as possible. In my opinion, it is for the benefit of the public that it should be prevented; and that any society for the prevention of cruelty to animals, whether domestic animals or not, is within the scope of charitable institutions. The rules of this society have been scanned minutely by counsel, in order, if possible, to find out something which would show that the objects for which it was instituted go beyond the legal limits of charitable purposes. What are they? To prevent by every means in their power the ill-treatment of animals, and to protect all useful animals, especially birds, and, whenever necessary, to provide them with food. Those are the two chief objects of the society, and they are objects of general mercy to animals of all kinds—especially useful animals—which has been interpreted by legal authority, to which I need not refer, as animals useful to man—but whether confined to animals useful to man or not, in my opinion the objects of the society are charitable. Having come to the conclusion (1) that these gifts, even if not charitable, are good and valid gifts; (2) that they are charitable gifts; it becomes unnecessary to decide the case on the question of estoppel. I think there is a good deal to be said on both sides of that question; but in the view I take of the case it is not necessary for me to express any opinion upon it. I think it right, however, to say that there is an entire absence of proof—and, indeed, I think there has been very little even of allegation—that there was anything in the slightest degree approaching to misrepresentation on the part of the executors, the Messrs. Reeves. All that they did was, when the plaintiffs (or the next-of-kin) came to them, and asked them as executors about the contents of the will, they informed them (as was the fact) that they took nothing under it, and that their names were not mentioned in it. In that, in my opinion, they were right: but even supposing that I am wrong in that opinion, it

was a matter which they *bonâ fide* believed; it was a matter as to which they had been advised by eminent counsel, and I concur in his opinion. This is not an action which, in my opinion, is entitled to be regarded with favour by the Court; I believe there are no legal grounds for it, and I dismiss it with costs.

## COUNTY COURT.

### MARKET RIGHTS.

At the Bromyard County Court, on Friday, December 19, his Honour Judge Sir Richard Harington, Bart., sitting for his Honour Judge Sir Rupert Kettle, gave judgment in the case of *Biddle* v. *Herbert*. His Honour said: This was an action brought to recover 3*s*. 6*d*. for market tolls in respect of marketable commodities alleged to have been sold by the defendant on market day within the precincts of the plaintiff's market, or, in the alternative, for 1*l*. damages for the wrongful disturbance of that market. Although the amount claimed is very trifling, yet the questions involved are of considerable importance to the town of Bromyard, inasmuch as by consent the Court was empowered to entertain the question of title to the tolls in dispute, and thus to determine not only the limits of the market in point of area, but also the question whether the present Thursday's market is a lawful market at all. The action came on for trial at the usual bi-monthly Court holden here in October last, on which occasion I expressed the opinion I had then formed as to the limits of the area of the market, but adjourned the case until December 1 for the purpose of hearing further arguments upon the questions of law raised. Upon the adjourned hearing further evidence was called by consent, and some admissions were made. It will, therefore, I think, be convenient that I should now state the conclusions of fact at which I arrive on the whole of the evidence and admissions given and made on both occasions. I find, then, that the Bishops of Hereford, as lords of the manor of Bromyard, have been accustomed, under the authority of a charter from the Crown or other good title now lost, to hold markets for the sale (*inter alia*) of plants (but not of poultry, eggs, or live stock) on every Monday in the year in the open spaces and buildings known as the Market Square and Market Hall. They were also accustomed under an equally good title to hold at other times, and in at least four instances in the year, on Thursdays, hiring fairs (locally called 'mops'), and fairs for the sale of live stock. These fairs, as distinguished from the ordinary weekly market, were not limited to any particular area, but extended over the whole town. Contemporaneously with the custom of holding the weekly market, in the market square and hall, there arose a practice of selling on market days, in the streets adjoining the market square, poultry and eggs, for the sale of which I find on the evidence that no toll was ever successfully demanded or taken by the lord of the market, nor were those sales ever treated as a disturbance of the market rights. The title of the Bishop of Hereford to hold the markets and fairs above mentioned has by various valid assurances which, as they are not in dispute, it is unnecessary to specify in detail, vested in certain gentlemen who have let their rights to the plaintiff. The plaintiff has therefore the same right to take tolls as the Bishop of Hereford would have had if the title had still remained in him. In the summer of 1878, the persons then having the management of the market, without any fresh charter, or any other lawful authority, altered the weekly day of holding it from Monday to Thursday, on which day of the week it has since been regularly holden. On the day mentioned in the particulars, which was a Thursday (but not a fair or mop day), the defendant offered for sale plants, which are marketable commodities on which a toll was customarily taken when sold in the ordinary weekly market in the market square. This offering for sale took place in the public street, and not in any private house or shop of the defendant, and within a few hundred feet of the market square. The defendant refused to pay any toll in respect of such offering for sale, and offered his goods for sale where he did for the purpose, as I find, of evading the payment of toll. On the part of the plaintiff it was contended, first, that the origin of the weekly market being lost in antiquity, it must be presumed that the grantee had the right to hold it on any day in the week and in whatever part of his manor he chose, or, at all events, that he would be entitled to hold an overflow market anywhere in the neighbourhood of the market square; secondly, that even assuming that the original grant was of a Monday market only, yet that a sale in the street of marketable commodities on any other day in the week was a disturbance of that market, even though, in fact, the Monday market was not held. For the defendant it was contended, first, that the lost grant being presumed from the custom only, the only presumption was of a grant limited to Mondays; secondly, that if the Thursday's market was lawful it was confined to the market square and hall, and that the exposure for sale by the defendant of goods outside that market was neither a fraud on the market nor an act rendering the defendant liable to toll. The questions whether the area of the market extended to the place where the defendant exposed his goods for sale, and whether, if not, that exposure was a fraud on the market, are, in the view which I take of the other question raised, of minor importance. Still, I think it right to state my reasons for the conclusions at which I arrive upon each of them. At the end of the hearing in October last I expressed the opinion that the weekly market, as distinguished from the mops and fairs, must be taken to be limited to the market square and hall. The evidence given on December 1 confirmed me in this opinion. I agree with the proposition of Mr. Cave that a general grant of a market to the lord of a manor authorises him, as between the Crown and himself, to exercise the franchise of holding the market in any part of the manor he chooses to use for the purpose (see *Curwen* v. *Salkeld*, 3 East, 538), and to change that place at will (*Mayor of Dorchester* v. *Ensor*, 39 Law J. Rep. Exch. 11; L. R. 4 Exch. 335). But such a grant would not confer any right to trespass on the land or infringe the right over land of other subjects of the Crown. The grantee therefore would, as against those other subjects, have the right to hold the market only in land in his own actual possession, or in which the persons entitled to the possession have by grant or sufferance consented that it should be holden (see *Moseley* v. *Walker*, 5 Law J. Rep. K. B. 358; 7 B. & C. 52; *Lockwood* v. *Wood*, 15 Law J. Rep. Q. B. 36; 6 Q. B. 31; and the judgment of the Master of the Rolls in *The Attorney-General* v. *Horner*, 54 Law J. Rep. Q. B. 227; L. R. 14 Q. B. Div. 254), and *per* Lord Blackburn in the same case in the House of Lords (55 Law J. Rep. Q. B. 193; L. R. 11 App. Cas. 66). In this case I am of opinion that the proper inference to draw is that the market square and hall were at the time of the presumed charter either demesne land of the manor in the actual possession of the lord; or, if waste, that the consent of the homage commoners or any other persons whose consent was necessary, was lawfully obtained to the holding of the market there. But there is no evidence before me that the soil of the streets is vested in the lord of the manor, and the presumption is that it is vested *usque ad medium filum* in the adjoining owners, nor is there any evidence of a consent by those owners to the holding by those under whom the plaintiff claims of a market in those streets. On the contrary, the evidence of

the oldest witness called, James Davies, tends strongly to confirm the presumption of ownership and the absence of consent, for he says that the sellers of poultry refused successfully to pay toll to him because they stood in the street and not in the market, and that he believed that they had leave from the shopkeepers to stand in front of their shops, and refused toll on that ground. But whether the market extended beyond the limits of the market hall and square or not, I am of opinion that the offering for sale by the defendant of marketable commodities close to and outside the market on market days, with intent, as I think the defendants intended here, to avoid payment of the market toll, would be, if the plaintiffs are entitled to the franchise they claim, a fraud on the market. (See per Lord Mansfield, C.J., in *Blakey* v. *Dinsdale*, Cowp. at p. 664; and *Prince* v. *Lewis*, 5 B. & C. 363.) It was indeed urged by Mr. Tree that there was no evidence here that there was room in the market, but, on the other hand, there was none (as in *Prince* v. *Lewis*) that any part of the market square was devoted to purposes other than those of the market. I think, therefore, that the burden of proof that there was no room was on the defendant in this case. (See the judgment of Mr. Justice Littledale in *Prince* v. *Lewis*, at p. 373.) And no such proof was given by him. I now come, however, to the much more serious question whether those under whom the plaintiff claims have any franchise entitling them to hold this market on Thursday at all. And I am of opinion that they have not. No case has been cited to me to support Mr. Cave's proposition that the fact that the grant is lost in antiquity leads to the presumption that it was a grant to hold a market on any day in the week the grantee might choose. On the contrary, I agree with Mr. Tree that the usage leads to presumption, and that the only inference I can draw from the evidence before me is that there was some legal origin to the Monday market. That the day is material is shown conclusively by the authority of Com. Dig., Market, tit. Forfeiture (citing 2 Roll. Abr. 124) and Viner's Abr. tit. Market. For if a grantee held his market on a day other than the day granted, without holding on the day granted, it is a forfeiture of his franchise. It follows of necessity that he can acquire no right of monopoly against the public by holding his market on a usurped day. It might probably be successfully contended that the original franchise in this case of the Monday market exists . . . notwithstanding the forfeiture until the Crown interferes; but to hold that the plaintiff can, by usurping a franchise which he has not, acquire any right against the public, would be inconsistent with the decision of the Court of Appeal in *The Attorney-General* v. *Horner* (*sup.*). In that case the market owner succeeded in proving a valid grant of a market for Thursdays and Saturdays. He gave evidence also of a long-continued usage to hold the market on other days as well. In that case the Court, for reasons which it is unnecessary to refer to in detail here, thought that this evidence was not sufficient to lead to a presumption of the grant of a franchise for those other days. The case was, therefore, in that respect very similar to this, where the recency of the change and the admissions of the plaintiff forbid any such presumption. At the end of his judgment Lord Justice Lindley says: 'I come to the conclusion that we must hold this franchise restricted as far as the days are concerned to Thursdays and Saturdays, but of course that will not interfere with the owner of this market place from selling on other days. He has a right to sell, but he will not have his monopoly. His market franchise must be confined to Thursdays and Saturdays.' The judgment was afterwards affirmed generally in the House of Lords (55 Law J. Rep. Q. B. 193; L. R. 11 App. Cas. 66), where, although the learned Lords guarded themselves from doing more than simply affirming the judgment on other points, they said nothing which in any way questions the opinion of the Lord Justice above quoted. In this case the essence of the plaintiff's claim is reliance on his monopoly. His monopoly is, in my opinion, limited to Monday, and he cannot avail himself of it on Thursday. Mr. Cave's argument that an exposure for sale of marketable goods on Thursday prejudiced the dormant right of the plaintiff to hold a market on Monday is too subtle for my comprehension. The authority relied on in support of it was that of *The Mayor of Dorchester* v. *Ensor*, 39 Law J. Rep. Ex. 11; L. R. 4 Ex. 335, in which it was held, following *Yard* v. *Ford*, 2 Wms. Saund. 174, that the holding of a rival market on a different day from that on which plaintiff's market is held may be evidence to go to the jury of a disturbance. But in this case the gist of the action is not for setting up a rival market, but for unfairly taking advantage of the market, which the plaintiffs do in fact, though, as I think, without a franchise, hold on Thursday by exposing goods for sale in its vicinity, with the object of evading toll. How this act in relation to a market which ought not to be but is holden on Thursdays can be a fraud on a market which may be but is not holden on Monday it surpasses my intellectual powers to conceive. There must therefore be judgment for the defendant, on the ground that the plaintiff had no right to any franchise conferring a monopoly on the day on which the act complained of occurred, and with such costs as are by the scale applicable to the case.—In reply to an application by Mr. Cave, his Honour said: Leave to appeal does not appear to be necessary, but if it is I give it.—The Registrar: The action is brought to recover a sum under 2*l.*, and the question of right of market was tried by consent of parties under section 61 of the Act of 1888, and not under section 64.—Mr. Tree: That being so, there will be no costs payable unless otherwise ordered. I ask for a special order for costs under section 119 of the Act, which was intended to apply to a case of this kind, as I submit.—His Honour: I award costs to the defendant to include all the four hearings on the higher scale A, except as to those of December 1 and to-day, in regard to which I allow to the solicitor for attendance the sum of 1*l.* 1*s.* and 6*s.* 8*d.* respectively.—Order accordingly. —Cave (Bromyard) for the plaintiff; Tree (Worcester) for the defendant.

## MAYOR'S COURT.

LIBEL—PUBLICATION OF LIST OF JUDGMENTS.

On July 7, in the Lord Mayor's Court, the case of *Foster* v. *The Trade Auxiliary Company* (*Lim.*) came on for trial before the Recorder (Sir T. Chambers, Q.C.) and a special jury. The plaintiff, Mr. Henry Foster, a builder, residing at Willesden, sued the defendants, who carry on business as Stubbs' Mercantile Agency, and who are the proprietors and publishers of *Stubbs' Weekly Gazette*, to recover damages for an alleged libel. The facts of the case were peculiar, and were at the same time of importance commercially. It appeared that the plaintiff had been carrying on business for some years past at Willesden, and had been fairly successful. In August last he was sued for a sum of 14*l.*, the balance of an account for bricks. This sum he paid to the solicitor of his creditor, but he omitted to pay the costs. Judgment was therefore entered against him for the full amount of debt and costs, and an execution was put in for the costs. These he paid to the bailiff. A curious mistake was, however, made by the officials at Westminster County Court, where the action had been brought against him, for two judgments had been entered against him on one plaint note. Both were for the same amount, one being entered against 'W. Foster, builder, Portland House, Willesden,' and the other against 'H. Foster, builder, Chapland Road, Willesden.'

In the ordinary course of things these two judgments were registered at the official office for registering County Court judgments at Whitehall, and the defendants included them in the list of judgments which they publish in *Stubbs' Weekly Gazette*. This was the libel complained of; and it was alleged by the plaintiff that it had had the effect of stopping his credit, and thus ruining his business. For the defence it was argued that the defendants were justified in copying a list of judgments from an official document; that the mistake complained of was not theirs; and that their list was what it purported to be—namely, a copy of the registry of judgments. Further, it was said that there was a qualifying notice at the head of the list, stating that the judgments were not necessarily unsatisfied and might have been the result of *bonâ fide* disputed actions; and, moreover, there was no evidence of malice against the defendants.—The jury found for the defendants.—Mr. A. Cock, Q.C., Mr. Lewis Glyn, and Mr. Mote were counsel for the plaintiff; Mr. Asquith, Q.C., M.P., and Mr. R. M'Kenna for the defendants.

## THE LATE MR. GLASSE, Q.C.

THE announcement of the death of Mr. Glasse, Q.C., must have caused surprise to many people—not that he was dead, but that he had only just died. When in practice he was seen and heard daily, but on retiring from professional work he went right away, first to Norfolk and then to Dorsetshire, where he died at a ripe old age If he ever returned to Lincoln's Inn it must have been at very rare intervals. An extremely active man during the greater part of his professional career, he probably disliked the idea of being a mere onlooker at the game which he had so often played successfully, and we should not be astonished if in his retirement he took up some other occupation to which he devoted the surplus of his vigour. 'Old Glasse,' as the name almost implies, was in a way perhaps the most popular man in the Lincoln's Inn of his time—even his little vices endeared him to the profession. Vice-Chancellor Bacon's Court was amusing, and also instructive, for the veteran spoke by far the best English on the Chancery bench; and everybody had a look at Vice-Chancellor Stuart, or at any rate at his legs; but no Court in modern times has ever 'drawn' like Malins' Court. The principal attraction there was Glasse, but probably his idiosyncrasies would not have been so marked, and his talents would not have been so much brought into play, if he had had a different judge on whom, or rather before whom, to practise. People went to Malins' Court to see some fun, and they seldom came away disappointed. But Vice-Chancellor Malins did a great deal of good work, with the assistance, and sometimes, perhaps, in spite of the opposition, of Mr. Glasse. If a suitor had anything like natural justice on his side, Sir Richard Malins tried his utmost to find an equity in his favour, and his quasi-parental solicitude sometimes tempted the leader of his Court into expressions which led to a conflict with the bench. In these the Vice-Chancellor generally came off second best, for he had a certain amount of dignity to preserve, whereas Glasse did not apparently care twopence about anybody's dignity—certainly not the judge's. Malins' habit of telling anecdotes, principally about himself, also tended to develop the humorous side of Mr. Glasse's character. The squabbles were of daily and almost hourly occurrence, and the combatants got used to them. If Glasse had left the Court the Vice-Chancellor's health would probably have suffered. After Malins had gone Glasse soon ceased to practise. Probably each was almost necessary to the other. Glasse, however, had qualities which would have made him a leader in any Court. He was a fair lawyer and a bold but scrupulously honest advocate. Though he squabbled with his judge, there was seldom bitterness in their quarrels. He got on well with other judges. He was beloved by the junior bar, and his services were eagerly sought for. Up to the time of his retirement he had shown little sign of physical or mental decay, and there is no painful association in connection with his memory.

## THE LAW OF COPYRIGHT.

SIR ROPER LETHBRIDGE writes to the *Times* as follows:

I think it is of great importance that those who are interested in the production of books in this country should make it quite clear to our American cousins, and to the whole world, that we have no desire for anything like protection, or, indeed, for anything else than the utmost freedom of trade. That is to say, the author should be free to publish where he thinks best, and the publisher should be free to print where he thinks best, without legislative interference save what may be necessary for the protection of rights of property. The Convention of Berne was practically the expression of the adhesion of the whole civilised world, except the United States, to this principle. The American Copyright Bill is, I think, a proof that the Americans themselves are already ashamed of their isolated position in this respect. It is an important step in the right direction; and we may fairly hope and expect that it will be followed to its logical conclusion by the Government of the United States notifying its adhesion to the Convention of Berne.

But in the meantime, as several of your correspondents have pointed out, the partial nature of the change in America is calculated to strike a deadly blow against freedom of trade, not only in the United States, but also, unless we take immediate measures to prevent it, in the United Kingdom. If a British author can secure copyright both in America and in the United Kingdom, by printing and publishing his book in America, whilst only securing a British copyright if he prints and publishes in England or Scotland or Ireland, it is obvious that he will be practically forced by the law, and by the law alone, to employ American printers and American publishers, even if English or Irish printers, or Scottish publishers, should be far cheaper, far better, or far more suited to his wants.

I propose, as soon as Parliament meets again, to introduce a bill to enact that British copyright shall be secured to those authors whose works are printed in the United Kingdom, in any of our colonies or dependencies, or in any country that has given in its adhesion to the Convention of Berne. Such a law would restore freedom of trade. Its immediate result would be that English works likely to attain a very large circulation would be printed both here and in America; while the British authors of less remunerative works would be free to print and publish here if they liked. I have little doubt that its ultimate result, and that before very long, would be that America would subscribe to the Convention of Berne, and thus secure free trade in books throughout the world.

I should be very glad to receive any communications from those who are interested in this question, addressed 'Sir Roper Lethbridge, M.P., care of the Hansard Publishing Union, 12 Catherine Street, Strand.' I would also venture to suggest that they should each communicate with his or her own member and lay the facts before him, so as to aid the passage of my bill through the House.

Mr. T. H. Farrer writes:—

Sir Roper Lethbridge invites communications on his proposed bill.

Will he, in accordance with the admirable principles enunciated in his letter, insert in his bill a provision that every book copyrighted by any author under the provi-

sions of the Berne Convention and published—*i.e.* manufactured—in any of the countries parties to that convention shall have free access to the markets of the United Kingdom, in whichever of the countries in question it may have been published (or manufactured)?

And if he will not do so, will he tell us why?

## THE BANKRUPTCY ACTS 1883 AND 1890.

Board of Trade, Whitehall Gardens:
Jan. 1, 1891.

NOTICE is hereby given, that Mr. Charles John Stewart, one of the official receivers of the Bankruptcy District of the High Court of Justice, having been appointed to be the official receiver attached to the said Court for the purposes of the Companies (Winding-up) Act, 1890, the Board of Trade have, by an order dated December 31, 1890, appointed Mr. Harold de Vaux Brougham to be official receiver of debtors' estates for the said Bankruptcy District of the High Court, and have further ordered:—

(*a*) As regards the bankruptcy proceedings instituted under the Bankruptcy Act, 1883, which at the said date are pending in the High Court, and in which at the said date the said Charles John Stewart was or is constituted official or interim receiver, that the said Harold de Vaux Brougham shall, in respect of the bankruptcy proceedings in which the initial of the first surname of the debtor or debtors is any of the letters Di to Ka, be the official receiver of the estates of the debtors in such proceedings, and discharge the duties of official receiver in relation to such estates.

(*b*) As regards all bankruptcy proceedings which from and after December 31, 1890, shall be instituted in or be transferred to the High Court under the Bankruptcy Acts, 1883 and 1890, that the said Harold de Vaux Brougham shall, in respect of the said bankruptcy proceedings in which the initial of the first surname of the debtor or debtors is any of the letters Di to Ka, be the official receiver, who shall be constituted official receiver of the estates of the debtors in such proceedings.

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Notice is hereby given, that the Board of Trade have appointed Mr. Arthur Stewart Maples to be official receiver in bankruptcy for the districts of the County Courts holden at Kingston-upon-Hull and at Great Grimsby, by transfer from the district of the County Court, holden at Newcastle-on-Tyne, as from January 1, 1891, and that they have further appointed Mr. Frank Lowson Clark, as from the same date, to be official receiver in bankruptcy for the district of the County Court holden at Newcastle-on-Tyne, rendered vacant by the said transfer of Mr. Arthur Stewart Maples.

## THE COMPANIES (WINDING-UP) ACT, 1890.

(*Statements by Liquidators in pending Liquidations to the Registrar of Joint-Stock Companies.*)

GENERAL ORDER BY THE BOARD OF TRADE, UNDER RULE 175 OF THE COMPANIES (WINDING-UP) RULES, 1890.

IT is hereby ordered by the Board of Trade as follows in regard to the matters referred to in section 15 of the Companies (Winding-up) Act, 1890, and rules 126 and 127 of the Companies (Winding-up) Rules, 1890.

*Transmission of Accounts.*

The statement of account required by subsection 1 of section 15 of the Act and by rule 127 to be transmitted in duplicate to the registrar of Joint-Stock Companies shall be in the Form No. 1, with such variations as circumstances may require, and shall be on sheets 13 inches by 16 inches, and shall be verified by an affidavit in the Form No. 2.

*Receipts and Payments.*

The statement shall contain a detailed statement of all the liquidator's receipts and payments on account of the company, but bank transactions as between the liquidator and the bank, and payments or receipts on account of investments made by or on behalf of the liquidator, should be inserted in the columns provided for that purpose, and not in the columns for 'other receipts and payments.' Each receipt and payment must be entered in the account in such a manner as sufficiently to explain its nature. The receipts and payments should severally be added up at the foot of each sheet, and the totals carried forward to the next sheet, without any intermediate balance, so that the gross totals shall represent the total amounts received and paid by the liquidator respectively.

*Trading Account.*

When the liquidator carries on a business, a trading account must be forwarded as a distinct account, and the totals of receipts and payments on the trading account must alone be set out in the statement. The trading account shall be in the Form No. 3, shall be on sheets 13 inches by 16 inches, and shall be sent in duplicate.

*Petty Expenses.*

Petty expenses must be entered in the statement or trading account in sufficient detail to show that no estimated charges are made.

*Realisations.*

Where property has been realised, the gross proceeds of sale must be entered under receipts in the statement, and the necessary disbursements and charges incidental to sales must be entered as payments.

*Dividends, &c.*

Where dividends or instalments of composition are paid to creditors or a return of surplus assets is made to contributories, the total amount of each dividend or instalment of composition or payment to a contributory must be entered in the liquidator's statement as one sum, and the liquidator must forward with his statement separate accounts in duplicate, in the Forms Nos. 4 and 5, showing the amount of the claim and the amount of dividend or composition payable to each creditor or contributory, distinguishing in such list the dividends or instalments of composition paid and those remaining unclaimed. Such list shall be on sheets 13 inches by 8 inches.

*Affidavit of no Receipts or Payments.*

Where a liquidator has not during the period comprised in the account received or paid any money on account of the company, he shall, at the period when he is required to transmit his statement to the registrar of joint-stock companies, forward to the registrar an affidavit of no receipts or payments in the Form No. 2.

M. E. HICKS-BEACH,
President of the Board of Trade.

Dated December 31, 1890.

[A schedule of forms follows the order.]

UNCLAIMED OR UNDISTRIBUTED ASSETS.

*Preliminary Notice.*

Whereas it is provided by section 15 of the said Act that any liquidator of a company (whether wound up by the Court, or under the supervision of the Court, or voluntarily) who has in his hands, or under his control, any money representing unclaimed or undistributed assets of a company which have remained unclaimed or undistri-

buted for six months after the date of their receipt shall forthwith pay the same to the companies' liquidation account at the Bank of England.

And whereas it is further provided that, for the purpose of ascertaining and getting in any money payable into the Bank of England in pursuance of that section, the like powers may be exercised, and by the like authority as are exercisable under section 162 of the Bankruptcy Act, 1883, for the purpose of ascertaining and getting in the sums, funds, and dividends referred to in that section.

And whereas it is provided by the said section 162 of the Bankruptcy Act, 1883, that the Board of Trade may at any time order any trustee or other person empowered to collect, receive, or distribute any funds or dividends under any or either of the Acts of Parliament specified in the fourth schedule to that Act to submit to them an account verified by affidavit of the sums received and paid, and may direct and enforce an audit of the account.

And whereas the Board of Trade have opened an account at the Bank of England above referred to as 'the companies' liquidation account.'

Notice is hereby given to any and every liquidator of a company forthwith to pay to the said account the money in their hands or under their control, obtaining in the first instance a receivable order from the Board of Trade, and that upon such payment the Board of Trade will furnish to such liquidators a certificate of receipt of the money so paid, which shall be an effectual discharge in respect thereof.

Dated this 31st day of December, 1890.

M. E. HICKS-BEACH,
President of the Board of Trade.

## ARE STRIKES ILLEGAL?

MR. W. M. THOMPSON writes to the *Daily Chronicle* as follows:—

Having appeared for the appellants in the Plymouth strike case, I do not intend to discuss the decision of the learned recorder, Mr. Bompas, Q.C., but only to point out its serious effect in connection with trade unionism. If it be the law, then, broadly speaking, nine-tenths of the strikes which take place are absolutely illegal, and the protection afforded by the Trade Union Acts to combinations of workmen are illusory.

Let me state one or two of the grounds upon which the recorder based his judgment:—

1. 'That Mr. Treleaven was afraid of injury to his trade through the course which the defendants stated the unions would pursue, and that he had reasonable grounds for that fear which would have influenced any man of ordinary sound views.'

4. 'That the union men, in leaving their employment at the request of the defendants, were, as the defendants knew, breaking their contracts.'

6. 'That the defendants had no ill-will against Mr. Treleaven personally, but acted with the object of obliging all the labourers to join the union as a means of getting employment and of obtaining for the members a monopoly of the labour of the port.'

And again: 'A strike for the purpose of compelling employers not to employ other persons, or to alter the terms of the employment of such other persons, is illegal, and renders all persons engaged in it liable to proceedings under this section.'

There have been many conflicting decisions as to the meaning of 'intimidation.' This case offers an exceptional opportunity to the trade unions of the country to obtain an authoritative declaration of the law on the subject by the High Court.

## THE BANKRUPTCY ACT, 1890.

The following letter has been addressed to the Inspector-General in Bankruptcy:—

16 King Street, Cheapside, London: Jan. 2, 1891.

Deeds of Arrangement Act, 1867—*re* Ellen Layton.

Dear Sir,—Your circular of the 31st ult. has been brought to us by the trustee under this deed, and we have also during the last two days been consulted by other trustees under deeds of arrangement relative to the same circular which has been received by them. We have advised our clients that your circular is altogether misconceived, and that section 25 of the Bankruptcy Act, 1890, has no application whatever to deeds of arrangement executed prior to the 1st inst., when that Act came into operation. We had carefully considered the statute and the rules before advising our clients, but in order to be more certain upon it we have deemed it expedient to take counsel's opinion on the subject, and we are glad to find that he confirms us entirely in the opinion we have formed. Our clients, acting upon our advice, do not propose to comply with the request contained in your circular, unless it is established by some decision of the High Court that they are bound so to do, and we therefore select this particular case to which to call your attention; and we accordingly invite you to take the earliest opportunity to institute such proceedings as you may deem necessary to obtain a decision on the point, and we will accept service of any process that you consider necessary to issue (whether it requires personal service or not), and we will waive any question of personal service.

Our clients object to comply with your request for the following (amongst other reasons):

1. That it involves labour in respect of which they can obtain no compensation.

2. Where cases are closed there can be no provision for payment of the fees you require, and therefore they ought not to be called upon to pay them.

3. In many cases it would be impossible to comply with the request, as the papers and accounts have changed hands, and in some cases been lost.

4. No duty was cast by law at the time of acceptance of the trust to preserve the necessary materials for the account. To have a duty cast by some future legislation upon a past acceptance of office is a condition of things highly detrimental to the interests of commerce, and calculated to prevent the acceptance of office in such unsettled conditions.

As to the objection No. 2, we are not unobservant of the proviso contained in the extract from scale of fees as set out on page 3 of your circular, but we would respectfully ask you, with regard to these, by virtue of what authority such a proviso has been made, and whether it is upon the language of this proviso you seek to base your present claim. If so, it appears to us to be clear that the rule is entirely *ultra vires*.

We should like, with all due respect to you, to point out that your circular is calculated to mislead and to give a false impression to the recipients as to the effect of the statute and rules, as though they provided that trustees of deeds executed and registered prior to 1891 were liable to account, which we think they are not. Take, for example, your reference to rules 7 to 16. A view wholly different from yours is at once obvious. Rule 3 clearly shows that the rules are intended to apply to returns made by the registrar every week, commencing January 8, 1891, which would be of registrations during and after the present year; and rule 6 with Form No. 1 are obviously intended for 1891 and subsequent years only, and, if you will look at the whole of the forms, the same observation will apply. Again, rule 16 clearly shows that the trustees' duties will be annual ones, so that what you call attention to in paragraph 2 of your circular as to Forms 6 and 3

does not apply in any sense to transactions prior to 1891.

To refer again to your instructions as to 'closed matters,' you say that Form No. 6 should be used as an affidavit. That form applies to a succession of accounts rendered under the Act of 1890. How could 'yearly accounts' have been rendered before, and, if not, how can Form No. 6 apply as you seek to instruct its application?

We have thus expressed ourselves somewhat fully to you in order that there may be no misunderstanding, and that a matter of so much importance may be brought to an issue without delay, and we shall be glad to hear from you at once what course you propose to pursue.

Yours faithfully,
ROOKS & Co.

John Smith, Esq., Inspector-General in Bankruptcy,
Board of Trade, Whitehall Yard, S.W.

Messrs. Rooks & Co. subsequently wrote to the *Times* as follows:—

Referring to the letter addressed by us to the Inspector-General in Bankruptcy, and published in your issue of the 3rd inst., we now beg to enclose you copy of the reply received by us to-day.

We have received a large number of communications from solicitors and accountants throughout the country, and are pleased to learn that the views expressed in our letter of the 2nd have been confirmed in every case.

Under the circumstances, we hope that no trustee under any deed of arrangement executed prior to the present year will make any return under section 25 of the Bankruptcy Act, 1890, unless and until a ruling of the High Court has been obtained compelling him to do so.

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'Board of Trade: January 10.

'Gentlemen,—I am directed by the Inspector-General in Bankruptcy to acknowledge the receipt of your letter of the 2nd inst., and, in reply, I am to state that the Inspector-General notes your intimation that you will accept service of any process which the Board of Trade may be advised to issue when the time has expired for transmission of accounts pursuant to section 25 of the Bankruptcy Act, 1890, and the rules thereunder. The Inspector-General also takes note of the grounds upon which you are prepared to challenge a legal decision on behalf of your client.

'I am, Gentlemen, your obedient Servant,
'F. WREFORD.

'Messrs. Rooks & Co., 16 King Street,
'Cheapside, E.C.'

## THE LORD CHANCELLOR AND THE APPOINTMENT OF MAGISTRATES.

A DISCUSSION arose on Tuesday, January 6, in the Colchester town council, when the formal announcement was made that his Honour, Judge Abdy, with six local gentlemen, had been added to the commission of the peace for the borough.

Alderman James Wicks, who was the Gladstonian candidate for the Harwich Division at the last general election, elicited from the town clerk that no reply had been received to a letter forwarded at the instance of the council, requesting that the Lord Chancellor would not depart from the precedent of submitting to that body the names of gentlemen whom it was proposed to appoint borough magistrates. Alderman Wicks thereupon declared that an affront, to use the mildest possible word, had been offered by the Lord Chancellor to the mayor, corporation, and inhabitants of a borough that had just celebrated the seven hundredth anniversary of the confirmation of its municipal rights. The Lord Chancellor, who received 20,000*l.* a year, and who was probably the highest-priced functionary in the kingdom, had seen fit to override their municipal institution, and he, for one, protested against such unwarrantable interference with their rights. It was conduct of this sort that cost Charles I. his head. He should propose a resolution which he did not think would debar him (Alderman Wicks) from bringing the matter before Parliament. He moved: 'That the council, having received no reply to their communication of a resolution unanimously passed at their last meeting, on December 18, would now address a representation to the Home Secretary upon the affront thus passed upon the constitutional municipal authority of the borough.'

Councillor Butcher (G. L.) seconded this resolution.

Councillor Hazell (C.) sympathised to some extent with the resolution, but objected to the word 'affront.'

Councillor Sanders, one of the newly-appointed magistrates, said he would have felt still more honoured if his name had in the first instance been submitted to the town council. He would vote for the resolution providing its wording could be modified.

Alderman Wicks said he would substitute 'want of courtesy' for 'affront.'

Alderman Elwes questioned whether the Home Secretary was competent to censure the Lord Chancellor.

Councillor Paxman said it would be absurd to report the Lord Chancellor to the Home Secretary. They might as well report him to one of the foremen of his ironworks. If they wanted a change they must try to alter the law.

Eventually it was decided to modify the resolution, and to forward it to the clerk to the Crown in the form of a remonstrance at 'the want of courtesy passed upon the constitutional and municipal authority of the borough.'

This decision was arrived at *nem. con.*

## BAR COMMITTEE.

REPORT of the Bar Committee on the rules as to retainers published by the Incorporated Law Society, November 15, 1890, and purporting to be approved by the Attorney-General.

The communication from the Incorporated Law Society which the bar committee has considered is entitled 'Rules of Practice Relating to Retainers of Counsel,' and is stated to have been adopted by the council of the Society, June 13, 1890, and approved by the Attorney-General, June 17, 1890. The bar committee must, in the first place, enter their decided protest against the assumption that it is in the power of the council of the Society to frame rules of practice as to retainers of counsel which will bind the bar, even though approved by H.M. Attorney-General. While fully recognising the authority of the Attorney-General to determine questions arising on disputed retainers, the bar committee observe that neither the Society nor the Attorney-General can legislate on the subject, and the approval of the Attorney-General must be taken to express his personal and individual opinion, which, though entitled to the highest consideration, has no official character and no representative authority, and will not bind any future holder of his office.

It has been brought to the attention of the bar committee that the Law Society's rules have been included in the Supplement to the 'Annual Practice' of Messrs. Snow, Burney & Stringer, 1890-91. Of course they receive no additional authority from being printed in that very useful publication, and they will not be binding on members of the bar until they have been generally accepted and recognised.

The bar committee proceed to consider how far the rules in question express the present practice, and to

what extent the alterations proposed by the rules are in their opinion expedient.

Rule 1 contains a material alteration from the present practice. It states that 'a general retainer applies, unless otherwise expressed, to all Courts or tribunals, including the House of Lords and the Privy Council.' It is not quite clear what is meant by tribunals as distinguished from Courts, but the rule quoted, even if confined to Courts, is not an accurate statement of the present practice. The bar committee believe that, before the Judicature Act, a general retainer applied only to the Court or Courts in which a counsel usually practised—*e.g.* a general retainer to a common law counsel secured his services in the three common law Courts only, and it was usual, if it was desired to retain the counsel's services in the Court of Chancery as well as in the common law Courts, to give two general retainers. Indeed, in the Court of Chancery, where leading counsel attached themselves to a particular branch of the Court, a general retainer was considered to apply only to the particular branch to which the counsel was attached. Since the Judicature Act a practice seems to have grown up of regarding a general retainer as applicable to all the divisions of the High Court and to the Court of Appeal. The bar committee understand that this practice has not been universally recognised, but they are not disposed to suggest any dissent from or disapproval of it. The bar committee, however, believe that neither before nor since the Judicature Act has an ordinary general retainer been understood to extend to the House of Lords or the Privy Council. It has, the bar committee believe, been the invariable practice to give a separate general retainer for the House of Lords, and also for the Privy Council. It may also be remarked that whereas the fee on an ordinary general retainer is five guineas only, the customary fee on a general retainer for the House of Lords or for the Privy Council is ten guineas.

The bar committee recommend the recognition of the practice of treating an ordinary general retainer, unless expressly limited, as applicable to all divisions of the High Court and the Court of Appeal, or, in other words, to the Supreme Court. But the question whether the present practice should be altered in the manner suggested in the proposed rules, namely, by extending the application of a general retainer to the House of Lords and Privy Council, has been considered by the bar committee with some anxiety. The interests of the bar in this question are not, in their opinion, separable from those of their clients. They are not disposed to object to the proposed alteration on the mere ground of the difference in the fee at present payable on retainers in the House of Lords and Privy Council. They are of opinion that it ought not to be possible for any party on an appeal, by giving a general retainer, or otherwise, to secure the services of the counsel who has appeared for the opposite party in the Court below, and received the confidence of his client, at any rate, if the original client desires to have his services on the appeal. On the other hand, it must be remembered that it is not altogether for the interests of the client to widen the extent of a general retainer, as it would compel the client to give a brief on every occasion to the counsel retained on the penalty of losing the retainer. And this objection is not altogether removed by a suggestion which has been made, that the client can always renew his general retainer, because the client may in that case lose his priority.

On the whole, the bar committee consider that no alteration should be made in the present practice as to the extension of a general retainer to the House of Lords and the Privy Council, but that it should be a recognised rule:

1. That a party shall not, on the ground of priority of a general retainer in the House of Lords, obtain the services on appeal of a counsel who has appeared for his opponent in the Court below, in case the original client desires to have the services of the counsel.

2. That no counsel who has appeared for either party in the Court below shall accept a general retainer, or special retainer, or brief in the House of Lords for the opposite party, without giving the original client due notice.

The proviso to rule 5 raises a question which has been much controverted. The rule proposed to be laid down is undoubtedly vague, and is open to the objection that it practically leaves to the solicitor instructing counsel to define the extent of the retainer, and to say whether he shall be bound by it or not. In spite of these and other objections which have been stated, the bar committee cannot find that any practical inconvenience has arisen when the usage has been adopted, and they are not prepared to suggest any amendment to this or the similar rule 9. With regard to the latter rule, it appears to assume, contrary to the fact, that retainers are given to leading counsel only.

It does not appear whether in rule 8 'the whole progress of the action' is intended to include proceedings in the Court of Appeal. Your sub-committee think that it should.

In like manner it does not appear whether rule 14 is intended to apply to appeals to the Court of Appeal as well as those to the House of Lords. As already stated, the bar committee think that proceedings in the Court of Appeal should be considered as covered by the special retainer in the action, but not an appeal to the House of Lords, subject to the conditions expressed in their previous observations.

Rule 15 is also, in the opinion of the bar committee, new. The bar committee entirely accept the principle intended to be expressed by it, which has sometimes been described as 'retainer by confidence,' and which they believe has been recognised and acted on by the present and previous holders of the office of Attorney-General in decisions given by them. But they think that the rule is expressed in too wide terms, and that in its present form it might operate unfairly on counsel particularly on circuit, and in case of counsel in large business it would impose on counsel and on their clerks a duty which in many cases they ought not to be required and could not safely undertake to discharge. With regard to junior counsel who have been instructed to settle pleadings or advise on evidence and other questions in the initial stages of the action, they recommend the adoption of the rule, but with this addition—that as the client gets the benefit of a special retainer the counsel should have the same benefit and be entitled to a brief on the trial, or (in other words) be placed in the same position as if he had received a special retainer. But with regard to advice given generally different considerations occur. That a counsel who has received the confidence of his client should not place the knowledge thus acquired at the service of his client's opponent is of course dictated by the plainest principles of honour and good faith. And the bar committee believe that the sense of fairness of counsel and solicitors and the power of referring to the Attorney-General in any doubtful case are sufficient to prevent any such scandal arising. But many cases in which counsel are required to advise involve no confidence whatever—such as questions of construction of wills and other documents, or mere questions of law on admitted or assumed facts. Counsel in large practice are frequently called on to advise on a case submitted to them long before an action is commenced, or an appeal to the House of Lords or Privy Council is presented, and in some cases counsel may even, without any impropriety, have advised both sides. The clerk of such a counsel, when offered a

retainer or brief (say) on an appeal to the House of Lords or Privy Council, searches his retainer-book, and finds nothing which prevents his accepting it. He does not know, and cannot discover from his books, that counsel has at some former time advised on the case, because the case submitted may have been under a different name from the parties to the appeal, and the entry in the fee-book will not show the subject-matter of the case; and, indeed, it is at least doubtful how far the duty of making such a search ought to be imposed on the clerk. It is only when counsel reads his brief on the eve of the hearing that he may be reminded that at some former time he advised somebody on the case. If in such a case the client who has taken the advice desires to have the services of the counsel in event of litigation or an appeal, it is not too much to ask that he should protect himself by giving a retainer. The bar committee feel the difficulty of putting into the form of a rule what they believe to be the well understood, though unwritten practice, that a counsel is not compellable, and ought not to accept, a brief from one party which will involve a real breach of confidence towards another party. They, however, consider:

1. That counsel cannot be required, on the ground of priority of general retainer or otherwise, to accept a special retainer or brief in any case in which they have previously advised the other party on the case.

2. That counsel ought not to accept a retainer or brief in any case in which the acceptance of the brief will involve a breach of confidence reposed in them by the opposite party in reference to the case.

It will be observed that in the latter case the proposed rules go beyond what is required by rule 15.

Rule 17 should read 'in Parliament, House of Lords, and Privy Council.'

December 17, 1890.

## RULES OF PRACTICE RELATING TO THE RETAINERS OF COUNSEL.

*Adopted by the Council of the Incorporated Law Society, June* 13, 1890. *Approved by the Attorney-General, June* 17, 1890.

### General Retainers.

I. A general retainer applies, unless otherwise expressed, to all Courts or tribunals, including the House of Lords and the Privy Council; but a separate general retainer must be given to cover business before Parliamentary committees of either House.

II. If the counsel who has accepted a general retainer should be offered a special retainer or brief by the opponent of the party who has given such general retainer, the general retainer entitles the party who has given it to notice before the offered retainer or brief is accepted.

III. Subject to these rules a general retainer lasts for the joint lives of the client and counsel.

IV. In case a special retainer or brief is offered to counsel against the party who has given a general retainer, the counsel, after giving notice to the party from whom he has received a general retainer of the offer of the special retainer or brief, is at liberty to accept the special retainer or brief of the other party, unless a special retainer or brief be given within a reasonable time by the party who gave the general retainer.

V. Where a general retainer has been given, and a brief is not delivered to the retained counsel in any action or other proceeding in which the party giving the general retainer is concerned, and to which it applies, the general retainer is forfeited; provided that the holding of a general retainer does not entitle a Queen's Counsel to the delivery of a brief on occasions when it is usual to instruct a junior counsel only.

VI. Where a general retainer is given for one person, and he sues or is sued with others, and appears separately, the retainer applies in that particular action; but if he appears jointly with others, the retainer does not apply, and remains unaffected.

### Special Retainers.

VII. A special retainer cannot be given until after the commencement of an action or proceeding.

VIII. A special retainer gives the client a right to the services of the counsel during the whole progress of the action.

IX. The retained counsel is entitled to a brief on every occasion in which the case is brought before the Court, except on occasions in which it is usual to instruct one junior counsel only.

### Circuit Retainers.

X. A special retainer must be given for a particular assize.

XI. If the venue be changed for another place on the same circuit, a fresh retainer is not required.

XII. If the action be not tried at the assize for which the retainer is given, the retainer must be renewed for every subsequent assize until the action is disposed of, unless a brief has been delivered.

XIII. A retainer may be given for a future assize, without a retainer for an intervening assize, unless notice of trial shall have been given for such intervening assize.

### Appeals.

XIV. Counsel in the original action cannot accept a retainer or brief on appeal from the opposite party without affording the client in such original action the opportunity of giving such retainer.

### Opinions and Pleadings.

XV. Where counsel has advised or drawn pleadings in contemplation or during the progress of an action or suit, a retainer cannot be accepted from, or pleadings drawn for, or advice given to the opponent, without notice to the first client.

### Promotion of Counsel.

XVI. The retainer of a counsel does not cease upon his being promoted to a higher rank at the bar.

### Amount of Fees.

XVII. The fees given for general retainers are as follows:—

| | |
|---|---|
| In Parliament | £10 10 |
| In all other cases | 5 5 |

XVIII. The fees given for special retainers are as follows:—

| | |
|---|---|
| In Parliament | £5 5 |
| In the House of Lords and Privy Counsel | 2 2 |
| In all other cases | 1 1 |

## EVIDENCE OF PERSON CONDEMNED TO DEATH.

IN *Græme* v. *The Globe Printing Company*, which came before the master in chambers at Toronto on November 5, the question of the admissibility of the evidence of a witness under sentence of death was considered. The action was for libel growing out of a newspaper article in which, as the plaintiff charged, it was asserted that he was in some way connected with the murder of one Benwell. The article appeared subsequent to the trial and conviction of one Birchall for the murder of Benwell, and Birchall was at the time in gaol under sentence of death. The plaintiff desired to obtain the evidence of Birchall to establish that he (Birchall) had not said that the plaintiff was in any way connected with the murder of Benwell. The sentence of death was to have been executed on

Birchall on November 14, 1890. On November 4, 1890, the plaintiff moved before the master in chambers for an order to examine Birchall as a witness in the case and to use his depositions at the trial, which would not take place in the ordinary course till after his execution. The defendant's counsel contended, *inter alia*, that Birchall was civilly dead, and was not a competent witness, and therefore that the order should not be made. *Regina* v. *Webb*, 11 Cox, 133, was cited. The plaintiff's counsel contended that all disabilities of witnesses are now removed in Ontario by sections 2 and 3 of the Evidence Act, R. S. O., c. 61. The master in chambers held, following *Regina* v. *Webb*, that Birchall, being a person under sentence of death, was not a competent witness, and refused to make the order. This order, on appeal, was upheld by Chief Justice Galt, but other grounds were assigned.—*Montreal Legal News.*

## PERSONAL STATISTICS.

THE oldest Cabinet minister is Viscount Cranbrook, G.C.S.I., Lord President of the Council, aged seventy-six; the youngest is the Right Hon. Arthur James Balfour, M.P., Chief Secretary for Ireland, aged forty-two. The oldest member of Her Majesty's Privy Council is the Right Hon. Sir James Bacon, Knt., aged ninety-two; the youngest, the Duke of Portland, aged thirty-three. The oldest duke is the Duke of Cleveland, K.G., aged eighty-seven; the youngest, H.R.H. the Duke of Albany (a minor), aged six. The oldest Marquis is the Marquis of Northampton, K.G., aged seventy-two; the youngest, the Marquis of Camden (a minor), aged eighteen. The oldest earl is the Earl of Albemarle (who is the oldest peer of the realm), aged ninety-one; the youngest is the Earl of Dalhousie (a minor), aged twelve. The oldest Viscount is Lord Arbuthnott, aged eighty-four; the youngest Viscount Torrington (a minor), aged four. The oldest baron is Baron Ebury, aged eighty-nine; the youngest, Lord O'Hagan (a minor), aged twelve. The oldest member of the House of Commons is the Right Hon. Charles Pelham Villiers, M.P. for the Southern Division of the Borough of Wolverhampton, aged eighty-nine; the youngest, Lord Walter Charles Gordon-Lennox, M.P. for the Chichester Division of the County of Sussex, aged twenty-five. The oldest judge in England is the Right Hon. Lord Esher, Master of the Rolls, aged seventy-five; the youngest, the Hon. Sir Arthur Charles, D.C.L., of the Queen's Bench Division of the High Court, aged fifty-two. The oldest judge in Ireland is the Hon. John FitzHenry Townsend, LL.D., of the Court of Admiralty, aged eighty; the youngest, the Right Hon. John George Gibson, of the Queen's Bench Division, aged forty-five. The oldest of the Scotch Lords of Session is the Right Hon. John Inglis (Lord Glencorse), Lord Justice General, aged eighty; the youngest, the Hon. Moir Tod Stormonth Darling (Lord Stormonth Darling), aged forty-six. The oldest prelate of the Church of England is the Right Rev. Richard Durnford, D.D., Lord Bishop of Chichester, aged eighty-eight; the youngest, the Right Rev. Alfred George Edwards, D.D., Lord Bishop of St. Asaph, aged forty-one. The oldest Prelate of the Church of Ireland is the Most Rev. Robert Bent Knox, D.D., Archbishop of Armagh and Primate of All Ireland, aged eighty-three; the youngest, the Right Rev. Robert Samuel Gregg, D.D., Bishop of Cork, Cloyne, and Ross, aged fifty-six. The oldest Prelate of the Scotch Episcopal Church is the Right Rev. Charles Wordsworth, D.D., Bishop of St. Andrews, aged eighty-four; the youngest, the Right Rev. James Robert A. Chinnery-Haldane, Bishop of Argyll and the Isles, aged forty-nine. The oldest Baronet is the Rev. Sir John Warren Hayes, of Newlands, Arborfield, Berks, aged ninety-one; the youngest, Sir Stewkley F. Draycott Shuckburgh (a minor), of Shuckburgh, Warwickshire, aged ten. The oldest Knight is Sir Provo William Parry Wallis, G.C.B., the senior Admiral of the Fleet, of Funtington House, near Chichester, aged ninety-nine; the youngest, Sir Henry Beyer Robertson, of Palé, Merionethshire, aged twenty-eight.

*Who's Who in* 1891.

## PUBLICATION OF COMMUNICATIONS BETWEEN CONVICTED PERSONS AND THE OUTSIDE WORLD.

FOUR executions have taken place in Canada within a few weeks for the crime of murder. There is no reason to suspect, in any of these cases, that the verdict of the jury was founded upon doubtful evidence, or that the punishment was not due to the crime. But there is one point in connection with these cases which seems to be forced upon the attention of the most indifferent observer, and that is the necessity of imposing more stringent rules upon sheriffs and gaolers with reference to the communications which pass between convicted persons and the outside world. In almost every instance there has been a daily and hourly correspondence permitted between the prisoner and the reporters for the press, as well as others who have no immediate connection with the convict or his family. This publicity we have been accustomed to regard as an evil incident of the administration of justice in the United States, and its introduction into Canada should be strenuously resisted as tending to bring the authority of the law into contempt. The sheriff ought not to permit communication between his prisoner and anybody who chooses to make him a visit; still less ought he to permit the gaoler or turnkeys to gossip with reporters over every act and saying of the man awaiting execution. A monstrous example of the length to which the abuse has gone is afforded by the publication of the following telegram from Mr. F. X. Lemieux to Remi Lamontagne, who was executed at Sherbrooke on the 19th inst. for a murder committed in circumstances of unusual atrocity:—

'All my efforts are in vain; entertain no further hope. Men do not pardon, but God alone is truly merciful. With all my heart I wish you the courage necessary to bear the terrible trial. It is sad to die young, healthy and vigorous, but in fifty years the judge and jury who have condemned you will in their turn be judged and will not, perhaps, like you, enjoy the advantage of being ready for death. Farewell for ever, dear client; *au revoir* in eternity. My children and myself pray to the good God for you. I wished to go and see you, but remained here to endeavour to save you. I know you will die like a Christian and a brave man. Farewell!'

We do not wish to make any comment upon this extraordinary communication. It could only have been written under the influence of excitement, and was evidently not intended for publication. But what shall be said of a system which tolerates the communication of such matter to the reporters? How are judges and juries to perform faithfully and conscientiously their painful duty if they are exposed to such attacks? The occasion seems to call for a united and energetic remonstrance from the bench and from all who are interested in the proper administration of justice, and the adoption of regulations which shall render the repetition of such a scandal impossible.

*Montreal Legal News.*

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## LAW AND PROFESSIONAL NOTES.

By T. F. UTTLEY, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### PRISON CHAPELS AND JUVENILE OFFENDERS.

THE chairman of the Salford Hundred Quarter Sessions, Mr. W. H. Higgin, Q.C., in his address to the grand jury, touched on a point which so far seems to have escaped general observation—that is to say, the mingling of first offenders with hardened criminals during the services at the prison chapels. With reference to the system on which their prison was carried on, he desired to say that the only place where first offenders who were sent there could be contaminated was in the most unlikely and most improper place in the whole prison, and that was in the chapel. It did not appear that there was any means of keeping separate in chapel first offenders who were over the age of sixteen and old offenders. It was quite possible to separate the two classes of offenders there, and if it could be done it ought to be done, so that there might be no possible risk of contamination. The chairman also pointed out that the number of prisoners for trial at these sessions was extremely small, as it was at the corresponding sessions last year. At the January sessions last year the number of prisoners was nine, and now it was fourteen. Contrasted with the numbers that used to appear in the calendar these figures showed a remarkable falling off in the number of prisoners sent for trial. This diminution—large, substantial, and satisfactory decrease—appeared to be general all over the country, and it was certainly general in this county.

### PRINTED TENANCY AGREEMENTS.

A correspondent in a Manchester newspaper—the *City News*—writes over the name of 'Harvey' a somewhat remarkable letter bearing on the law of landlord and tenant. It is not patent whether the writer of the letter is a solicitor or some person outside the profession who has been advising on the matter. The letter runs thus: 'A point of law in reference to tenancy agreements has been advised upon by me this week, and it is of such general importance that I think a short statement of the facts and the law will be the means of preventing your readers being led into the trap provided for them by unscrupulous landlords. In September, 1889, my client took a dwelling-house, and was asked by the landlord to sign a printed form of tenancy for the house, and he volunteered the information that it was the usual yearly tenancy agreement. My client examined the agreement, and, seeing that it was a form printed and published by one of the leading law stationers in this city, he presumed that he was merely following the ordinary course of conduct, and signed the agreement as requested. After being in the house a few months he found his wife's health to be very unsatisfactory, and the doctor informed him that the illness was probably caused by bad drainage. He, therefore, on March 23, 1890, gave the usual six months' notice to quit the premises at the expiration of the first year's tenancy. When September quarter came round he left the house, paid the rent, and offered the key to the landlord, who refused the key, and said that he should not release him until the end of the second year of the tenancy. After the Christmas quarter my client was handed a writ for half a year's rent, being three months' rent, September to December, and three months' rent in advance. He brought me the writ, and I immediately procured a copy of the tenancy agreement, which reads as follows: "Memorandum of agreement made (between the parties), whereby the said landlord agrees to let unto the said tenant, and the said tenant agrees to take, all that dwelling-house and premises situate, &c., to hold for the term of one year to commence from September 29, 1889, and so on from year to year until this agreement shall be determined by one of the said parties giving to the other six calendar months' notice in writing for that purpose, such notice expiring at the termination of the current year's tenancy." Upon turning to Woodfall upon the "Law of Landlord and Tenant," I read as follows: Where parties usually agree for a tenancy "from year to year," and possession is taken, such a tenancy may be determined at the end of the first or any subsequent year of the tenancy by a regular notice to quit. But where a tenancy is created "for one year, and so on from year to year, which is frequently done by mistake, it ensures a tenancy for two years at least, and cannot be determined at the end of the first year." The author then refers to the case of *Cladborn* v. *Green*, which, it appears, was decided in 1839, and which is the leading case upon the point. Another leading law stationer in the city issues a form of tenancy agreement which reads as follows: "To hold from the —— day of —— as tenant from year to year, until this agreement shall be determined by one of the said parties giving to the other six calendar months' notice in writing for that purpose, such notice expiring at the termination of the current year's tenancy." Under this latter form the tenant could leave at the end of the first twelve months by giving the proper notice to quit. The law stationer, it appears, who supplied the former agreement now tells me that he was in entire ignorance of the legal consequences of the form published by him, and that he has always issued the form believing that it did not bind the tenant beyond the first year.'

### ACCOUNTANCY PERIODICALS.

With the new year the leading organ of the chartered accountants, *The Accountant*, is developing new resources. It announces that '*The Accountant* Law Reports' will be continued as before. These reports, be it noted, are on topics of peculiar interest to accountants—*i.e.* arbitrations, administration, bankruptcy, bills of sale, company law, and mercantile law. It is also proposed to include a weekly summary of the decisions of the judges in the Courts under the title of 'Current Law, and also important debates in the Legislature. The other features of the magazine remain as usual. Such a periodical as this, catering as it does for a particular profession, should be of a more useful character, but it has been complained in the past that it devotes itself too much to legal matters and not enough to accountancy affairs. However, it looks, judging by the weekly numbers of the year so far issued, that some improvement will result in this respect. Everyone knows that new brooms sweep clean. The incorporated accountants have their quarterly organ under the title of the *Incorporated Accountants' Journal*, which has proved exceedingly popular. Its features are doubtless familiar to our readers, as we believe a copy is sent to every law library in the kingdom, a practice which no other accountants' journal seems wide awake enough to imitate. The editor of the *Incorporated Accountants' Journal* does not smother his readers with legal points, leaders, decisions, and so forth, but gives a useful epitome of legal decisions, and fills the rest of the magazine with accountancy matters proper. Considering the great interest which accountants take in legal matters, the rising ranks of lawyers ought to take equal interest in accounts. This can be done by following accountancy matters in the periodicals. Besides those already enumerated, there is the monthly *Accountants' Journal*, advocating the interests of students as well as practitioners, and the *Auditor and Secretary*, another monthly, which has struck out a separate line in accountancy matters by dealing at some length with company affairs. It would be excellent if copies of all these magazines could be seen regularly in all law libraries.

### TESTAMENTARY LAW.

Do they do it better in France? That is the question which always rises to one's mind on reading about a will whose provisions are of an eccentric nature. According to French law men are not allowed to will their property at their death, but are compelled to distribute it among their heirs. It is considered that England is more sinning in respect of selfish and unjust wills than either her colonies or the United States of America. Certainly there have been many strange wills proved from time to time. Quite recently the annual income of certain property was left to a son, an M.P., with the provision that if he failed to be re-elected 2,000*l.* a year was to be struck off, but so long as he had a Parliamentary seat, no matter where, he could retain the income indicated. Looking at the present prominence of women in all matters of life, the practice of giving sons the major portion of a fortune should cease, and the property be equally divided amongst sons and daughters. Equitable arrangements like this are more common elsewhere than in England, but perhaps, with the spread of democratic teaching, we may hope for more consideration for women than heretofore.

## OBITUARY.

MR. ALEXANDER WILLIAM KINGLAKE, barrister, died at his residence, 17 Bayswater Terrace, on the 2nd inst. He was the eldest son of Mr. William Kinglake, of Taunton, and was born in 1811. He was educated at Eton, and at Trinity College, Cambridge, where he took the degree of B.A. He was called to the bar at Lincoln's Inn in May, 1837, and for many years practised as a Chancery barrister. He retired from practice in 1856. In 1844 he published 'Eothen,' a book on Eastern travel, which created a great sensation at the time and achieved immediate success. He was with our army at the Crimea and watched keenly the tide of events, and afterwards wrote an elaborate and able history of the war, extending over eight volumes, the first published in 1863, and the last in 1877. He was a member of Parliament for Bridgwater from 1857 to 1869. He was deputy-lieutenant for Somerset, and lord of the manner of Saltmoor in the same county.

MR. THOMAS MARRIOTT DODINGTON, M.A., barrister, of Combe Dulverton, Somerset, and Horsington House, near Wincanton, died on November 17. Mr. Dodington was the eldest son of the Rev. Thomas Marriott Dodington, of Horsington, Somerset, and was born on July 22, 1839. He was educated at Trinity College and Marlboreugh College, Cambridge. He was called to the bar on January 26, 1865, and in June of the same year he married Lucy Elizabeth, fourth daughter of the Rev. G. E. Downe, rector of Rushden, North Hants. Mr. Dodington was lord of the manors of Stowell, Henstridge, Bowden, and High Ham. He was captain of the 3rd Battalion Somerset Light Infantry, and a justice of the peace.

MR. JOHN MARSHALL, barrister, died on the 30th ult. He was the eldest son of Mr. Thomas Harrison Marshall, of Hull, and was born on May 14, 1820. He was called to the bar at the Middle Temple on November 23, 1849, and was a member of the Northern Circuit. He married on April 28, 1869, Elizabeth, youngest daughter of Mr. Joseph Gardner, of Huyton, Lancashire.

MR. THOMAS AINSWORTH, solicitor, of Blackburn, died on the 6th ult. He was the son of Mr. Thomas Ainsworth, solicitor, of Blackburn, and was born about the year 1810. He was educated at the Grammar School of Queen Elizabeth in Blackburn. At first he intended to join the army, but in consequence of his elder brother's death he was articled to his father, and was admitted a solicitor in 1832. Both his father and mother were possessed of considerable property in Blackburn, to which, as well as to the business, Mr. Ainsworth succeeded on the death of his father. The deceased was an able lawyer, particularly well versed in conveyancing and magisterial work. For many years he filled the offices of town clerk, clerk to the magistrates, and clerk to the burial board, and he had for some considerable time been connected with every movement for the progress of the town, which he has not forgotten in his will, as he leaves his paintings and books to the Blackburn Free Library. These are of considerable value. For many years he was a collector, and, being a bachelor, he was not restrained by any considerations of economy from purchasing what he fancied. He has also left 2,000*l.* to the Blackburn and East Lancashire Infirmary, 2,000*l.* to the Blackburn Ragged School, 100*l.* to the Parish Church Higher Grade School, and 2,000*l.* to the governors of the Grammar School of Queen Elizabeth for the purpose of founding scholarships of the annual value of 10*l.*, tenable for two or three years, at the discretion of the governors. The total value of Mr. Ainsworth's bequests to the town amounts to upwards of 8,000*l.* During his life he was also very free-handed in helping any meritorious object.

## NOTICES FOR THE WEEK.

### ROTA OF REGISTRARS.

MONDAY, January 19. — Court of Appeal No. 2: Mr. Farmer. Mr. Justice Chitty: Mr. Ward. Mr. Justice North: Mr. Beal. Mr. Justice Stirling: Mr. Leach. Mr. Justice Kekewich: Mr. Jackson. Mr. Justice Romer: Mr. Carrington.

Tuesday, January 20.—Court of Appeal No. 2: Mr. Rolt. Mr. Justice Chitty: Mr. Pemberton. Mr. Justice North: Mr. Pugh. Mr. Justice Stirling: Mr. Godfrey. Mr. Justice Kekewich: Mr. Clowes. Mr. Justice Romer: Mr. Lavie.

Wednesday, January 21.—Court of Appeal No. 2: Mr. Farmer. Mr. Justice Chitty: Mr. Ward. Mr. Justice North: Mr. Beal. Mr. Justice Stirling: Mr. Leach. Mr. Justice Kekewich: Mr. Jackson. Mr. Justice Romer: Mr. Carrington.

Thursday, January 22.—Court of Appeal No. 2: Mr. Rolt. Mr. Justice Chitty: Mr. Pemberton. Mr. Justice North: Mr. Pugh. Mr. Justice Stirling: Mr. Godfrey. Mr. Justice Kekewich: Mr. Clowes. Mr. Justice Romer: Mr. Lavie.

Friday, January 23.—Court of Appeal No. 2: Mr. Farmer. Mr. Justice Chitty: Mr. Ward. Mr. Justice North: Mr. Beal. Mr. Justice Stirling: Mr. Leach. Mr. Justice Kekewich: Mr. Jackson. Mr. Justice Romer: Mr. Carrington.

Saturday, January 24.—Court of Appeal No. 2: Mr. Rolt. Mr. Justice Chitty: Mr. Pemberton. Mr. Justice North: Mr. Pugh. Mr. Justice Stirling: Mr. Godfrey. Mr. Justice Kekewich: Mr. Clowes. Mr. Justice Romer: Mr. Lavie.

DRAMATIC COPYRIGHT.—A correspondent asks whether a copyright play first produced in England, which has been taken down in shorthand at a London theatre, can be represented at a club where no payment is made for admission (such representation being a drawing-room performance) without infringing the provisions of the Copyright Acts or the author's rights.

## CALENDAR OF THE COUNTY COURTS.

FROM JANUARY 19 TO JANUARY 24.

| No. of Circuit | His Honour | January 19 | January 20 | January 21 | January 22 | January 23 | January 24 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Pfoulkes | — | Birkenhead | — | — | Leigh | — |
| 8 | Judge Heywood | — | Salford | Salford | Salford | Salford | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | Stockton-on-Tees | — | Darlington | Leyburn | Stokesley | Northallerton |
| 19 | Judge Barber | — | Alfreton | Burton | Derby | Ashbourne | — |
| 22 | Judge Harington | Stratford-on-Avon | Coventry | Warwick | Rugby | Daventry | Southam |
| 26 | Judge Jordan | Tamworth | Rugeley | — | — | — | — |
| 47 | Judge Powell | — | Lambeth | Woolwich | Lambeth | Greenwich | — |
| 54 | Judge Metcalfe | Weston-supr-Mare | Wells | Axbridge | — | — | — |
| 55 | Judge Machonochie | — | Dorchester | Bridport | Weymouth | Blandford | — |
| 58 | Judge Edge | Totnes | Kingsbridge | Crediton | — | — | — |

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, BOWEN, L.J., and FRY, L.J.

MONDAY, JANUARY 12.

*Showers and others* v. *Chelmsford Union Assessment Committee* (Q. B. *Crown Side*) (appeal of Showers and others from order of Day, J., and Lawrance, J., dated November 4, affirming poor rate under 12 & 13 Vict. c. 45, s. 11).—Dismissed.

*Roberts* v. *Tyser and In re judgment obtained by Roberts against Tyser, dated May* 19, 1888 (appeal of plaintiff from order of Mathew, J., and Grantham, J., dated November 6, granting entry of satisfaction upon judgment signed May 19, 1888).—Dismissed.

*Pratt and another* v. *Russel* (appeal of defendant from Stephen, J., and Charles, J., affirming order of judge in chambers refusing unconditional leave to defend).—Allowed.

TUESDAY, JANUARY 13.

*Taylor and another* v. *Wheatley* (application of plaintiffs for new trial on appeal from verdict and judgment at trial before Williams, J., at Bradford). *Taylor and another* v. *Cragg* (application of plaintiffs for new trial on appeal from verdict and judgment at trial before Williams, J., at Bradford).—Dismissed.

*Torriss* v. *Cornwell and Empire Printing and Publishing Company* (*Lim.*) (application of defendants for judgment or new trial on appeal from verdict and judgment at trial before Smith, J., in Middlesex).—Dismissed.

*Dibley* v. *Victoria Steamboat Association* (application of defendants for verdict and judgment upon findings of jury on appeal from direction and judgment at trial before Cave, J., in Middlesex).—Dismissed.

*Semmens* v. *Bute Docks Company and E. Robertson & Co.* (application of Bute Docks Company for judgment or new trial on appeal from verdict and judgment at trial before Huddleston, B., with special jury in Middlesex).—Dismissed.

Before the MASTER OF THE ROLLS, SIR JAMES HANNEN, and FRY, L.J.

WEDNESDAY, JANUARY 14.

*Pittard* v. *Oliver* (appeal of plaintiff from judgment or new trial on application from direction and judgment at trial before Mathew, J., in Middlesex).—Refused.

*Lund* v. *Brocklesby and another* (application of defendants for judgment or new trial on appeal from verdict and judgment at trial before Mathew, J., in Middlesex).—Judgment for defendants.

## APPEAL COURT II.

Before LINDLEY, L.J., LOPES, L.J., and KAY, L.J.

MONDAY, JANUARY 12.

*In re T. Owens (dec.).* *Owens* v. *Green* (appeal of C. B. Cottam in person from order of Stirling, J., dated November 21, refusing a charging order for costs).—Dismissed.

*Hamilton* v. *Brogden* (appeal of defendant A. Brogden from order of North, J., dated November 18, giving liberty to sign judgment under Order XIV.).—Abandoned.

*Jenkins* v. *Bushby* (appeal of plaintiff from order of Stirling, J., dated December 1, refusing trial by jury).—Part heard.

TUESDAY, JANUARY 13.

*Martin* v. *Heath* (2) (appeal of T. B. Green, plaintiff in second action, from judgment of Chitty, J., dated August 1).—Dismissed.

*In re Shipley Estates and Munday's Settlement Trusts, and Settled Land Act*, 1882 (appeal of settlement trustees from order of North, J., dated August 7, declaring trustees not authorised to pay costs of improvement).—Allowed.

*In re Liverpool Household Stores Association* (*Lim.*) *and Company's Acts* (appeal of H. W. Blundell from order of Kekewich, J., dated August 11).—Dismissed.

*Apollinaris Company* v. *Snook* (appeal of defendant from judgment of Kekewich, J., dated August 6).—Allowed.

WEDNESDAY, JANUARY 14.

*Jenkins* v. *Bushby* (appeal of plaintiffs from order of Stirling, J., dated December 1, refusing trial by jury).—*Cur. adv. vult.*

*Attorney-General* v. *Morgan* (appeal of defendant from judgment of North, J., dated August 6).—Part heard.

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QUEEN'S BENCH DIVISION.—It is stated that, in consequence of the transfer of the New Trial Paper to the Court of Appeal, three Queen's Bench Division Courts only will be formed to sit *in Banco* during the ensuing Hilary Sittings, instead of four as hitherto, while eight of the judges will, according to present arrangements, be told off to sit and dispose of special and common and non-jury actions, the lists of which are somewhat in arrear. The only difficulty in the way of carrying out this scheme will be the want of sufficient Courts, as, including the Lord Chief Justice's Court, there are only ten Queen's Bench Division Courts altogether, so that the problem will be where to locate the eleventh Court.

## HONOURS AND APPOINTMENTS.

MR. EDWARD PINDER DAVIS, LL.B. (of the firm of Davis & Marcus), of 49 Chancery Lane, W.C., has been appointed a Commissioner for Oaths. Mr. Davis was admitted in 1883.

Mr. Thomas Wm. Tempany, of 25 Bedford Row, London, W.C., has been appointed a Commissioner for Oaths. Mr. Tempany was admitted in 1879.

Mr. William Dalziel Fisher (of the firm of Fisher & Williamson), of Newcastle-upon-Tyne, has been appointed a Commissioner for Oaths. Mr. Fisher was admitted in 1884.

Mr. Harry Morse Hewitt (of the firm of Morse, Hewitt & Farman), of 39 King Street, Cheapside, E.C., has been appointed a Commissioner for Oaths. Mr. Hewitt was admitted in 1884.

Mr. Henry Kerby, of 2 Lancaster Place, Waterloo Bridge, London, W.C., has been appointed a Commissioner for Oaths. Mr. Kerby was admitted in 1884.

Mr. William Munro Tapp, B.A., LL.M. Cantab (of the firm of Goren & Tapp), of 27 South Molton Street, Oxford Street, W., has been appointed a Commissioner for Oaths. Mr. Tapp was admitted in 1884.

Mr. Frederick Albert Wood (of the firm of Wood, Bird & Wood), of 23 Rood Lane, Cannon Street, E.C., has been appointed a Commissioner for Oaths. Mr. Wood was admitted in 1884.

Mr. Charles Walter Oddie (of the firm of Torr, Janeway, Gribble, Oddie & Sinclair), of 38 Bedford Row, W.C., and 19 Parliament Street, Westminster, has been appointed a Commissioner for Oaths. Mr. Oddie was admitted in 1879.

Mr. Thomas John Servington Savery King, of 41 Chapel Street, Marylebone Road, has been appointed a Commissioner for Oaths. Mr. King was admitted in 1868.

Mr. Herbert Bamford, of 201 Great Portland Street, W., has been appointed a Commissioner for Oaths. Mr. Bamford was admitted in 1879.

Mr. George Henry Carthew, of 3 Raymond Buildings, Gray's Inn, W.C., has been appointed a Commissioner for Oaths in matters depending in the Courts of the Colony of the Bahamas. Mr. Carthew passed the final examination with honours, and was admitted in 1876.

Mr. Arthur Lamb (of the firm of Lamb, Brooks & Sherwood), of Basingstoke, has been appointed a Commissioner for Oaths. Mr. Lamb was admitted in 1884.

Mr. Arthur Stewart Maples has been appointed Official Receiver in Bankruptcy for the districts of the County Courts holden at Kingston-upon-Hull and at Great Grimsby, by transfer from the district of the County Court holden at Newcastle-on-Tyne.

Mr. Percy Hamilton Hughes (of the firm of Thompson & Hughes), of Birkenhead, has been appointed a Commissioner for Oaths. Mr. Hughes was admitted in 1884.

Mr. Frederick Swinson (of the firm of Shute & Swinson), of Birmingham, has been appointed a Commissioner for Oaths of the Supreme Court of Newfoundland. Mr. Swinson was admitted in 1884.

Mr. Thomas Walter Hall (of the firm of Sorby & Hall), of Sheffield, has been appointed a Commissioner for Oaths. Mr. Hall was admitted in 1884.

Mr. Frank Lowson Clark has been appointed Official Receiver in Bankruptcy for the district of the County Court holden at Newcastle-on-Tyne, rendered vacant by the transfer of Mr. Arthur Stewart Maples.

Mr. John Cross (of the firm of Cross, Barnard & Cross), of Norwich, has been appointed a Commissioner for Oaths. Mr. Cross was admitted in 1878.

Mr. Walter Brooke, of Woodbridge, has been appointed Deputy-Registrar of the County Court. Mr. Brooke was admitted in 1881.

## BOOKS RECEIVED FOR REVIEW.

BANKRUPTCY ACTS (The), 1883-90. By Chalmers and Hough. Third Edition. London: Waterlow & Sons.

Bankruptcy Act (The), 1890. By Lawford Yate Lee and Henry Wace, Barristers-at-Law. London: Sweet & Maxwell (Lim.).

Dod's Peerage, &c. 1891.

Liability of Employers (The). Sir Henry James' Prize Essay. By T. W. S. Firth, Solicitor. London: Stevens & Sons (Lim.). 1890.

Sell's Dictionary of the World's Press, 1891.

Stock Exchange Year-Book (The), 1891.

Trevor on Railways in India. London: Reeves & Turner. 1891.

CENTRAL CRIMINAL COURT.—The Lord Mayor has received a letter from Mr. E. J. Read, the Clerk of Arraigns at the Central Criminal Court, resigning that office through ill-health. Mr. Read, who succeeded Mr. Avory in 1881, was for many years previously Deputy Clerk of Arraigns.

THE EARL OF WESTMEATH, who attained his majority on Sunday, January 11, can boast of a lineage equalled by few of our peers. He is directly descended from Thomas Nugent, second son of Richard, second Earl of Westmeath, who was Chief Justice of the Court of King's Bench, and was created Baron Riverston, of Riverston, in 1689, but the title, having been conferred by James II. after he had abdicated the English crown, was not recognised. Lord Westmeath is also Baron Delvin, a title which dates from 1286.

A SMOKING concert will be given at Anderton's Hotel, Fleet Street, on Monday, January 26, in aid of the funds of the Royal Courts Cricket Club. This club has been established for the recreation of the large staff of attendants at the Law Courts. The chair will be taken on the 26th by Mr. Francis A. Stringer and the vice-chair by Mr. Arthur T. Pask. Mr. A. Leigh Pemberton will act as M.C. We are requested to state that tickets (prices—chairman's table, 2*s.* 6*d.*; other tickets, 1*s.* each) may be obtained from any of the attendants in uniform at the Royal Courts of Justice.

THE first smoking concert of the Clare Market Club (for working men) was given by the Plowden Bijou Orchestra, under the direction of Mr. Gillespie, at the Essex Hall, Essex Street, on the 13th inst.; Mr. Justice Grantham, a vice-president of the club, in the chair. A large and enthusiastic audience was present, and Mr. Lawler's violin solo, Mr. Gillespie's banjo songs, Mr. Tomkin's flute solo, and Mr. Broxholm's gavotte, accompanied by the band, had all to be repeated. The 'Pelican Lancers,' too, decidedly 'took.' At the conclusion of the concert, the Chairman proposed a vote of thanks to the orchestra, which was vociferously accorded, and himself received a similar compliment. The National Anthem brought a very successful evening to a close. Our readers' attention is called to our advertising columns, as money is much needed to support a club for the working-men inhabitants of the poor and populous district of Clare Market lying between Drury Lane and the Law Courts.

MR. BARKER, Q.C., the Leeds Recorder, was unable to attend the borough sessions on Monday, January 12, as he is suffering from an injury sustained by falling on a slide on New Year's Day.

LORD CHIEF JUSTICE COLERIDGE is confined to the house with a cold, and is not expected to sit in Court for a few days. His lordship, who is to be elected treasurer of the Middle Temple at a special parliament to be held this evening, has written from his Devonshire seat saying that in consequence of his indisposition he would be unable to attend personally.

SOLICITORS' BENEVOLENT ASSOCIATION.—The usual monthly meeting of the board of directors of this association was held at the Law Institution, Chancery Lane, London, on Wednesday, the 14th inst., Mr. John Hunter in the chair. The other directors present were Messrs. W. Beriah Brook, H. Morten Cotton, Robert Cunliffe, G. Burrow Gregory, Edwin Hedger, J. H. Kays, Grinham Keen, R. Pennington, Henry Roscoe, Sidney Smith, R. W. Tweedie, Frederic T. Woolbert, and J. T. Scott (secretary). A sum of 260*l.* was distributed in grants of relief, ten new members were admitted to the association, and other general business was transacted.

THE MOVABLE DWELLINGS BILL.—The following unsolicited expression of opinion from the 'King of the Gipsies' has been received at the central offices of the Liberty and Property Defence League: 'Gipsy Camp, Falcon Hall, Edinburgh, January 10, 1891.—Having been all my life a traveller on the roads, and living the life of a gipsy, as my forefathers have done for ages, I protest strongly against the assertions made by a man calling himself "George Smith, of Coalville," and against the attack on our liberties contained in his Movable Dwellings Bill. Let this man name and produce evidence of any cases among gipsies or showmen that bear out his assertions. I personally know all the gipsies and showmen in England, and I am bold to assert that in health and morality their lives will bear favourable comparison with either that of "George Smith, of Coalville," himself or those of his pet slum dwellers. Many members of the House of Lords and of the House of Commons have been in my tent, and those of other gipsies, and can speak to their cleanliness. It would be a gross injustice to put us on a worse footing than the lowest thief in a London slum.—GEORGE SMITH, King of the Gipsies.'

PLOUGH MONDAY IN THE CITY.—According to annual custom on the first Monday after the Feast of the Epiphany, or 'Plough Monday,' as it is generally called, a grand court of wardmote was held at Guildhall, under the presidency of the Lord Mayor. The Court is summoned at this season for the purpose of receiving the returns from the several wards of the City of the election of members of the Court of Common Council for the present year, of hearing petitions (if any) against those returns, and of admitting the City Marshal, the ward beadles, and the extra constables. The business was merely formal. There was but one petition, which was adjourned. With this exception, the Common Council, 206 members in all, may be considered as constituted for the year. In the evening, according to custom, the Lord Mayor and the Lady Mayoress entertained the members of their household and other officers of the Corporation at dinner at the Mansion House. The entertainment is one of the first given by each chief magistrate. According to Ashe, the appellation 'Plough Monday' was given to this particular day as being the day on which our forefathers 'returned to the duties of agriculture after enjoying the festivities of Christmas.' Another writer states that, on Plough Monday, the ploughmen of the north country used to draw a plough from door to door and beg plough money to drink.'

UNITED LAW SOCIETY.—The usual weekly meeting was held on Monday at the Inner Temple Lecture Hall; Mr. A. K. Common in the chair. This being the first meeting of the month was devoted to business.

HAMPSTEAD HEATH.—An arbitration case, in which the right of public way over Hampsted Heath is involved, was begun in one of the judge's rooms at the Royal Courts of Justice on Monday, December 22, and continued on the 23rd. Mr. Haldane, Q.C., M.P., is the arbitrator. The county council are represented by Mr. Byrne, Q.C., and Mr. Harrison; Sir Spencer Wells by Mr. Ambrose, Q.C., M.P., and Mr. White. The complaint against the county council is that, as successors of the late Metropolitan Board of Works, they have persisted in closing an old highway for carriages, and have converted it into a ride for equestrians only, to the injury of the public and of Sir Spencer Wells, who has four different gates of access from his property on to the old road, secured to him and his tenants by the Hampstead Heath Act. The public rights, as well as those of Sir Spencer Wells, were supported by Ordnance and parochial maps of various periods, and by the evidence of Mr. Tufman, agent to the lord of the manor before the Board of Works obtained control over the heath; by Mr. Garrard, formerly surveyor to the Ecclesiastical Commissioners; by Mr. Baker, land agent, of Kilburn; Mr. Potter, surveyor and builder, of Hampstead; and by an old coachman upwards of eighty years old. Many more witnesses were in attendance when the case was adjourned until after the Christmas holidays.

## BIRTHS.

On Jan. 7, at Hilcott, Bedford Hill, Balham, the wife of Arthur Robert Ingpen, Barrister-at-Law, of a son.

On Jan. 9, at 36 St. George's Square, S.W., the wife of William Cecil Smyly, Barrister-at-Law, of a daughter.

## MARRIAGES.

On Jan. 10, at St. James's Church, Spanish Place, John George O'Brien, Esq., of 2 Egerton Gardens, to Marian Dora, daughter of his Honour Judge Cooke, Q.C.

On Jan. 13, at the residence of the bride's sister, 16 Gloucester Place, Portman Square, W., Edward Montague Lazarus, Solicitor, 9 Union Court, Old Broad Street, third son of Montague Lazarus, of 536 Oxford Street, W., to Fannie, youngest daughter of the late Barnett Lyons, of Plymouth.

## DEATHS.

On Dec. 16, Christopher Reader Harris, infant son of Reader Harris, Barrister-at-Law, aged 11½ months.

On Dec. 28, at Bombay, Robert William Spottiswoode Pinhey, Barrister-at-Law, of Lincoln's Inn, and one of the Judges of the Bombay Small Cause Court, aged 37, eldest son of Mr. Justice Pinhey, of Lincoln's Inn and Sylvester House, Eastbourne, late one of the Judges of the Bombay High Court.

On Jan. 6, at Scarborough, in his 76th year, Benjamin Chadwick, Solicitor, late of Dewsbury.

On Jan. 7, at his residence, The Poplars, Ealing, Middlesex, Chadd Ragsdale Randall, Solicitor, in the 86th year of his age.

On Jan. 7, Albert Barnes, Solicitor, of 60 York Terrace, Regent's Park, and 8 Sackville Street, Piccadilly.

On Jan. 8, at 46 Ladbroke Road, Notting Hill, Jane Emily, widow of the late J. G. Dobinson, of 57 Lincoln's Inn Fields, and sixth daughter of the late Charles Brookfield, Solicitor, Sheffield.

On Jan. 9, in London, William Mavon Scharlieb, of the Middle Temple, Barrister-at-Law, Esq., and Colonel of the Madras Volunteer Guards, aged 62 years.

On Jan. 10, at the residence of his son-in-law, C. H. Fasson, Esq., 2 Meadow Walk, Edinburgh, Robert Robertson, formerly Solicitor in Calcutta, and of Strowan Lodge, Morningside, aged 88.

On Jan. 11, at Beaumont, Wells, Somerset, William Inman Welsh, Solicitor, in his 81st year.

On Jan. 12, at 1 Abbotsford Villas, Twickenham, Elizabeth Frances, daughter of the late John Hodgson, Q.C., and dearly-loved sister and life-long companion of Francis Cotterell Hodgson, of King's College, Cambridge, and the Education Department, Whitehall.

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# The Law Journal.

*SATURDAY, JANUARY* 24, 1891.


## 'OBITER DICTA.'

LORD COLERIDGE had sufficiently recovered from his recent illness to be able to take his seat in Court on Monday. His lordship has been sitting during the week, and taking special jury cases. Mr. Justice Denman is, we regret to state, still upon the sick list.

---

A CURIOUS incident happened in connection with the nomination of candidates at the Hartlepool election. By rule 4 of schedule 1 to the Ballot Act, 1872, 'the time appointed' for an election 'shall be such two hours between the hours of ten in the forenoon and three in the afternoon as may be appointed by the returning officer, and the returning officer shall attend during those two hours and for one hour after;' by rule 8, 'the nomination papers shall be delivered to the returning officer at the place of election during the time appointed for the election;' and, by rule 13, 'the returning officer shall decide on the validity of every objection made to a nomination paper, and his decision, if disallowing the objection, shall be final; but, if allowing the same, shall be subject to reversal on petition questioning the election or return.' It so happened that the Hartlepool clocks were at variance, and that one nomination paper was objected to as being delivered too late. The decision of the returning officer was happily immaterial, inasmuch as the nomination paper objected to was one of a large number, of which at least one, and probably all the others, were unquestionably good. It is very material to point out, however, for the guidance of returning officers in general, that 'time,' where mentioned in an Act of Parliament, means 'Greenwich mean time.' Such is the clear effect of the Statutes (Definition of Time) Act, 1880 (43 & 44 Vict. c. 9).

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WITHIN six weeks the bodies of three persons well known to the world—Baron Huddleston, Mr. Kinglake, and the Duke of Bedford—have been cremated. Attention having been so prominently directed to the subject, the number of cremations is likely to increase, and it is as well to inquire what is the law on the point. Now in *Williams* v. *Williams*, 51 Law J. Rep. Chanc. 385, Mr. Justice Kay, declared it to be doubtful whether it is lawful to burn a dead body even if the deceased by his will directed some person to do so. But in *Regina* v. *Price*, 52 Law J. Rep. M. C. 57, Mr. Justice Stephen, in charging the grand jury at Cardiff, laid down, after an exhaustive examination of the learning on the subject, that to burn a dead body is no misdemeanour unless it be so done as to create a public nuisance, or done in order to prevent the coroner holding an inquest on the body—as to which last point see also *Regina* v. *Stevenson*, 53 Law J. Rep. M. C. 176, in which a conviction for unlawfully burning was affirmed by the Court of Criminal Appeal. Cremation, therefore, is, within certain very reasonable limits, a perfectly lawful manner of disposing of a dead body. But the questions may possibly arise, whether a clergyman of the Church of England (1) may legally read the burial service with such alteration as is necessary over the ashes of a cremated person, and (2) whether he might be compelled to do so, which questions are not quite without practical interest when the strongly worded objections to cremation of the late Bishop of Lincoln are considered. We slightly incline to the opinion that, technically, an ecclesiastical offence is committed by a clergyman altering the burial service to suit it to a cremation, and have little doubt that a clergyman could not be compelled so to alter it. The question seems now to require attention from Convocation.

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COPYRIGHT in newspaper articles is not expressly given by the existing law, but, as was recommended by the royal commissioners who reported in 1878, it is proposed by Lord Monkswell's bill not only expressly to confer a newspaper copyright, but also to define the extent to which it shall exist. This is proposed to be

done by clause 19 of the bill, which runs that 'the copyright given by this Act in respect of newspapers shall extend only to articles, paragraphs, communications, and other parts which are compositions of a literary character, and not to any articles, paragraphs, communications, or other parts which are designed only for the publication of news, or to advertisements.' Upon this clause the question might arise whether the newspaper copyright would extend to news so descriptively and tellingly announced as to invest the announcement with literary merit. Would such an announcement be literature, having the copyright, or would it be merely news, not having the copyright? The question is an interesting one. The words of the clause are 'designed,' which seems to point to the intention of the compiler or editor, which in this case would be twofold, one first to tell the news, and secondly to drive it home by the way of telling it. We think that the solution would be that, if the primary intention was to tell the news, as, for instance, when the fall of Sebastopol was announced, quite erroneously as it happened, the copyright would not attach, but if the primary intention was to write something fine, merely taking the news as a peg, as if it should be announced that Mr. Gladstone had cut down a very large tree in midwinter, the copyright would attach. But the word 'designed' is a little awkward. In many cases, if not most cases, the difficulty would be escaped by the practice of newspaper editors of printing their news in one part of their papers and their comments in another, as was done by the *Times* in the case of the recent Aristotelian discovery.

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THE Court of our Sovereign Lady the Queen holden before the Mayor and Aldermen in the Inner Chamber of the Guildhall of the City of London—we beg to apologise if by a single word we have abbreviated or curtailed the full style and title of this ancient and august tribunal—must have been startled, if such an emotion as surprise may be predicated of the Lord Mayor or of the exalted civic dignitaries who support him on either side, when learned counsel, who was instructed to support a petition praying the Court to set aside an apparently valid election to the Common Council, actually submitted that the immemorial jurisdiction of the Court had been taken away by a modern statute, and that consequently his clients were not entitled to be heard. But if the submission of the petitioner's counsel took the Court by surprise, the objection to the Court's jurisdiction did not take the recorder by surprise. Sir Thomas Chambers is not likely to have overlooked the objection which was so ingenuously stated by the learned counsel under a sense of duty to the Court. But, in any case, we doubt if there is any civic corporation on the face of the earth so tenacious of its privileges as the Corporation of London is well known to be. That any advocate should have had the hardihood to stand up in the presence of the Lord Mayor, with the awe-inspiring mace lying on the table in front of him, and invite the City Fathers to admit that the ancient jurisdiction of their Court may by possibility have been taken away, not, indeed, by express enactment, but by implication and necessary inference from the language of a modern Act of Parliament, only shows how morally courageous an advocate may grow when impelled by a stern sense of duty.

LORD DERBY has complained of the premature publication, by 'a gross breach of confidence' on the part of some person as yet undiscovered, of a report of the royal commission appointed to inquire into Markets and Tolls. Does the Official Secrets Act, 1889 (52 & 53 Vict. c. 52), passed 'to prevent the disclosure of official documents and information,' apply to such a case? By section 2 of the Act, 'where a person, by means of his holding or having held an office under Her Majesty the Queen, has lawfully or unlawfully either obtained possession of or control over any document . . . or acquired any information, and at any time corruptly or contrary to his official duty communicates or attempts to communicate that document . . . or information to any person to whom the same ought not, in the interest of the State, or otherwise in the public interest, to be communicated at that time, he shall be guilty of a breach of official trust,' and be liable to 'imprisonment with or without hard labour for a term not exceeding two years, or to a fine, or to both imprisonment and a fine,' and the section applies 'to a person holding a contract with any department of the Government of the United Kingdom, where such contract involves an obligation of secrecy.' It may possibly turn out that the offence of which Lord Derby complains may be within the letter, as it is within the spirit, of this useful little statute, and since these lines were written it has been stated that Lord Derby intends to try the question—if he can only catch the offender.

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THE Solicitors' Magistracy Bill, which was dropped last session before it had reached a second reading, has been reintroduced with the addition of Mr. Leng and Mr. M. Healy as backers to Mr. Maclure, Sir A. Rollit, and Mr. Lawson, by whom the measure was originally brought in. It is proposed to repeal 34 Vict. c. 18, and section 27 of 6 Geo. IV. c. 48 (a corresponding enactment applicable to Scotland only), and to enact 'that any solicitor shall be capable of becoming or being a justice of the peace for any county in England, Wales, or Scotland, although he shall practise and carry on the profession or business of a solicitor in such county; but it shall not be lawful for any solicitor himself or by any partner directly or indirectly to practise before any bench of magistrates of which he is a member.' It will be remembered that by section 33 of the Solicitors Act, 1843 (6 & 7 Vict. c. 73), the disqualification of attorneys and solicitors for the county magistracy was absolute, but that by the Act of 1871 (34 Vict. c. 18) this section was repealed, and attorneys and solicitors became qualified to act in counties other than those in which they practise. The disqualification in Scotland under 6 Geo. IV. c. 48 was and is still confined to solicitors in inferior Courts.

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IT is quite clear that life interests must be brought into hotchpot by appointees under the usual hotchpot clause. This was decided by Vice-Chancellor Wood in *Rucker* v. *Scholefield*, 32 Law J. Rep. Chanc. 46, and more recently by the late Master of the Rolls in *Eales* v. *Drake*, 45 Law J. Rep. Chanc. 51. In the latter case the life interest was determinable on bankruptcy or alienation, and the late Sir George Jessel said: 'The value must be ascertained in the best way you can, and if you cannot agree, there must be an inquiry at chambers on the subject.' In the case of *Trench* v. *Heathcote*,

reported in our Notes of Cases for this week, at p. 7, Mr. Justice Kekewich had a similar point before him. In that case the trust funds were settled in trust for the children of the appointor as he should appoint, and in default of appointment in trust for the children equally, with the usual hotchpot clause. The appointor appointed by will life interests to two daughters, but made no other valid appointment, so that the reversion of the trust funds remained unappointed, and the question was whether the other children of the appointor were entitled to have the life interests valued at once, as at the death of the appointor, so as to immediately ascertain their own shares in the unappointed reversion. Mr. Justice Kekewich held that they were so entitled, and directed a reference to chambers for the purpose. 'The other children,' observed the learned judge, 'say: "We want to know now what our shares are. There is no difficulty in ascertaining our shares, because the value of the appointed life interests is not according to the time the appointee may live, but according to the actuarial value at the time the appointee values the life interest." I think that is so, and that it is right and fair that the other children should know now what their shares are, and that I am not infringing any rule of practice or expediency in saying that there must be an inquiry now as to the value of the life interests.' The conclusion appears to be a perfectly correct one when it is once admitted that life interests are subject to the operation of the hotchpot clause.

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IN *Cooke* v. *Smith*, reported in our Notes of Cases for this week, at p. 7, a hitherto undecided point of practice came before Mr. Justice Kekewich for his decision. The point arose, under Order XXXI., rule 26, on an application by the defendants for an order, that the plaintiffs, who had obtained an order for discovery on August 19, 1890, might be ordered to pay into Court an additional sum by way of security for the costs of the discovery. No further payment in excess of the essential 5*l.* had been directed by the order for discovery itself, and the objection was taken by the plaintiffs that the defendants' summons, which was taken out on October 1, 1890, was too late; in other words, that the power of the Court to order a further payment under Order XXXI., rule 26, is limited to the time when the order for discovery itself is made. The terms of that rule are not, perhaps, so clear as they might be; but Mr. Justice Kekewich did not adopt this construction of the rule, but held that the Court has power to order a further payment at any time after the order for discovery is made on a proper case being shown. The point does not seem to have been previously decided.

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THERE must have been considerable doubt in the profession on the question which was decided by the Court of Appeal in *In re Dick; Lopes* v. *Dick* on January 16, but the decision seems to be in accordance both with law and good sense. Trustees under the will of a testator, who died in 1858, held real and personal estate upon trust to convert such part (not being plate, &c.) as should not consist of moneys, securities for moneys, or Government securities, and to invest in the public stocks or funds of Great Britain, and to stand possessed of the same, and the other residuary estate, upon trust with the consent of the person entitled to the income to invest the same residuary estate in Irish freeholds, the will containing no express power to vary investments. Part of the residue had been invested in Irish freeholds, but large sums of Government stock still remained in the trustees' hands. The tenant-for-life having requested the trustees to realise a sum of stock sufficient to raise a large sum and invest it in an English freehold mortgage (one of the securities authorised by the Trust Investment Act, 1889), the opinion of Mr. Justice Stirling was sought, and his lordship, following Mr. Justice North's decision in the case of *In re The Manchester Royal Infirmary*, 43 Law J. Rep. Chanc. Div. 420, held that, as the will contained no power to vary, the proposed realisation was not within the trustees' powers. This looks like a narrow view of trustees' powers independently of the special terms of the Act of 1889. Section 3 of that Act, after enabling trustees, unless expressly forbidden by the trust instrument to invest in (*inter alia*) public funds and Government securities of the United Kingdom and real securities in Great Britain, empowers them 'also from time to time to vary such investments.' Standing alone, the words would at first sight seem only to authorise a change in the investments *authorised* by the Act; but the Lords Justices have held that they apply to all the investments *mentioned* in the section. This may be a bold, but it is certainly a useful and sensible decision. Section 6 of the Act, it should be added, applies the statute to trusts previously created, and enacts that the new statutory powers 'shall be in addition to the powers conferred by the instrument, if any, creating, the trust;' but the words in inverted commas do not seem to affect the question.

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THE various provisions of the Public Health Act of last session (53 & 54 Vict. c. 59) are being extensively adopted by the 'local authorities' to whom the option is given. The advantage of securing the powers contained in parts 2, 3, and 5 is so obvious that but little discussion is likely to arise over their adoption at the public meetings called for the purpose. But with reference to part 4 (music and dancing), there will, no doubt, be considerable divergence of opinion; and it is pretty certain that the influence of the brewing trade and the licensed victuallers will be thrown into the scale against its adoption. There is, indeed, almost a puritan severity in the clauses which, if strictly interpreted and enforced, would prove of the most stringent character. The evils aimed at are undeniable and require a remedy; but in checking the abuse of dancing and music it is surely unfortunate to adopt such measures as will practically extinguish two of the least expensive and most natural pastimes of the poorer classes. The cheap out-of-door concerts to be found in nearly all continental towns, crowded as they are by orderly, sober people of both sexes and all ages, is an example to be followed rather than avoided. But, apart from this, there exists a strong feeling in the mind of the average Briton that he does not want his pleasures and amusements prescribed for him, and that he can very well take care of himself. Lord Bramwell and other opponents of grandmotherly legislation will probably be asked to come to his rescue when part 4 is adopted by unsuspecting local authorities.

THE poor-law system of this country is now being tested in a practical way. Severe and long-continued frost during the present winter has, by throwing multitudes of labouring men out of employment, reduced them and their families to the desperate alternative of starvation or the workhouse. The local government officials are, it is well known, opposed to the principle of giving outdoor relief; and in most unions the guardians endeavour to carry this objection into practical effect, but whether wisely or not, especially in seasons of exceptional distress, is a question which will have to be answered before, at any rate, another winter comes round. An unusually intelligent and conscientious relieving officer, who for forty years has carried out his duties in the New Forest Union in Hants (and has, he calculates, walked as many miles as would have taken him round the globe), has recently been allowed to explain his views to his board on this important question of outdoor relief. This officer's wide experience has convinced him of its great value both in preserving the self-respect of the recipients and the maintenance of a 'home' and of family life, in contrast with the barrack-like existence which must be the lot of inmates of a workhouse. The subject is, however, too wide to be more than briefly referred to in these columns, but deserves the earnest consideration of all humane persons, and especially of those members of the legal profession who have to advise on the administration of the poor laws.

## THE BORROWING POWERS OF BUILDING SOCIETIES.

THE position of building societies in relation to their borrowing powers has been further elucidated by two recent decisions, reported by us during the past year, of Mr. Justice Chitty, both of which are of great practical value. They serve to remove not a little doubt that formerly enshrouded a subject which is of interest to a considerable section of the community—the numerous class of depositors in building societies, as well as the societies themselves.

It is scarcely necessary to remind the reader that the building societies of this country are divided into two classes: (*a*) Societies established under the Building Societies Act, 1836 (6 & 7 Wm. IV. c. 32) and not subsequently incorporated under the Building Societies Act, 1874 (37 & 38 Vict. c. 42)—commonly called '*unincorporated* building societies;' (*b*) societies incorporated under the Act of 1874, whether established before or after its passing—known as '*incorporated* building societies.'

As regards the borrowing powers of unincorporated societies, what there is to be said can be disposed of in a few words, such powers depending not on statute, but on the rules of each particular society. Neither 10 Geo. IV. c. 56, nor 4 & 5 Wm. IV. c. 40, nor 6 and 7 Wm. IV. c. 32—the statutes governing unincorporated societies—contained any provision concerning borrowing by those societies. But the point has been the subject of consideration in several cases before the Courts, and it is now settled by the authority of the House of Lords that such societies may lawfully acquire, by their rules, a power of borrowing (*Murray* v. *Scott*, 53 Law J. Rep. Chanc. 745; L. R. 9 App. Cas. 519). There must, however, be a clause in the rules authorising the borrowing, and in all properly drawn rules the clause is of a perfectly definite character. So long as the borrowing is sanctioned by the rules it is not obligatory that the sanction should be in anywise restricted, and it is immaterial as to how it is expressed, Lord Hatherley's *dictum* in *Laing* v. *Reed*, 39 Law J. Rep. Chanc. 1; L. R. 5 Chanc. App. 8, as to an unlimited power of borrowing, having been overruled in *Murray* v. *Scott* (*ubi sup.*). The question as to the limitation on the power to borrow in the case of unincorporated societies was fully discussed by the House of Lords in *Murray* v. *Scott*; and, as was pointed out by Lord Justice Bowen in *In re The Mutual Aid Permanent Benefit Building Society*, 55 Law J. Rep. Chanc. 111; L. R. 30 Chanc. Div. 434, *Murray* v. *Scott* shows that the only limitation is that the power is not to be so exercised as to make the society something different from a benefit building society formed in pursuance of the Act of Parliament.

As regards incorporated societies, the matter stands on an entirely different footing, the rules of every incorporated society being, by section 16 (2) of the Building Societies Act, 1874, required to set forth 'whether the society intends to avail itself of the borrowing powers contained in this Act, and, if so, within what limits, not exceeding the limits prescribed by the Act.' The limits are prescribed in the preceding section (section 15), subsection 1 of which authorises any incorporated society to 'receive deposits or loans, at interest, within the limits in this section provided . . . . to be applied to the purposes of the society.' Then subsection 2 enacts that 'in a permanent society the total amount so received on deposit or loan and not repaid by the society shall not at any time exceed two-thirds of the amount for the time being secured to the society by mortgages from its members.' In the case of terminating societies some distinction is drawn, not material, however, for our present purpose to be examined. The limit fixed by the Act of 1874 is expressly based on the decision in the case of *Laing* v. *Reed* (*ubi sup.*), where it was held by Lord Chancellor Hatherley, and Lord Justice Giffard, in 1869, that a rule empowering the trustees of an unincorporated building society to borrow money, for the purposes of the society, to an extent not exceeding two-thirds of the amount secured by the mortgages, was not illegal under 6 & 7 Wm. IV. c. 32.

In estimating the statutory two-thirds, how is the 'amount for the time being secured to the society by mortgages from its members' to be ascertained? This is a question which has puzzled the advisers of building societies ever since the passing of the enactment.

For an answer we turn to the first of the two cases which we referred to above as having been recently decided by Mr. Justice Chitty. In *The Neath Permanent Benefit Building Society* v. *Luce*, 59 Law J. Rep. Chanc. 3; L. R. 43 Chanc. Div. 158, the learned judge held that, in calculating the extent of an incorporated society's borrowing power, the 'amount for the time being secured to the society by mortgages' is not to be limited to the principal sum secured by such mortgages, but covers all sums due thereon at the date when the borrowing power is exercised, whether for principal, or interest, or fines, or otherwise, and all instalments not then accrued due, but secured by such mortgages and outstanding.

It was generally supposed that the words 'amount for the time being secured' ought to be construed as only including the principal sums secured by the mort-

gages, and not comprising interest, fines, and other payments due under the mortgages. There was considerable ground for this view, which it would be impossible within the limits of our space to discuss and explain, but which to a certain extent may be gathered from the argument in favour of that contention addressed to his lordship, as appears in our report. The decision, however, of Mr. Justice Chitty is based upon a process of reasoning so sound and convincing, if we may be permitted to say so, that it must, we think, be regarded as settling the point.

Sums lent to an incorporated society in excess of its borrowing powers clearly cannot be recovered. But it is established that the persons so lending have an 'equity of subrogation,' which is expressed by Lord Selborne in *The Blackburn, &c., Building Society* v. *Cunliffe, Brooks & Co.*, 52 Law J. Rep. Chanc. 92; L. R. 22 Chanc. Div. 61, as the right to be repaid such portion of the amount lent as went to pay the legitimate debts of the society. To this extent the lenders are entitled to stand in the shoes of the creditors. This point had also to be considered by Mr. Justice Chitty in the case of *The Neath, &c., Building Society* v. *Luce* (*ubi sup.*). The society had borrowed in excess of the limit allowed by subsection 2 of section 15, and the question arose as to the right, in working out the equity of subrogation, which the *quasi*-lenders, as the learned judge termed them, possessed. It appeared that in making advances to its members the society had acquired a profit by offering such advances to such members at a premium. The result was that the members paid a premium of 10*l.* for every advance of 100*l.* In other words, an advance of 90*l.* only was received, with an obligation to repay 100*l.* The learned judge held that, in working out the subrogation, the advances were not to be treated as diminished by 10*l.* per cent, but that the *quasi*-lenders must get the benefit of the full advance of 100*l.* In his lordship's opinion, the right of persons who had lent money to an incorporated society in excess of its borrowing powers, to have the benefit of securities obtained from members of the society by means of the loans, extended to the whole amount covered by such securities, although a lesser amount was, in fact, received by the members from the society.

In the other case decided by Mr. Justice Chitty, to which we desire to draw attention—viz. *In re The West Riding of Yorkshire, &c., Building Society, No. 2*, 59 Law J. Rep. Chanc. 823; L. R. 45 Chanc. Div. 463—several important points were raised. The first was whether the 'amount for the time being secured to the society by mortgages from its members' included moneys secured to the society by mortgages from persons who were only borrowers from, but not members of, the society. Of course such advances were *ultra vires*, as under the Building Societies Act, 1874, s. 13, advances can only be made to *members*. Hence the words 'mortgages from its members' in section 15 (2). Mr. Justice Chitty accordingly held that such moneys were not to be included. On the other hand, his lordship very properly decided that moneys secured to the society by mortgages from persons who were *members* of the society, but not advanced to such persons in respect of their shares, ought to be included.

Then followed the question whether moneys secured to the society by mortgages from non-members were to be taken into account in estimating the extent of the society's borrowing powers. His lordship came to the conclusion that the total amount borrowed and not repaid by the society was not to be taken as reduced by sums secured to the society from non-members.

The borrowing by an incorporated society may be from anybody; but in ascertaining whether the statutory 'two-thirds' has been attained, the term with which the borrowing has to be compared is not the total amount for the time being secured to the society by mortgages generally, but it is by a particular class of mortgages—namely, 'mortgages from its members.'

With the assistance of these two cases there cannot now, it seems to us, be much room for uncertainty in determining some, at any rate, of the various complicated questions that arise in connection with the present subject.

## THE BEHRING'S SEA QUESTION.

THE application to the American Supreme Court made by the Attorney-General of Canada, apparently with Lord Salisbury's approval, for a prohibition to be directed to the Circuit Court of Alaska restraining further proceedings against one of the sealers captured in the Behring's Sea, comes as a surprise to most English lawyers. The ground upon which it is based is that the American Government has, by the law of nations, no jurisdiction upon the high seas. In international law, no doubt, the claim of the United States to appropriate the fishing over a wide area of open sea is an almost absurd anachronism, and in this particular matter, moreover, the Americans are barred by their own conduct, and by the treaty which they concluded early in the century with Russia. But if the seizures have been made, as we assume they have, by the authority of Congress, judging from the analogy of our own law, these arguments have neither place nor weight in an American Court of law. Certainly, so far as our own Courts are concerned, it would be immaterial that a statute violated every principle laid down by Grotius or his successors, if its terms were clear, although, if they were not, for the purposes of construction, a judge would, no doubt, presume that no such violation was intended. 'It is freely admitted to be within the competency of Parliament to extend the realm how far so ever it may please,' Lord Coleridge asserted in *The Franconia Case* (*Regina* v. *Keyn*, 46 Law J. Rep. M. C. 60; L. R. 2 Exch. Div. p. 152), and others of the judges spoke to the same effect. The celebrated case just mentioned is, indeed, in one aspect the converse of the present application. There it was argued on behalf of the prosecution (*inter alia*) that by international law the English criminal Courts had jurisdiction over the seas within three miles of the coast, but the judges, by a majority of seven to six, decided that no such jurisdiction in fact existed. It is true that Sir R. Phillimore and Chief Baron Kelly relied on the uncertainty of the publicists themselves as to whether the jurisdiction was recognised by the law of nations, but Lord Chief Justice Cockburn and the judges who concurred in his elaborate judgment, and particularly Lord Bramwell, held that, if it were so recognised, statutes or precedents would still be required, and the case is generally taken to have decided, contrary to some earlier *dicta*, that what is called 'international law' is not, as such, part of the law of England. Here its rules, so far from being of greater authority than Acts of Parliament, are not binding on our Courts at all.

It may be urged that the Supreme Court occupies a position with regard to Congress which is different to that of our own Courts with regard to Parliament. Certainly it is accustomed to override the enactments of Congress when it finds them in conflict with the fundamental law of the constitution, and, moreover, no jurists have written more strongly of the binding force of international law than American lawyers. Chancellor Kent, to cite a single instance, declared that it is, in fact, part of the common law itself. But though we do not presume to speak with any confidence on this matter, it would seem that, within the limits of the constitution, Congress is as supreme as Parliament; and it is clear that the doctrine of the freedom of the high seas, or any other rule of international law, is no part of the constitution. There are, moreover, authorities in the American reports which suggest that the assumed subordination of the Legislature, before the municipal law, to the rules generally accepted by civilised nations would at once be repudiated by the Courts, however right and proper it may be for statesmen to defer to them in practice. For example, in *The United States* v. *Kessler*, Bald. 34, Judge Hopkinson declared that the Court (the District Court of Pennsylvania) derived its authority from Congress, and that it made, therefore, no difference whether an alleged offence at sea was committed within the territorial waters or outside them.

We trust that the difficulty we have dwelt upon was fully considered before the application for the prohibition was launched, and it may be found that the English case has been submitted to a jurisdiction where the arguments upon which it rests, extremely strong as they are, cannot even be considered. In any event, we cannot see what end could be served by lending to the application, which might well have been made in the name of the owner of the vessel alone, the authority of the Canadian, and possibly of the British, Governments.

# Reviews.

## INDIAN RAILWAY LAW.

*The Law relating to Railways in British India.* Including the Indian Railways Act, 1890, and the Relevant Portions of the Contracts between Government and the Companies. By HENRY EDWARD TREVOR, of Lincoln's Inn, Barrister-at-Law, some time Judge of the Suburban Court, Hyderabad, Deccan. London: Reeves & Turner. Calcutta: Thacker, Spink & Co. Madras: Higginbotham & Co. Bombay: Thacker & Co. 1891.

THE object of this work is to exhibit the law relating to railways in British India as it stands at the present date, collected in its different branches within the compass of one volume. No work, the author tells us, has, so far as he is aware, been produced on this subject during the last ten years, and within that interval there have been many and considerable changes. The railway system has been expanded; new railway companies on new principles have been established; important cases have been decided by the High Courts; and last, but not least, the Indian Railways Act, 1890—to a consideration of which a large number of the pages of the work before us are devoted—has been passed into law. The first book deals with the railway companies and their contracts with Government. There are, Mr. Trevor tells us, four classes of railways: (1) Proprietary lines worked by guaranteed companies; (2) Proprietary lines worked by assisted companies; (3) State lines worked by guaranteed, assisted, and other companies; (4) State lines worked by Government. The mileage open in 1890 in each of these classes was 3,423, 720, 6,007, and 4,924 respectively. The three first are considered in this portion. Part II. deals with the law of companies applicable to railways, a path, as our author tells us, 'more than usually beset with thorns, as it involves the application of English common law and cases.' We have tested the book here in several points, and must bear testimony as to the care with which the work is executed. The law as to liabilities to servants is well discussed at p. 163 *et seq.* Part III. contains the Indian Railways Act, 1890, with a commentary, and there is also an appendix of Special Acts, &c., and the rules made under the Railway Acts of 1879 and 1890. The work will be found useful to those who desire to study the law as to the railways of India. There is a mistake on p. 128, where the Factors Act of 1877 (now repealed) is alluded to instead of the Factors Act, 1889.

# Correspondence.

## COUNTY COURT APPEALS.

SIR,—In your *Obiter Dicta* of last week you refer to *Voysey* v. *Armitage* (L. J. N. C. vol. 25, p. 168), in which Mr. Justice Stephen and Mr. Justice Charles were unable to decide whether an appeal lies from an interlocutory order in a County Court, and you say it may be a long time before the point is decided. But the point was decided in favour of such appeal by the Lord Chief Justice and Mr. Justice Mathew, in *Carruthers* v. *Fisher* (L. J. N. C. vol. 24, p. 135), and against such appeal in *The Cashmere* (59 Law J. Rep. Adm. p. 57). The strange part of the controversy is that in *The Cashmere* the case of *Carruthers* v. *Fisher* was not cited, and in *Voysey* v. *Armitage* neither of these cases was cited, which proves how carefully judges and counsel read their Reports. J.

## PRINTED TENANCY AGREEMENTS.

SIR,—I observe in your last issue, under the heading of 'Law and Professional Notes,' a communication from Mr. Uttley, solicitor, relative to a letter appearing in a Manchester paper concerning printed tenancy agreements.

The letter apparently accuses landlords of being unscrupulous and of leading tenants into traps, inasmuch as they grant tenancies 'for one year and so on from year to year' (thereby binding tenants to two years certain), instead of simple year to year tenancies, whereby tenants may leave at the end of the first year.

Now, surely, if a tenant chooses blindly to accept a tenancy agreement without having it perused by a solicitor (which doubtless might cost 6*s.* 8*d.*), he deserves to suffer. It is the old story that 'when a man is his own lawyer he has a fool for his client,' and I do not see that he can complain, for 'Ignorantia juris non excusat.'

It seems to me very unfair to accuse a landlord of being unscrupulous merely because a tenant chooses to accept the terms offered him; and surely that landlord is a wise man who draws his tenancy agreements so as to bind a tenant for two years rather than allow him to take a recently beautified house and then to have him leave at the expiration of a year, from perhaps mere caprice, having in the meantime during his tenancy pulled the house about, thus necessitating a fresh decoration.

Here in the North of England it is customary for yearly tenancies to be made for one year certain and so on from year to year, and I fail to see why a landlord may not dictate what terms he likes to an intending tenant, who is at liberty to accept or reject them as he thinks proper. R. W. WILDE.

Manchester: Jan. 21.

## THE RECORDERSHIP OF NEWCASTLE-UNDER-LYME.

SIR,—In your comment at p. 38 of last week's issue of the LAW JOURNAL you lightly touch the legal blunders of some of your lay contemporaries, but there is an *inaccuracy* in the paragraph.

The present recorder of Newcastle-under-Lyme is Mr. H. T. Boddam, who was appointed to the office a few months since upon the resignation of Mr. Underhill, Q.C. You have, in the paragraph referred to, named Mr. Underhill, Q.C., as the recorder; it is a singular mischance. GEO. E. SOLOMON.

[We are obliged to our correspondent for the correction. He is quite right. Mr. Underhill is no longer recorder of Newcastle-under-Lyme, having been transferred in August last to the recordership of West Bromwich.—ED. L. J.]

# Unreported Cases.

## NISI PRIUS.

### BANKER—FORGED CHEQUES.

ON January 20, before Mr. Justice Mathew and a special jury, the case of *Chatterton* v. *The London and County Bank* was heard. This was an action by an insurance broker to obtain repayment of a sum of 520*l.* paid by defendants out of his account on forged cheques. The defendants denied that the cheques were forged, and said that if they were forged the plaintiff was guilty of negligence which contributed to the loss, and was not, therefore, entitled to recover. The case was originally tried before Mr. Justice Day and a special jury on April 16 last, when the jury found for the defendants. On application to a Divisional Court, consisting of Mr. Justice Denman, Mr. Justice Charles, and Mr. Justice Vaughan Williams, a new trial was ordered, and this was confirmed by the Court of Appeal, composed of the Master of the Rolls and Lord Justice Lindley and Lord Justice Lopes. The short facts of the case, as opened by counsel, were these: In 1887, the plaintiff, who banked, and still banks, with the defendants, had a confidential clerk named Noad, the son of a clergyman. It was Noad's duty to put cheques before him to sign, with the accounts on which they were due. Having examined the vouchers, he would sign the necessary cheques, which were to bearer, and were always crossed. The body of the cheque was filled up by Noad. Matters went on until August 14, 1888, when plaintiff had occasion to go to the bank himself. The cashier called his attention to the fact that his signatures varied a good deal, but as he had been using a box of sample pens he attributed the variation to that fact, and said so to the cashier. On returning to his office, however, he mentioned the incident to Noad, and told him to get him a box of his old pens. Next day Noad did not appear, and wrote saying he was ill, and from that day to this he has never been seen. Inquiries were then made, and it was found that not only had over 500*l.* been obtained by Noad on forged cheques, but over 200*l.* from the cash-box.—Mr. J. H. Chatterton, the plaintiff, examined by Mr. Robson, gave evidence as to the course of business in his office. He used to check the pass-book with the ledger. Noad would read entries from the ledger, and he would tick the amounts off in the pass-book. What Noad must have done was to get the forged cheques out of his pass-book at the bank and destroy them. All he would then have to do would be to read out the amounts of forged cheques as if they appeared in the ledger, and as they appeared, of course, in the pass-book, they would be ticked off. The cheques, the subject of the action, numbered twenty-five, and were almost all paid over the counter, being drawn in favour of regular customers of his, and were uncrossed.—Cross-examined by Mr. Finlay, Q.C.: His accounts had not been audited during the period over which the frauds extended, as his auditor was ill, and he waited for him to get well. He never compared his returned cheques either with the pass-book or the counterfoils in the cheque-book. He ticked off the entries in the pass-book as read out, as he supposed, by Noad from the ledger. With one exception—that of the last forged cheque—all the forged cheques were missing. Noad never had his authority to sign cheques. Noad could not have obtained his signature by fraud; the cheques must have been forged. Noad had left behind him memoranda relating to all the cheques, but no confession that he had forged them.—Evidence not having been called for the defence, Mr. Bigham, Q.C., addressed the jury on behalf of plaintiff, and submitted that there could be no doubt that the cheques were forged, and forged by Noad. That being so, what had plaintiff done to disentitle him from recovering his money from the bank? Was there any duty cast upon him to conduct his affairs in an unusual manner to protect the bank? He had said that he never signed a cheque except when he had the account on which it was due before him. He had never given Noad signed cheques in blank, or given him any authority to sign for him. That being so, the case was an undefended one.—Mr. Finlay, Q.C., on behalf of defendants, contended that Noad could not have obtained cheques without discovery unless he obtained them from the plaintiff, no doubt by fraud. Week after week the bank sent in its pass-book and returned cheques, and no complaint was made until after Noad had bolted. If plaintiff had adopted the ordinary precaution of comparing his old cheques with the pass-book or the counterfoil cheque-book, the fraud must have been discovered on the very first cheque being brought to his notice. Because Noad was a rogue, it did not follow that he was necessarily a forger, and he submitted that he would shrink from the more serious crime when he could obtain the same results by fraudulently obtaining his master's signature, in which case the bank would not be liable. Even if the cheques were forged, could it be said that plaintiff by his conduct had not led the defendants to believe that he had examined his book and found his accounts correct? It might be said that no duty was cast on plaintiff to examine his pass-book, but if he did so and ticked off the entries, surely it was his fault if the bank were deceived.—Mr. Justice Mathew, in summing up the case to the jury, described it as one of immense interest to all commercial men, dealing as it did with the relations existing between banks and their customers. What was the con-

tract existing between a bank and its customers? To debit them only with such cheques as they drew. The meaning of that was that the bank took upon themselves the risk. It might be said that was hard on the banker, but he must be supposed to know his own business, and on that basis make his own bargain. The first question was, Were the cheques forged? But the bank had called no evidence to prove their genuineness. That Noad was a rogue and a forger no one could doubt, because it was common ground that the last cheque—the only one not destroyed—was a forgery. Was it, therefore, likely that that was his only effort in that branch of crime? It was said on defendants' behalf that Noad would shrink from forgery when he could obtain his master's signature by fraud, and then alter the figures. That, however, was a matter for them to consider. The second question was, Had the bank been misled by plaintiff's conduct, and had plaintiff by his conduct disentitled himself to recover from the bank? If the bank had proved that they were misled—and they had not done so—could it be said that plaintiff had done anything wrong because he conducted his business in his own way? People in business were not always guarding against fraud, but against mistakes. Supposing plaintiff had told Noad to examine his pass-book and compare the returned cheques with it and with the counterfoils, would the bank have any right to complain? And yet in that case the frauds would not have been discovered any sooner in the ordinary course of events. His lordship then proceeded to review the evidence carefully, and left the following questions to the jury: (1) Were the cheques forged? (2) If so, did the plaintiff so act as to lead the bank to believe they might honour the cheques now admitted to be forgeries, and did the bank do so because of his acts? (3) What were the plaintiff's acts which misled the bank?—The jury found for the plaintiff for the amount claimed—520*l.* 5*s.* 7*d.*—Judgment accordingly.—Mr. Bigham, Q.C., and Mr. Robson were for the plaintiff; Mr. Finlay, Q.C., and Mr. C. K. Francis for the defendants.

## CENTRAL CRIMINAL COURT.

### INDICTMENT—ADDITION OF COUNTS WITHOUT LEAVE.

In the case of *Regina* v. *Aylmer*, which was heard by the recorder on January 14, the defendant was indicted for publishing a defamatory libel of and concerning F. Lange, and on this charge he had been committed by the magistrate. The bill preferred to and found by the grand jury contained counts charging a *scienter*. The leave of the Court to add these counts had been refused.—Mr. Forrest Fulton, M.P., on the case being called on, submitted, on behalf of the defendant, that the whole indictment must be quashed on the grounds—(1) that the counts charging *scienter* had been improperly added; and (2) that the evidence before the grand jury having been given on both sets of counts must have influenced them to find the whole bill.—Mr. Woodfall (with him Mr. Lockwood, Q.C., M.P.), for the prosecution, said that although the counts had been added contrary to the leave of the Court, yet they were properly added within 30 & 31 Vict. c. 35, s. 1; that, if the Court had power to prevent these counts going to the jury, any such discretion in the Court could only be exercised after the evidence had been given, which would enable it to form an opinion as to whether the counts were founded on the same materials as those before the magistrate; that there being no error on the face of the indictment, the Court had no power to quash the indictment as a whole; and that it was not competent to this Court to inquire as to what had been the nature of the proceedings before the grand jury.—The recorder quashed the indictment.

### ATTEMPTING TO CORRUPT A JURY.

On January 17, before the recorder, James Baker surrendered and was indicted for unlawfully and knowingly attempting and endeavouring to corrupt a jury sworn to give a true verdict according to the evidence in the issue joined between the Queen and Bernard Boaler upon an indictment against him for having published a defamatory libel concerning the directors of the Briton Medical and General Life Association (Limited), and to incline the jury to be more favourable to the side of the said Bernard Boaler by persuasion, entreaties, entertainments, and other unlawful means, and so committing acts of embracery.—Mr. Besley moved the Court to quash the indictment, and said that no search had been able to find any conviction for embracery. With regard to embracery, they had to go back to the time of Edward III. The learned counsel went on to quote 'Russell on Crimes,' and the report of the Royal Commission in 1879 on the criminal law. He submitted that there must be an attempt to influence an individual, and not a body like a jury. The jurors supposed to have been embraced were not named in the indictment. The indictment simply referred to 'a jury,' and did not mention names. The corrupt means were not set out.—Mr. Wightman Wood followed on the same side: 'Corrupting a jury,' he pointed out, was a conventional expression, and was inaccurate when mentioned in an indictment. What ought to be alleged was that certain jurors mentioned by name were corrupted. The learned counsel quoted 'Stephen's Digest of the Criminal Law,' p. 77, and said that the word 'jury' was not used, but only 'a juryman.' The offence of embracery was the embracing of a juror. He therefore submitted that the indictment which alleged an attempt to influence a jury instead of an attempt to influence certain jurors, and mentioning their names, was bad. He argued also that the nature of the persuasion and entertainment ought to be set out, and that the words 'other unlawful means' were far too vague for an indictment. He therefore submitted that the indictment ought to be quashed as the names of the jurymen were not mentioned in it, and the means of corruption were not stated sufficiently, and the words 'other unlawful means' were too vague.—Mr. Fulton argued that the offence was sufficiently stated. The charge was unlawfully attempting to influence a jury. There was no precedent on which the indictment could be drawn.—The recorder said that this was an indictment at common law, and there did not appear to be any precedent for the indictment. What they found was that where the offence was alluded to in the Act 32 Hen. VIII., in 'Stephen's Digest of the Criminal Law' and in the Report of the Royal Commission, and also in the draft bill drawn in conformity with the recommendations of that report, the language had been singularly uniform, and in every case the allusion had been not to a body as a jury, but always referred definitely to individuals. In his opinion the indictment was bad, and must be quashed.—The indictment was accordingly quashed, and the defendant was discharged.—Mr. Forrest Fulton and Mr. Courthope-Munroe were counsel for the prosecution; Mr. Besley and Mr. Wightman Wood appeared for the defence.

## COUNTY COURT.

### INTERNATIONAL MUSICAL COPYRIGHT.

At the Brighton County Court Judge Martineau recently heard two actions brought by Mr. Moul and others against the Devonshire Park Company and Mr. Norfolk Megone, conductor of the company's grand orchestra. The actions were brought by the various plaintiffs to substantiate their claims under the International Copyright Acts. It appeared that the French authors of dramatic and musical works had formed themselves into

a society for the purpose of protecting their works from piracy in other countries. The rights of foreign authors arise by virtue of the Convention of Berne, and the society, having discovered that, in this country, that convention was being practically defied, and that certain works by M. Gounod and other French composers were being represented in England at the Devonshire Park and other places without permission, instituted these proceedings. The works concerned were of three classes—namely, those first produced prior to the year 1882, which had not obtained any registration in England, including Massenet's 'Scènes Napolitaines' and Gounod's 'Faust'; those in which there was perfect copyright in France and England, including 'Mignon' and Bizet's 'Carmen;' and those which had been produced since 1882 and had been registered, including 'Le Cid' and 'Loin du Bal.' In all these works the plaintiffs claimed the copyright and the right of representation. Mr. William Boosey (Boosey & Co., music publishers), who was called for the defence, said the copyright of foreign music would rarely be bought by English publishers if there were any restrictions as to performance. If they were to give up this *répertoire*, which they had legitimately acquired, they might as well close their halls of entertainment at once. In this case his Honour reserved judgment. In an action brought by Mr. Moul against Herr Groening, of the Brighton West Pier, his Honour gave a verdict for the defendant, with costs. The claim in this case was in respect of the performance of the 'Valse Caprice,' by Mayeur. His Honour held that, the composer having failed to copyright it and acquire the sole right of performance in England, the composition became public property. The judge invited an appeal, so that his decision might be reviewed.

## BAR STUDENTS' EXAMINATIONS.

### HILARY, 1891.

GENERAL examination of students of the Inns of Court, held at Lincoln's Inn Hall, on December 15, 16, 17, 18, 19, and 20, 1890. The Council of Legal Education have awarded studentships in Jurisprudence and Roman Law of 100 guineas, to continue for a period of two years, to

WHITE, ARCHER MORESBY, of the Middle Temple.
CHAYTOR, ALFRED HENRY, of the Inner Temple.

And studentships in Jurisprudence and Roman Law of 100 guineas, for one year, to

MAJID, ABDUL, of the Middle Temple.
KINGDON, FREDERICK WILLIAM WASHINGTON, of the Middle Temple.

The Council also awarded to the following students certificates that they had satisfactorily passed a public examination:—

ADAMS, WILLIAM H., of the Middle Temple.
ATKIN, PERCY H., of the Middle Temple.
BAILEY, JOHN C., of the Inner Temple.
BATESON, ALEXANDER D., of the Inner Temple.
BIRCH, FRANCIS H., of the Inner Temple.
BOND, JOHN W. G., of the Inner Temple.
BRODHURST, BERNARD E. S., of the Inner Temple.
BUCH, TRIMBUCKRAY TRICAMRAY MAZMOONDER, of the Middle Temple.
BULLER, WALTER L., of the Inner Temple.
BURNETT, WILLIAM F., of Lincoln's Inn.
CHARTERIS, HON. EDWARD E., of the Inner Temple.
CLEGG, THOMAS B., of Gray's Inn.
CONNOLLY, PAUL, of the Inner Temple.
CUTTER, THOMAS, of Gray's Inn.
DE VITRÉ, DENNIS F. D., of the Inner Temple.
DOVE, FRANCIS T., of Lincoln's Inn.
EVANS, PEPYAT W., of the Inner Temple.
EVANS, WILLIAM H., of the Middle Temple.
FRASER, JAMES A., of the Inner Temple.
GADDUM, ARTHUR L. R., of the Inner Temple.
GANDHI, MOHANDAS KARAMCHAND, of the Inner Temple.
GATES, FRANK C., of Lincoln's Inn.
GLOVER, ARNOLD, of the Inner Temple.
GREIG, THOMAS, of the Inner Temple.
HARDY, HAROLD, of Gray's Inn.
HENDERSON, JAMES S., of the Middle Temple.
HOGG, ALAN F., of the Inner Temple.
HUGHES, RICHARD, of the Middle Temple.
HUSSEY, HENRY P., of the Inner Temple.
JAY, WILLIAM C. P., of the Inner Temple.
KING, GEORGE C., of Lincoln's Inn.
LAWSON, HARRY LAWSON WEBSTER, of the Inner Temple.
LEEPER, ALEXANDER, of the Middle Temple.
MARRIOTT, CHARLES B., of the Inner Temple.
MATTHEWS, VIVIAN, of the Inner Temple.
MISRA, JAGDRI SUNKAR, of the Middle Temple.
MONEY, WALTER M'LACHLAN, of the Inner Temple.
MONGAN, HERBERT J., of Lincoln's Inn.
MOORE, ARTHUR, of the Inner Temple.
MORGAN-BROWN, HUBERT, of the Middle Temple.
MORTEN, VIVIAN, of the Inner Temple.
NAYUDU, COTTARI SOORYA PRAKASHA RAO, of the Middle Temple.
O'CONNOR, ARTHUR J. A., of the Middle Temple.
PAKENHAM, THOMAS C., of the Inner Temple.
PARODI, HORACE P., of the Inner Temple.
PHILLIMORE, GEORGE G., of the Middle Temple.
PHILLIPS, ARTHUR G., of the Middle Temple.
PIRES, GEORGE F., of the Middle Temple.
PORRAL, JOHN M., of the Inner Temple.
PRESTON, CHARLES S., of the Inner Temple.
NARAYAN, RAJ, of the Middle Temple.
RAM, DEWAN SHADI, of the Inner Temple.
ROCHERY, LOUIS G. G., of the Middle Temple.
RYAN, JOHN, of the Inner Temple.
ST. CLAIR, JAMES L. C., of Lincoln's Inn.
SAVAGE, GABRIEL H., of the Middle Temple.
SELBY-BIGGE, LEWIS A., of the Inner Temple.
SLADE, WYNDHAM N., of the Inner Temple.
SMITH, JAMES, of the Inner Temple.
STATHAM, FRANCIS, of Lincoln's Inn.
STONEY, WILLIAM, of Lincoln's Inn.
SWEET, HENRY T. D., of Lincoln's Inn.
TAYLOR, CHARLES, of the Inner Temple.
THOMPSON, WILLIAM L., of the Middle Temple.
THORNE, HERBERT S., of the Middle Temple.
THORNTON, ALFRED H. R., of the Inner Temple.
TIMMIS, THOMAS S., of Lincoln's Inn.
TINGEY, WILLIAM H., of the Inner Temple.
TOMLIN, THOMAS J. C., of the Middle Temple.
TURNER, GEORGE, of the Middle Temple.
TURNER, JOHN E. P., of Lincoln's Inn.
WATKINS, WATKIN J. Y. S., of the Inner Temple.
WATTS, WILLIAM N., of the Middle Temple.
WHITBREAD, FRANCIS P., of the Inner Temple.
WHITTAKER, OLDHAM, of the Inner Temple.
WOOD, KENNETH F., of Lincoln's Inn.
WRIGHT, CLAUDIUS E., of Gray's Inn.

Out of 109 candidates examined, 77 passed.

The following students passed a satisfactory examination in Roman Law:—

Motiram Showkiram Advani, of the Inner Temple; John G. Allen, of the Inner Temple; Edward E. H. Atkin, of the Middle Temple; Edmund A. Basilon, of Lincoln's Inn;

Charles D. Benham, of the Inner Temple; Thomas R. Blakeley, of the Inner Temple; Frank Brisley, of Gray's Inn; Philip V. Broke, of Lincoln's Inn; James Burchell, of the Inner Temple; William Burton, of Gray's Inn; Henry N. G. Bushby, of the Inner Temple; John G. Calverley, of the Inner Temple; Kamalanabha Rama Chandra, of Lincoln's Inn; Walter G. Clay, of the Inner Temple; John D. Lucas, of the Middle Temple; Frank H. Colam, of the Middle Temple; Ward Coldridge, of Lincoln's Inn; Basil W. Crump, of the Middle Temple; Herbert D. Darbishire, of Lincoln's Inn; Hugh M. Davidson, of the Middle Temple; Keshav Ganesh Deshpandi, of the Middle Temple; Francis X. D'Souza, of the Middle Temple; Jacob A. J. De Villiers, of the Middle Temple; Charles Dixon, of Lincoln's Inn; William V. R. Fane, of the Inner Temple; Alfred E. Field, of the Inner Temple; Algernon M. Fleet, of the Middle Temple; Frederick T. Galsworthy, of Lincoln's Inn; Richard P. Glasgow, of the Middle Temple; Harprasad Sing Gour, of the Inner Temple; James W. H. Gully, of the Inner Temple; Joseph Gundry, of the Inner Temple; Abdul Hakim Khan, of the Middle Temple; Frank O. Hartley, of the Middle Temple; George F. Howe, of Gray's Inn; Arthur Hudson, of the Inner Temple; Joseph H. Hume-Rothery, of Lincoln's Inn; Richard E. Jackson, of the Inner Temple; William Jones, of Gray's Inn; George H. B. Kenrick, of the Middle Temple; Gilbert A. Koek, of the Middle Temple; Richard O. B. Lane, of the Inner Temple; Hormasji Bapuji Liskari, of the Middle Temple; H. G. Leitner, of the Middle Temple; Charles H. C. Livesey, of the Inner Temple; Reginald H. Long-Innes, of Lincoln's Inn; George R. Lowndes, of Lincoln's Inn; Egerton M. C. Macdona, of the Middle Temple; Alick H. H. Maclean, of the Middle Temple; Robert R. Marett, of the Inner Temple; Joseph S. E. Martin, of the Middle Temple; George F. Milne-Redhead, of the Middle Temple; Edward A. Mitchell-Innes, of the Middle Temple; Hubert S. Moore, of the Inner Temple; John Nisbet, of the Middle Temple; Nurullah Shah, of the Middle Temple; Bernard Perks, of the Inner Temple; Alan Prentice, of the Middle Temple; Alexander P. O. Ramsay, of the Inner Temple; Belal Ahmed Mohamed Raoof, of Lincoln's Inn; Richard W. Reynolds, of the Inner Temple; John F. T. Royds, of the Middle Temple; Hugh M. St. Aubyn, of the Inner Temple; Harold Sands, of the Middle Temple; William H. Scratton, of the Inner Temple; Mohammad Shafi, of the Middle Temple; John R. Shaw, of the Middle Temple; Tranquebar Srinivasan, of Gray's Inn; Robert W. Stent, of the Inner Temple; Wasey Sterry, of Lincoln's Inn; Shunpei Uyemura, of the Middle Temple; Walter R. Warren, of the Inner Temple; Joseph Watson, of Gray's Inn; Thomas S. Whittaker, of the Middle Temple; Bernard Wicks, of the Inner Temple; Edward K. Williamson, of the Middle Temple; Joseph G. Willis, of the Inner Temple; Robert J. Willis, of Gray's Inn; and Mohammed Zahoor, of the Middle Temple.

Examined, 89; passed, 79.

At the December examination, 1890, on the subjects of the lectures of the professors of the Inns of Court, held at Lincoln's Inn Hall, December 22 and 23, 1890, the Council of Legal Education awarded the following prizes to the undermentioned students:—

*Roman Law, Jurisprudence, Constitutional Law and Legal History, and Public International Law.*

ARCHER M. WHITE, of the Middle Temple, a prize of 50*l.*

ARTHUR S. MAY, of Gray's Inn, a prize of 25*l.*

JOHN B. C. STEPHEN, of Gray's Inn, a prize of 15*l.*

FREDERICK W. GILKS, of the Inner Temple, a prize of 10*l.*

*Equity.*

RICHARD DENISON CUMBERLAND-JONES, Inner Temple, a prize of 50*l.*

FERRAR REGINALD MOSTYN CLEAVER, Middle Temple, a prize of 10*l.*

*Common Law.*

The result of the examination was as follows:—(1) P. J. Padshah; (2) A. H. Graham; (3) C. B. Gedge; (4) Anthony Maxwell; (5) Fateh Chand. Mr. Graham was disqualified from receiving the second prize by reason of not having given the notice required by the regulations; the council, therefore, awarded as follows:

PESJANJI JAMASJI PADSHAH, Middle Temple, a prize of 50*l.*

CECIL BERTIE GEDGE, Inner Temple, a prize of 25*l.*

ANTHONY MAXWELL, Middle Temple, a prize of 15*l.*

FATEH CHAND, Middle Temple, a prize of 10*l.*

*Real and Personal Property Law.*

FREDERICK W. W. KINGDON, Middle Temple, a prize of 50*l.*

EDWARD C. JACKMAN, Middle Temple, a prize of 25*l.*

THOMAS G. DAVIES, Middle Temple, a prize of 15*l.*

The council have also awarded to the students who obtained the greatest aggregate number of marks in the subjects of the lectures given by two of the professors, viz.:

*Equity and Common Law.*

THOMAS P. PERKS, Gray's Inn, a prize of 70*l.*

*Equity and the Law of Real and Personal Property.*

KENNETH F. WOOD, Lincoln's Inn, a prize of 30*l.*

## BAR LECTURES AND EXAMINATIONS.

### ROMAN LAW.

THE Professor of Roman Law (Mr. E. C. Clark) will, during the ensuing educational term, deliver a course of twelve lectures in the Middle Temple Hall on 'The Roman Law of Persons, Legislative and Judicative.' The first lecture will be delivered on Friday, January 16, at 3 P.M., and the subsequent lectures on Wednesdays and Fridays at the same hour.

### EQUITY.

The Professor of Equity (Mr. Horton Smith, Q.C.) will, during the ensuing educational term, deliver a course of twelve lectures in Lincoln's Inn Hall on 'Specific Performance.' The first lecture will be delivered on Thursday, January 15, at 4.15 P.M., and the subsequent lectures at the same hour on Mondays and Thursdays.

### LAW OF REAL AND PERSONAL PROPERTY.

The Professor of the Law of Real and Personal Property (Mr. Elphinstone) will, during the ensuing educational term, deliver a course of twelve lectures in Gray's Inn Hall on 'Transfers of Personal Property.' The first lecture will be delivered on Friday, January 16, at 4.15 P.M., and the subsequent lectures at the same hour on Wednesdays and Fridays.

### COMMON LAW.

The Professor of Common Law (Mr. E. Robertson) will, during the ensuing educational term, deliver a course of twelve lectures in the Inner Temple Hall on 'Negotiable Instruments.' The first lecture will be delivered on Thursday, January 15, at 3 P.M., and the subsequent lectures at the same hour on Mondays and Thursdays.

NOTE.—In December, 1891, there will be four examinations, one in the subject of the lectures given by each professor, open (subject as hereinafter mentioned) to all students who have during the year 1891 attended the

lectures of any of the professors, but no student will be admitted to the examination in the subjects of the lectures of any professor unless he shall have attended at least two-thirds of the lectures given during the year by such professor. No student will be admitted to more than two examinations; and no student who shall have obtained a studentship will be admitted to any such examination. No student who has received a prize in any subject shall again compete for the same or any other prize in the same subject.

After the examinations the following prizes will, on the recommendation of the committee, be given (that is to say): To the students who shall have passed the best examination in the subjects of the lectures of each professor, first prize, 50*l.*; second prize, 25*l.*; third prize, 15*l.*; fourth prize, 10*l.* And a first and second prize, of 70*l.* and 30*l.* respectively, to the students who obtain the greatest aggregate number of marks in the examination in the subjects of the lectures given by any two of the professors.

No student will be entitled to more than one prize, but a student will receive the prize of the highest value to which he shall appear to be entitled.

The committee will not be obliged to recommend any of the above prizes to be awarded if the result of the examination be such as, in their opinion, will not justify such recommendation.

Any further information required by students may be obtained on application to the Clerk of the Council, Lincoln's Inn Hall.

By order of the Council,
(Signed) S. H. WALPOLE,
Chairman.

Council Chamber, Lincoln's Inn:
December 22, 1890.

## LONDON EXAMINATIONS IN LAW.

AT the LL.B. examination for 1891 the examiners were: In Common Law and Law and Principles of Evidence—Lumley Smith, Esq., M.A., Q.C., and William Willis, Esq., LL.D., B.A., Q.C. In Equity and Real and Personal Property—Leonard Field, Esq., B.A., and R. Horton Smith, Esq., M.A., Q.C. In Roman Law—Prof. J. E. C. Munro, LL.M., LL.D., and Prof. Edmund Robertson, M.A., LL.D., M.P.

The following is the pass list: First Division—George Duncan Grey. Second Division—Benjamin Amsden, B.A., Frederick Walton Atkinson, Cecil George Brown, Edward Frank Champion, Leonard Scott Iliff, William Harrison Moore, John M. Newnham, B.A., Thomas Probert Perks, Arthur Sansome Preston, John Arthur Slater, B.A., George Charles Smith, and Ernest Ivens Watson.

At the Intermediate Examination in Laws the examiners were: In Jurisprudence and Roman Law—Prof. J. E. C. Munro, LL.M., LL.D., and Prof. Edmund Robertson, M.A., LL.D., M.P. In Constitutional History of England—Henry E. Malden, Esq., M.A., and T. E. Scrutton, Esq., M.A., LL.B.

The following is the pass list: First Division—Rowland Allen, James Sinclair Baxter, Alexander Millington Begg, B.A., Franklin Coles Boucher, Joseph Charleston, B.A., Edwin Thomas Close, Edwin Dodshon, James Frodsham, Frederick William Gilks, B.A., John Turnley Luscombe, Henry William Macrosty, B.A., John Davies Pryce, Frederick William Richards, Gerard Stanley Sanders, Roland Moffatt P. Willoughby, and Charles Norton Wood. Second Division—Frederick Broadbridge, Charles James Robb Brown, Charles Arthur Buckley, Lionel Cresswell, Thomas Wilson Dougan, M.A., Eugene Guye, Francis John Hunt, Gwyn Morris, James Murray, Ananias Henry Nash, David Nimmo, Arthur Claude Ormerod, Matthew Colbeck Preston, Montague James Raymond, George Sedgwick, Albert Ambrose Strong, Stephen Walter Thomas, William Henry Tindall, and Mark Francis Waters.

## COUNCIL OF LEGAL EDUCATION.

### EASTER EXAMINATION, 1891.

*Examination of Candidates for Pass Certificates.*

THE attention of students is requested to the following rules:—

No student shall receive from the council the certificate of fitness for call to the bar required by the four Inns of Court, unless he shall have passed a satisfactory examination in the following subjects—viz. (1) Roman law; (2) the law of real and personal property; (3) common law; and (4) equity.

No student (except such as come under the next stated rule) shall be examined for call to the bar until he shall have kept nine terms; but students shall have the option of passing the examination in Roman law at any time after having kept four terms.

A student who, previously to his admission at an Inn of Court, was a solicitor in practice for not less than five years, may be examined for call to the bar without keeping any terms.

An examination will be held in March next, to which a student of any of the Inns of Court, who is desirous of becoming a candidate for a certificate of fitness for being called to the bar, will be admissible.

Each student proposing to submit himself for examination will be required to enter his name, in full, personally or by letter, at the treasurer's or steward's office of the Inn of Court to which he belongs, on or before Monday, March 9, next: and he will further be required to state in writing whether his object in offering himself for examination is to obtain a certificate preliminary to a call to the bar; or whether he is merely desirous of passing the examination in Roman law under the above-stated rule.

The examination will commence on Tuesday, March 17, next, and will be continued on the Wednesday, Thursday, and Friday following.

It will take place in the Hall of Lincoln's Inn, and the doors will be closed ten minutes after the time appointed for the commencement of the examination.

The examination by printed questions will be conducted in the following order: Tuesday morning, March 17, at ten, on the law of real and personal property; Wednesday morning, March 18, at ten, on common law; Thursday morning, March 19, at ten, on equity; Friday morning, March 20, at ten, on Roman law.

The oral examination will be conducted in the same order, and on the same subjects, as above appointed for the examination by printed questions.

The examiner in the law of real and personal property will examine in the following subjects: The elementary principles of the law of real and personal property, including the provisions of the Conveyancing and Settled Land Acts, with reference chiefly to the following treatises on those subjects—viz. Williams' 'Principles of the Law of Real Property;' Williams' 'Principles of the Law of Personal Property;' Goodeve's 'Modern Law of Real Property;' Goodeve's 'Modern Law of Personal Property;' Edwards' 'Compendium of the Law of Property in Land.'

The examiner in common law will examine in the following subjects: The elementary principles of (1) The law of contracts; (2) the law of torts; and (3) the criminal law—with reference chiefly to Mr. Broom's 'Commentaries,' eighth edition, 1888; (4) the procedure in the Queen's Bench Division of the High Court of Justice

—with reference to Book I. of the same work; and (5) Foulke's 'Elementary View of the Proceedings in an Action at Law,' third edition (founded on Smith's 'Action at Law').

The examiner in equity will examine in the following subjects as discussed in White and Tudor's leading Cases, or as affected by later statutes and decisions: (1) Implied trusts conversion (*Howe* v. *Lord Dartmouth*); (2) ademption and satisfaction; (3) injunctions in cases of waste, riparian rights, and nuisance; (4) marshalling; (5) defences to action for specific performance on grounds of (*a*) mistake, surprise, or unreasonableness in contract, (*b*) want of mutuality in contract; (6) married women's property.

The examiners in Roman law will examine in the 'Institutes of Justinian,' Books I. and II.; Book III., Title 13, to the end of the book; Book IV., Titles 1 to 5 inclusive.

### TRINITY EXAMINATION, 1891

*Examination of Candidates for Studentships and Pass Certificates.*

The attention of students is requested to the following rules:—

As an encouragement to students to study jurisprudence and Roman civil law, twelve studentships of one hundred guineas each shall be established and divided equally into two classes; one class of such studentships to continue for two years, and to be open for competition to any student as to whom not more than four terms shall have elapsed since he kept his first term; and another class to continue for one year only, and to be open for competition to any student, not then already entitled to a studentship, as to whom not less than four and not more than eight terms shall have elapsed since he kept his first term; two of each class of such studentships will be awarded by the council, on the recommendation of the committee, after every examination before Hilary and Trinity terms respectively, to the two students of each set of competitors who shall have passed the best examination in both jurisprudence and Roman civil law. But the committee shall not be obliged to recommend any studentship to be awarded if the result of the examination be such as in their opinion not to justify such recommendation. Where any candidates appear to be equal or nearly equal in merit, the council may, if they think fit, divide the studentship between them equally, or in such proportions as they consider just. Where in any year a studentship in either class is not awarded by reason of the candidates not appearing to deserve it, the council may, if they think fit, appropriate it, or a portion of it, for that year to the other class, or may offer it for competition in some other subject.

No student shall receive from the council the certificate of fitness for call to the bar required by the four Inns of Court unless he shall have passed a satisfactory examination in the following subjects—viz. (1) Roman law, (2) the law of real and personal property, (3) common law, and (4) equity.

No student (except such as come under the next-stated rule) shall be examined for call to the bar until he shall have kept nine terms; but students shall have the option of passing the examination in Roman law at any time after having kept four terms.

A student who, previously to his admission at an Inn of Court, was a solicitor in practice for not less than five years, may be examined for call to the bar without keeping any terms.

An examination will be held in May next to which a student of any of the Inns of Court who is desirous of becoming a candidate for a studentship or of obtaining a certificate of fitness for being called to the bar will be admissible.

Each student proposing to submit himself for examination will be required to enter his name in full, personally or by letter, at the treasurer's or steward's office of the Inn of Court to which he belongs, on or before Thursday, April 29 next; and he will further be required to state in writing whether his object in offering himself for examination is to compete for a studentship or to obtain a certificate preliminary to a call to the bar, or whether he is merely desirous of passing the examination in Roman law under the above-stated rule.

The examination will take place in the Hall of Lincoln's Inn, and the doors will be closed ten minutes after the time appointed for the commencement of the examination.

The examination by printed questions will be conducted in the following order: Thursday and Friday, May 7 and 8, at ten until one, and from two to five on each day, the examination of candidates for studentships in jurisprudence and Roman law.

The examination of candidates for pass certificates, and for pass in Roman law only, will take place as follows:—

Monday morning, May 11, at ten, on real and personal property law.

Tuesday morning, May 12, at ten, on common law.

Wednesday morning, May 13, at ten, on equity.

Thursday morning, May 14, at ten, on Roman law.

The oral examination will be conducted in the same order, and on the same subjects, as above appointed for the examination by printed questions.

*Jurisprudence, International Law, and Roman Law.*

Candidates for the studentships will be examined in all the following subjects:—

I. 'Institutes of Gaius' and 'Institutes of Justinian.'

*II. 'Digest,' book 18, title 1, 'De Contrahenda Emptione;' book 17, title 2, 'Pro Socio.'

III. History of Roman law.

IV. Principles of jurisprudence, with special reference to the writings of Bentham, Austin, and Maine.

V. Elements of international law.

VI. Principles of private international law.

Candidates for a pass certificate will be examined in the 'Institutes of Justinian,' books I. and II.; book III., title 13, to the end of the book; book IV., titles 1 to 5 inclusive.

The examiner in the law of real and personal property will examine in the following subjects: The elementary principles of the law of real and personal property, including the provisions of the Conveyancing and Settled Land Acts, with reference chiefly to the following treatises on those subjects—viz. Williams' 'Principles of the Law of Real Property;' Williams' 'Principles of the Law of Personal Property;' Goodeve's 'Modern Law of Real Property;' Goodeve's 'Modern Law of Personal Property;' Edwards' 'Compendium of the Law of Property in Land.'

The examiner in common law will examine in the following subjects: The elementary principles of (1) the law of contracts; (2) the law of torts, and (3) the criminal law—with reference chiefly to Mr. Broom's 'Commentaries,' eight edition, 1888; (4) the Procedure in the Queen's Bench Division of the High Court of Justice—with reference to Book I. of the same work; and (5) Foulke's 'Elementary View of the Proceedings in an Action at Law,' third edition (founded on Smith's 'Action at Law').

The examiner in equity will examine in the following subjects as discussed in White and Tudor's 'Leading Cases,' or as affected by later statutes and decisions:

* Same portions of 'Digest' for Hilary Examination, 1892.

(1) Implied trusts, conversion (*Howe* v. *Lord Dartmouth*); (2) ademption and satisfaction; injunctions in cases of waste, riparian rights, and nuisance; (4) marshalling; (5) defences to action for specific performance on grounds of (*a*) mistake, surprise, or unreasonableness in contract; (*b*) want of mutuality in contract; (6) married woman's property.

[By order of the council,
(Signed) S. H. WALPOLE,
Chairman.

Council Chamber, Lincoln's Inn Hall:
December 22, 1890.

## COMPANIES (WINDING-UP) ACT, 1890.

THIS Act, which applies to England and Wales only, came into operation on the 1st inst.; and the first step taken under it appears to have been the issue on that day of a circular letter from Mr. Purcell, the registrar of joint-stock companies, to the liquidators of all companies that have not been legally dissolved.

In calling attention to section 15 of the Act, and to the rules framed thereunder by the Lord Chancellor, the registrar points out that, as soon as possible, and not later than the 31st inst., he must be furnished with an account, in a form prescribed by the Board of Trade, of the particulars of the liquidator's receipts and payments from the date of that functionary's first appointment down to the 31st ult.; and he at the same time reminds the liquidator that, if this account be not duly rendered within the time named, he will be liable to a penalty not exceeding 50*l.* for each day during which the default continues. Similar returns must also be sent to the registrar at intervals of half a year until the winding up of the company affected is completed. The registrar adds further, that the provisions of section 15 of the Act apply to all companies wound up, whether compulsory or under the supervision of the Court or voluntarily, and he appends to his circular letter extracts from the Act and from the rules, &c., bearing upon the matter in point, as well as the text of the forms of account, &c., that have been approved by the Board of Trade and of the affidavit required in verification of the same.

It is believed that considerable sums of money, by way of unclaimed or undistributed assets, lie in the hands of liquidators of companies. Under the provisions of the new Act, these will now have to be accounted for and at once paid into a special account at the Bank of England. The number of companies that have not been legally dissolved, and which will consequently come within the purview of the Act, is understood to be very large.

On payment to the registrar of joint-stock companies of a prescribed fee it will be open to any creditor or contributory to search the liquidator's statement of receipts and payment, or trading account (if there be one), which must now in due course be filed at Somerset House.

## THE LONDON COUNTY COUNCIL.

THE usual weekly meeting of the Council of the Administrative County of London was held on January 20 at the County Hall, Spring Gardens, Sir John Lubbock, M.P., the chairman, presiding.

### APPEAL AGAINST ASSESSMENTS.

At the last meeting the council adopted the recommendations of the local government and taxation committee that the council should appeal to the quarter sessions against the totals of the valuation lists of the following parishes and unions: (*a*) St. George's, Hanover Square, (*b*) Holborn Union, (*c*) St. Marylebone, (*d*) St. Giles-in-the-Fields and St. George, Bloomsbury, (*e*) Shoreditch, (*f*) Lambeth, (*g*) St. George-in-the-East, (*h*) Stepney Union, (*i*) Mile End Old Town, (*j*) City of London Union, (*k*) St. Olave Union, (*l*) St. Saviour's Union, and (*m*) property at Streatham known as The Villa and Norfolk House. The council at the same time, however, resolved to adjourn until this meeting the question whether any of the appeals should be further proceeded with.

Mr. Boulnois, M.P., moved: "That no further proceedings be taken in respect of the appeals at the present time, the council not having sufficient or reliable information before it to justify the heavy expenditure (which would fall upon the rates) in prosecuting and in defending the appeals, and in furnishing professional evidence in the 5,448 cases and upwards suggested by the committee; especially as in many of the same cases the assessment committees of the metropolis have, in adjudicating, heard the ratepayers themselves as well as the Crown Surveyor of Taxes, and appeals to the Courts of law have been open in ordinary course to the Crown and others interested; and further that, in taking the extreme course proposed, the Council would not be able equitably to adjust any increased taxation between the ratepayers of the parish affected, but the same would fall upon the ratepayers now assessed to the utmost limit, as well as upon those alleged to be underrated.' He had been told that the public-houses in Marylebone were very much underrated. (Hear, hear.) Of course they would say something against the public-houses, but all he could say was that in St. Pancras precisely the same method of assessing public-houses was adopted, but they did not hear anything from the committee about underestimating such premises in St. Pancras. Those who cheered the idea that public-houses would be dealt with properly if the Council agreed to the suggestion in the report of the committee must see that the teetotallers would have to pay for the supposed laches of the licensed victuallers because there was no power to raise individual assessments. It must be done in one amount, and those unfortunate persons who were highly assessed would have to pay for those under-assessed. He complained of the report as being absolutely incorrect in stating that certain places were not assessed. The report had been got together hastily, as the committee wished to assert themselves and to show that they were doing something, and thus they thought to secure enormous renown. The question of the cost of prosecuting the appeals was also a most important one to the ratepayers, and it was said that it might cost them 50,000*l.*

Mr. Debenham, in seconding the motion, remarked that the council were asked to undertake a terrible risk in prosecuting the appeals. If they agreed to the committee's report they would be committed to an act of great injustice.

Mr. H. Vincent, M.P., supported the motion, and objected to the course of procedure adopted by the committee. Agents, he said, had been employed who had collected tittle-tattle (Cries of 'Oh, oh') as to the rents and premiums paid, and even asked. In fact, in some cases the assessments had been made at random. He trusted the council would be influenced by a sense of fairness, and not by any feeling against wealthy parishes.

Mr. Beachcroft supported the recommendations of the committee.

Mr. Campbell supported the committee, and said there had been no particular selection made in the parishes of Marylebone and St. George's, Hanover Square. If there had been any unfairness in the past it should be exposed.

Mr. H. Farquhar, in supporting the motion, stated that he believed in the honesty of their assessment committee. He suggested that some uniform rate of valuation should be agreed upon before contesting these cases in the

Courts, or that if there were any cases of under-assessment they should be dealt with in conference.

Mr. Torr pointed out that there were no fewer than eleven parishes in which re-assessments were considered desirable. One case was that of Lord Revelstoke's houses, Nos. 37 and 38 Charles Street, for which 100,000*l.* was asked. That was equal to an annual value of 4,000*l.* And yet that house was rated at 1,800*l.* There was on behalf of the wealthy parishes a great amount of sound and fury signifying nothing, and when it came to a fight they would pay and the rich parishes would relieve the poor. The need for that was shown in the fact that whilst Bethnal Green was rated at 6*s.* 6*d.* or 7*s.* in the pound, the rates in Marylebone, Kensington, the City, and other parishes were not over 5*s.*

Mr. Lawson, M.P., maintained that the committee were doing good work in the endeavour to secure uniformity in the assessment of the various parishes. It was well, however, that the council should make sure that they were acting upon accurate information. Having explained that in the case of Lord Revelstoke's house the highest offer made was 50,000*l.*, and that in the case of the sale of the residence of the Earl of Aberdeen a special price was paid owing to the extraordinary expenditure made upon the building, he contended that there was little to find fault with in the instances cited, and expressed the hope that the chairman of the committee would show that they were acting on some less flimsy grounds than those put forward by Mr. Torr—(laughter)—because he believed they were performing a public duty.

Colonel Hughes, M.P., held that the amendment meant that all the parishes were to go and do just as they liked, and, so far as St. George's, Hanover Square, was concerned, it would mean that in five years they would save 200,000*l.*

After some further discussion,

Mr. Costelloe, the chairman of the committee, in reply, assured the council that before making their recommendations they had obtained all the information possible, and had only given weight to that which was reliable.

The council divided, and there voted: For the motion, 10; against, 75; majority against, 65.

The recommendations of the committee, except with regard to land at Streatham, were agreed to.

## JURORS IN WAITING.

MR. W. W. GREEN writes to the *Times* as follows:—

Several of the jurors summoned to attend Court XI. of the Queen's Bench this week have requested me to thank Mr. Justice Mathew for the considerate manner he has treated 'jurors in waiting.' I forwarded the enclosed letter to his lordship on Saturday, and when the jurymen (about forty) assembled in Court on Monday morning they were released until 12 o'clock whilst a 'part heard' case was concluded. At half-past 12 o'clock a fresh jury was sworn, and the judge then asked counsel if his case would conclude that day, and being answered in the negative, the 'jury in waiting' were dismissed for the remainder of the day, instead of being kept uselessly in Court until 2 o'clock. To-day Mr. Justice Mathew allowed us leave from half-past 11 until 2 o'clock, the case in hand concluding about 3 o'clock.

I am sure the judge would have relieved us from returning to the Court this afternoon had he been informed by counsel in the next case that they proposed taking it without a jury.

It is certainly time that merchants and brokers attending the Courts as jurors should be treated with more consideration.

'25 Mincing Lane: January 17.

'My Lord,—The practice of keeping twenty to thirty commercial men in Court waiting to be called until two o'clock, whilst the case in hand drags through three to four days, is a serious loss to men whose business requires their personal attention. The objection is not against doing one's duty as a juryman, but the useless time waiting in Court "to be called." Might I suggest to your lordship that where an action bears certain signs of taking the whole day or more, counsel should be consulted on the point, and if they agree that the case cannot finish before four o'clock, the master could dismiss the jury in waiting at half-past ten o'clock instead of detaining them until two o'clock. I quite realise the necessity of jurors attending each morning, as cases are sometimes settled by arrangement after Court hours. If your lordship can kindly give the matter your consideration, you will confer a favour upon busy City men.

'Yours truly,

'WM. W. GREEN.

'Mr. Justice Mathew.'

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, SIR JAMES HANNEN, and FRY, L.J.

THURSDAY, JANUARY 15.

*Bolander* v. *Davies* (application of plaintiff for new trial on appeal from verdict and judgment at trial before Hawkins, J., in Middlesex).—Dismissed.

*Webley* v. *Lowe* (application of defendant for judgment or new trial on appeal from verdict and judgment at trial before Huddleston, B., in Middlesex).—Dismissed.

Before the MASTER OF THE ROLLS, BOWEN, L.J., and FRY, L.J.

FRIDAY, JANUARY 16.

*In re A. Soltykoff, ex parte H. G. Margrett* (appeal of petitioning creditor from order of Registrar Linklater, dated November 29, dismissing petition).—Dismissed.

*In re Marquis of Ailesbury, ex parte P. C. Mitchell* (appeal of debtor from refusal of Registrar Giffard, dated December 22, to adjourn petition and from receiving order made same day).—Adjourned.

*Evens* v. *Fenton* (application of defendant for judgment or new trial on appeal from verdict and judgment at trial before Day, J., in Middlesex).—Dismissed.

*Robinson & Co.* v. *Ricardo* (application of defendant for judgment or new trial on appeal from verdict and judgment at trial before Mathew, J., in Middlesex).—Dismissed.

SATURDAY, JANUARY 17.

*Williamson* v. *Savill Bros.* (application of plaintiff for new trial on appeal from verdict and judgment, dated July 1, at trial before Huddleston, B., with special jury in Middlesex).—Dismissed.

*Horsman* v. *Croaker* (application of defendants for new trial on appeal from verdict and judgment at trial before Grantham, J., in Middlesex).—Dismissed.

*Lamley* v. *Mayor, &c., of East Retford* (application of defendants for judgment or new trial on appeal from verdict and judgment, dated July 4, at trial before Grantham, J., in Middlesex).—Dismissed.

MONDAY, JANUARY 19.

*Williams* v. *Buchanan* (*Alexander, third party*) (application of plaintiff from order of the Lord Chief Justice and Hawkins, J., on report of special referee (heard February 27, 1889—restored after referee's further report).—Part heard.

TUESDAY, JANUARY 20.

*Williams* v. *Buchanan* (*Alexander, third party*).—Heard January 19; dismissed.

*Cronheim* v. *Sedgwick* (appeal of defendant Sedgwick from judgment of Day, J., dated July 16, at trial without a jury in Middlesex).—Dismissed.

WEDNESDAY, JANUARY 21.

*Whitehaven Ship Building Company (in liquidation)* v. *Russell and others* (appeal of defendants from judgment of Williams, J., dated July 18, at trial without a jury at Carlisle).—Dismissed.

*Steinman & Co.* v. *Angier Line* (1887) (*Lim.*) (appeal of defendants from order of Smith, J., dated August 5, at a trial without a jury at Liverpool).—Part heard.

## APPEAL COURT II.

Before LINDLEY, L.J., LOPES, L.J., and KAY, L.J.

THURSDAY, JANUARY 15.

*Attorney-General* v. *Morgan* (appeal of defendant from judgment of North, J., dated August 6).—Part heard.

FRIDAY, JANUARY 16.

*In re Dick, deceased. Lopes* v. *Hume-Dick* (appeal of defendant from Stirling, J., dated November 29, refusing liberty for sale and investment of part of residuary estate).—Allowed.

*Bellamy* v. *Debenham* (appeal of plaintiff from judgment of North, J., dated July 15).—Dismissed.

SATURDAY, JANUARY 17.

*E. M. G. De Vere Beauclerk* (*Petitioner*) v. *De Vere Beauclerk* (*Respondent*) (appeal of petitioner from judgment of Butt, J., dated November 18, refusing decree of dissolution of marriage).—Part heard.

MONDAY, JANUARY 19.

*E. M. G. De Vere Beauclerk* (*Petitioner*) v. *De Vere Beauclerk* (*Respondent*).—Dismissed.

*Evans* v. *Langley* (application of plaintiff for new trial on counter-claim or judgment on appeal from verdict and judgment at trial before Cave, J., at Worcester).—Dismissed.

*Gibbins* v. *Cumberland and another* (application of plaintiff to set aside judgment entered for defendant, dated July 11, at trial before Grantham, J., with a jury, in Middlesex).—Allowed.

Before LINDLEY, L.J., and LOPES, L.J.

TUESDAY, JANUARY 20.

*Welbourne* v. *Porter* (appeal of defendants from order of Kay, J., dated June 6, refusing to set aside judgment).—Dismissed.

Before LINDLEY, L.J., LOPES, L.J., and KAY, L.J.

WEDNESDAY, JANUARY 21.

*Attorney-General* v. *Morgan* (*Cur. adv. vult.* January 15).—Dismissed.

*In re W. Heseltine, dec. Woodward* v. *Heseltine* (appeal of defendant Lewis Simmons from order of North, J., dated December 12, restraining, dealing, &c., with goods under bill of sale).—Dismissed.

*Carey and Wife* v. *Long's Hotel* (*Lim.*) (application of defendants for judgment or new trial on appeal from findings of special jury and judgment, dated July 9, 1890, at trial before Pollock, B., in Middlesex).—Dismissed.

*Hayes* v. *Burgess* (application of defendant for judgment or new trial on appeal from verdict and judgment, dated July 16, 1890, at trial before Grantham, J., in Middlesex. *Hayes* v. *Burgess* (application of plaintiffs for judgment).—Part heard.

## NOTICES FOR THE WEEK.

ROTA OF REGISTRARS.

MONDAY, January 26. — Court of Appeal No. 2: Mr. Ward. Mr. Justice Chitty: Mr. Clowes. Mr. Justice North: Mr. Godfrey. Mr. Justice Stirling: Mr. Rolt. Mr. Justice Kekewich: Mr. Lavie. Mr. Justice Romer: Mr. Pugh.

Tuesday, January 27.—Court of Appeal No. 2: Mr. Pemberton. Mr. Justice Chitty: Mr. Jackson. Mr. Justice North: Mr. Leach. Mr. Justice Stirling: Mr. Farmer. Mr. Justice Kekewich: Mr. Carrington. Mr. Justice Romer: Mr. Beal.

Wednesday, January 28.—Court of Appeal No. 2: Mr. Ward. Mr. Justice Chitty: Mr. Clowes. Mr. Justice North: Mr. Godfrey. Mr. Justice Stirling: Mr. Rolt. Mr. Justice Kekewich: Mr. Lavie. Mr. Justice Romer: Mr. Pugh.

Thursday, January 29.—Court of Appeal No. 2: Mr. Pemberton. Mr. Justice Chitty: Mr. Jackson. Mr. Justice North: Mr. Leach. Mr. Justice Stirling: Mr. Farmer. Mr. Justice Kekewich: Mr. Carrington. Mr. Justice Romer: Mr. Beal.

Friday, January 30.—Court of Appeal No. 2: Mr. Ward. Mr. Justice Chitty: Mr. Clowes. Mr. Justice North: Mr. Godfrey. Mr. Justice Stirling: Mr. Rolt. Mr. Justice Kekewich: Mr. Lavie. Mr. Justice Romer: Mr. Pugh.

Saturday, January 31.—Court of Appeal No. 2: Mr. Pemberton. Mr. Justice Chitty: Mr. Jackson. Mr. Justice North: Mr. Leach. Mr. Justice Stirling: Mr. Farmer. Mr. Justice Kekewich: Mr. Carrington. Mr. Justice Romer: Mr. Beal.

## HONOURS AND APPOINTMENTS.

MR. JAMES BLACKLOCK-LEE (of the firm of Carrick, Lee & Sons), of Brampton and Haltwhistle, has been appointed Coroner for the Eastern Division of Cumberland. Mr. Lee was admitted in 1860, and is Clerk to the Commissioners of Taxes for Eskdale Ward, and Clerk to the Brampton and Haltwhistle Highway Boards, Registrar of the Haltwhistle County Court, Superintendent-Registrar for Haltwhistle, a Commissioner for Oaths, and a Perpetual Commissioner.

Mr. Charles Norwood, of Ashford, Kent, has been appointed Superintendent-Registrar. Mr. Norwood was admitted in 1881.

Mr. James Peter Piper, M.A., Cantab (of the firm of Whyley & Piper), of Bedford, has been appointed Town Clerk of Bedford. Mr. Piper was admitted in 1862.

Mr. Charles Henry Cowlishaw (of the firm of Cooper, Chawner & Co.), of Uttoxeter, has been appointed a Commissioner for Oaths. Mr. Cowlishaw was admitted November 28, 1884.

GRAY'S INN.—January 19 being the Grand Day of Hilary Term at Gray's Inn, the treasurer (Mr. James Shell) and benchers of this honourable society entertained at dinner the following guests: The Right Hon. Sir Michael Hicks-Beach, M.P., the Right Hon. Lord Justice Lindley, the Hon. Mr. Justice Mathew, the Hon. Mr. Justice Romer, the Recorder of London (Sir Thomas Chambers, Q.C.), his Honour Judge Snagge, Mr. Bulwer, Q.C. (Master in Lunacy), Mr. J. C. O'Dowd, C.B., Mr. Henn Collins, Q.C., Mr. C. S. Bagot, Mr. H. Corser, Mr. G. Denman, and Mr. Hannay; and the masters of the bench present, in addition to the treasurer, were masters the Right Hon. Lord Watson, Fooks, Q.C., Pine, K.C.M.G., Hugh Shield, Q.C., Bowen Rowlands, Q.C., M.P., Beetham, Middleton, Jeremy, and Rose, and the Rev. the preacher (the Rev. J. H. Lupton).

## CALENDAR OF THE COUNTY COURTS.

FROM JANUARY 26 TO JANUARY 31.

| No. of Circuit | His Honour | January 26 | January 27 | January 28 | January 29 | January 30 | January 31 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Birkenhead | — | Warrington | Birkenhead | — |
| 8 | Judge Heywood | — | Manchester | Manchester | Manchester | Manchester | — |
| 15 | Judge Turner | Middlesbrough | Stockton-on-Tees | — | — | — | — |
| 22 | Judge Harington | — | Stow-on-the-Wold | Alcester | Pershore | Solihull | — |
| 47 | Judge Powell | — | Lambeth | Greenwich | Lambeth | Lambeth | — |
| 54 | Judge Metcalfe | Bristol | Bristol | Bristol | Bristol | Bristol | — |
| 55 | Judge Machonochie | Poole | Lymington | Bournemouth | Wimborne | Wareham | — |

## CIRCUITS OF THE JUDGES.

Mr. Justice Denman and Mr Justice Cave will remain in town.

NOTICE.—In cases where no note is appended to the Names of the Circuit Towns both Civil and Criminal Business must be ready to be taken on the first working day; in other cases the note appended to the name of the Circuit Town indicates the day before which Civil Business will not be taken. In the case of Circuit Towns to which two Judges go there will be no alteration in the old practice.

| Winter Assizes, 1891 | Western | Home | South-Eastern | Oxford | Midland | North-Eastern | Northern | South Wales and Chester | North Wales, Chester, and Glamorgan |
|---|---|---|---|---|---|---|---|---|---|
| Commission days | Ld. Coleridge, L.C.J. of England. Stephen, J. | Stephen, J. | Pollock, B. | Hawkins, J. Charles, J. | Wills, J. Grantham, J. | Mathew, J. Smith, J. | Day, J. Lawrance, J | Vaughan Williams, J. | Wright, J. |
| Jan. Friday . 30 | — | — | — | — | Aylesbury | — | — | — | — |
| Feb. Tuesday . 3 | — | — | — | — | Bedford | — | — | — | — |
| Thursday . 5 | — | — | — | Reading | — | — | — | — | — |
| Friday . 6 | — | — | — | — | Northampton | — | — | — | — |
| Monday . 9 | — | — | — | Oxford | — | — | Appleby | — | — |
| Wednesday . 11 | — | — | — | — | Leicester | — | Carlisle | — | — |
| Thursday . 12 | Devizes | — | — | Worcester | Saturday 14 | — | — | — | — |
| Friday . 13 | — | — | Huntingdon | Monday 16 | — | — | — | — | — |
| Saturday . 14 | — | Maidstone | — | — | — | — | — | — | — |
| Monday . 16 | Dorchester | — | Cambridge | — | — | — | — | — | — |
| Tuesday . 17 | — | — | — | — | Oakham | — | Lancaster | — | — |
| Wednesday . 18 | — | — | — | Gloucester | Lincoln | Newcastle | — | Haverford W. | — |
| Thursday . 19 | — | — | Norwich | Saturday 21 | Saturday 21 | — | — | — | Welshpool |
| Friday . 20 | Taunton | — | Monday 23 | — | — | — | — | — | — |
| Saturday . 21 | Monday 23 | — | — | — | — | — | — | Lampeter | — |
| Monday . 23 | — | — | — | — | — | — | Manchester | — | Dolgelly |
| Tuesday . 24 | — | Guildford | — | Monmouth | Nottingham | — | (2) | Carmarthen | — |
| Wednesday . 25 | — | — | — | — | Friday 27 | — | — | — | Carnarvon |
| Thursday . 26 | Bodmin | — | — | — | — | Durham | — | — | — |
| Friday . 27 | — | — | Ipswich | Hereford | — | — | — | — | — |
| Saturday . 28 | — | — | Mon. Mar. 2 | — | — | — | — | — | Beaumaris |
| Mar. Monday . 2 | — | — | — | Shrewsbury | — | — | — | Brecon | — |
| Tuesday . 3 | Exeter | | — | — | — | — | — | — | Ruthin |
| Wednesday . 4 | 2 | | — | — | Derby | — | — | — | — |
| Thursday . 5 | — | — | — | — | (2) | York | — | Presteign | Mold |
| Friday . 6 | — | — | — | — | Warwick | — | — | — | — |
| Saturday . 7 | — | — | — | Stafford | (2) if needed | — | Liverpool | Chester | |
| Monday . 9 | Winchester | | Chelmsford | (2) | — | — | (2) | (2) | |
| Tuesday . 10 | 2 | — | — | Birmingham | | Leeds | — | — | — |
| Saturday . 14 | Bristol | | Hertford | (2) | — | — | — | Cardiff | |
| Wednesday . 18 | 2 | — | Lewes | — | — | — | — | (2) | |
| | | | Saturday 21 | | | | | | |

## LAW STUDENTS SOCIETIES.

GRAY'S INN MOOT.—A moot will be held in Gray's Inn Hall, on Wednesday, January 28, at 7.30 P.M., before R. B. Haldane, Esq., Q.C., M.P. Question: 'A. is an employer of labour who has in his employment: (1) Members of a trades union who are under contract to give notice before leaving his employment; (2) members of a trades union who are under no such contract; (3) Non-union men. A. refused to dismiss the non-union men. B., C., and D., officials of the union, thereupon call upon all union men to leave the employment without notice. Have B., C., and D. been guilty of any, and what, wrongful act or acts?'——The annual meeting of the above society will be held in Gray's Inn Hall, on Friday, January 30, at 7.30 P.M. punctually; the Hon. President (his Honour Judge Russell) in the chair. Members of all the Inns of Court are urgently invited to attend and take part in the proceedings.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## OBITUARY.

MR. WM. FRANK JONES, barrister, died at Baroda, Ventnor, Isle of Wight, on December 27, at the age of fifty. He was the only son of Mr. Wm. Jenkin Sayer, late of Newport, Mon. He was educated at St. Mary's Hall, Oxford, and was M.A. and B.C.L. of that university. He was called to the bar at Lincoln's Inn in July 1874, having obtained an exhibition in 1871, and went the Oxford Circuit. He subsequently assumed the name of Jones. He was joint-editor of Chitty's 'Index to Reported Cases.'

Mr. Edward Ashurst Morris, M.A., Solicitor (of the firm of Ashurst, Morris, Crisp & Co.), died at his residence, 44 Cadogan Square, on December 17. He was the son of Mr. John Morris, senior partner in the firm above mentioned, and was born in 1862. He was educated at Charterhouse School, and in Germany, and at Trinity Hall, Cambridge, and was afterwards articled to his father, and after his admission in 1886 he joined his father's firm. He died of typhoid fever. He married, in 1889, Miss Puleston, daughter of Sir J. H. Puleston, M.P., and leaves a daughter five months old. Mr. Morris had a very amiable disposition, and leaves a host of friends to mourn his loss.

MR. JOHN LUKE HAIGH, solicitor, of Selby, died on December 5, at the age of ninety. Mr. Haigh was articled to Mr. Edward Parker, of Selby, and was admitted a solicitor in Easter Term, 1840. Mr. Haigh joined the Wesleyan Methodists about sixty years ago, and became an active member of that body and a local preacher. He carried on a very successful practice at Selby, and was widely known as an able lawyer and skilled conveyancer. He leaves three daughters and two sons. He was buried on the 10th ult. at the quiet little churchyard of Brayton, near his residence, and his funeral was largely attended by his numerous friends.

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LORD COLERIDGE had so far recovered from his indisposition as to be able to resume his duties. He took his seat on Monday, January 19, in the Court of the Lord Chief Justice, and proceeded with the trial of Middlesex special jury cases.

CANTERBURY CONVOCATION.—Sir James Parker Deane, Q.C., the Vicar-General, attended on January 20 at the board room of Queen Anne's Bounty Office, Westminster, and, under a commission from the Archbishop of Canterbury, prorogued the Convocation of the Province of Canterbury from the 20th inst. until Tuesday, February 3 next, to meet for the despatch of business. Sir John Hassard, the Archbishop's registrar, was present.

PROPOSED DAY CENSUS FOR THE CITY.—The *City Press* says: 'A movement in favour of taking a day census in the City is, we are informed, about to be set on foot by a member of the corporation. Ten years ago, it will be remembered, a similar census was taken on the initiative of the corporation, who made all the arrangements and defrayed the whole expense, which amounted, it is worthy of note, to about 1,200*l*. For various reasons it is to be hoped that the proposal will be adopted when it is formally submitted at an early meeting of the corporation. A census of the sleeping population is more or less useless as far as the one square mile is concerned, for as it is a business, and not a residential city, it is practically deserted after the day's work is done. But a day census, on the other hand, is eminently desirable, as showing what the population of the City really is, and also what industries and callings engage the attention of those who pass their working hours within the jurisdiction of the Lord Mayor.'

DEATH OF THE DUKE OF BEDFORD.—It has now been announced that the late Duke of Bedford committed suicide by shooting himself during a paroxysm of pain, and a coroner's jury have returned a verdict of 'temporary insanity.' It will be remembered that the remains of his grace were cremated, and we may have to offer some remarks later on on the important bearing the sad event has on the legal restrictions which should safeguard cremation. It is certainly to be regretted that the true cause of the death of such a prominent member of the community should not have been at once announced.—*Lancet*.

PRESENTATION TO MR. REGISTRAR MIDDLETON.—On January 21, in the Probate and Divorce Registry at Somerset House, a number of managing clerks of firms practising in the division presented Mr. Registrar Middleton, senior registrar, with an address on vellum. Mr. Garnett (Chester, Mayhew & Co.) introduced the deputation. Mr. Registrar Middleton, in accepting the presentation, incidentally stated that, according to the Civil Service requirements, a man must resign at the age of sixty-five, but he was now in his eighty-second year. He sincerely thanked the deputation for their testimonial.

JURORS IN WAITING.—In the Queen's Bench Division on January 21, Mr. Justice Stephen said he had received a letter from a special juryman in waiting who wanted to be allowed to go. The writer observed that the Act of Parliament exempted pharmaceutical chemists, but did not exempt him; that he had been 'kicking around' since Monday, and ought now to be told to go. 'I must tell him,' his lordship said, 'that he must stay, and that I think he ought not to have addressed me in such inelegant slang; also that he had better not 'kick,' either 'around' or otherwise.' At a later period his lordship added: 'I find that the juryman who wrote the letter asking me to let him go took the opportunity in the first place to get the officer of the Court to let him go, and has gone. I give him notice that he must attend tomorrow, and if he does not attend he will be heavily fined.'

PROBATE, DIVORCE, AND ADMIRALTY DIVISION.—Their lordships (the Right Hon. the President and Mr. Justice Butt) sat as a Divisional Court to hear Admiralty appeals from County Courts. When their lordships had taken their seats on Monday, January 19, Sir Walter Phillimore rose and said: My lords, before the business of the Court begins, may I take the opportunity, on behalf of my brethren of the bar, of whom I happen to be the senior present, of expressing respectfully to your lordships the pride and the joy and the satisfaction which we all feel in learning that the president's long and varied and most honourable career as a judge is not to find its termination in this Court, but is to be completed by his promotion to the dignity of a Lord of Appeal?—The President: Sir Walter Phillimore, I am deeply indebted to you for the kindness you have shown in what you have said on behalf of yourself and your brethren of the bar. I assure you it is not without very mixed feelings indeed, in which sadness I must not say largely preponderates, but largely enters, that I am separating myself from you. I beg leave to say that I have always considered myself most fortunate in the gentlemen of the bar who have habitually practised before me. I have to render to them my most hearty thanks for the assistance which they have given me. They have always shown that they feel themselves to be assisting in the administration of the law—which is the true function of a barrister. I again thank you most heartily for this unexpected expression of your feelings towards me, and I wish you all happiness and success.

CENTRAL CRIMINAL COURT.—A sitting of the Court was held on January 19 for the purpose of the formal confirmation by the commissioners of the appointment of Mr. Henry Kemp Avory to the office of Clerk of Arraigns of the Central Criminal Court, vacant by the resignation through failing health of Mr. E. J. Read. The Lord Mayor nominated Mr. Avory to the office last week, and the nomination was now confirmed by the commissioners. The formal document confirming Mr. Avory's appointment was signed by Sir Thomas Chambers, Q.C., the recorder, and Mr. Alderman Evans, on the part of the commissioners of the Court. The business of the sessions was concluded and the sessions were adjourned.

THE NEW LORD OF APPEAL.—The Queen has been pleased to approve the appointment of the Right Hon. Sir James Hannen, D.C.L., President of the Probate, Divorce, and Admiralty Division of the High Court of Justice, to be Lord of Appeal in Ordinary, in the room of the Right Hon. Sir Barnes Peacock, deceased. Sir James Hannen is just seventy years of age. It is forty-three years since he was called to the bar, and twenty-three since he took his seat on the bench as a justice of the Court of Queen's Bench. He was soon transferred to the Court of Probate, and has now been for many years President of the Probate Division of the High Court. Those who remember the dignity and impartiality with which Sir James presided over the Special Commission Court, and the unwearied labour which he devoted to the inquiry, will recognise that this promotion has been well earned. Sir James was knighted in 1868, and added to the Privy Council in 1872. He is a widower.

LINCOLN'S INN.—The treasurer, Mr. Napier Higgins, Q.C., entertained at dinner on January 20, being the Grand Day in Hilary Term, the Earl of Cork and Orrery, Lord Carrington, Lord Coleridge (Lord Chief Justice of England), the Right Hon. Henry H. Fowler, Mr. Baron Pollock, Mr. Justice Day, Sir James Garrick, Q.C., K.C.M.G., Sir Gordon Sprigg, Mr. Reid, Q.C., M.P., Mr. Barnes, Q.C., Mr. Henry Maxwell Lyte, C.B., Mr. G. W. Kekewich, Mr. Reiss, and Mr. Robert Stewart. The benchers present on the occasion were Mr. Osborne Morgan, Q.C., M.P., Lord Justice Bowen, Lord Justice Fry, Sir William Grove, Mr. Justice Mathew, Mr. Justice Chitty, Sir Robert Stuart, Q.C., Sir Charles Russell, Q.C., Mr. Crackanthorpe, Q.C., Mr. Justice Kekewich, Mr. Horton Smith, Q.C., Mr. Gibbs, Q.C., C.B., Lord Macnaghten, Mr. W. Karslake, Q.C., Mr. Everitt, Q.C., Mr. Cozens-Hardy, Q.C., Mr. Pembroke Stephens, Q.C., Mr. Giffard, Q.C., Mr. Simpson, Mr. Bush, Q.C., Mr. Leonard H. Courtney, M.P., Lord Morris, and the Rev. Dr. Wace, preacher.

THE CIRCUITS. — A meeting of the judges of the Queen's Bench Division was held on Friday afternoon, January 16 (the Courts having risen at 3 o'clock for the purpose), under the presidency of the Lord Chief Justice of England, to choose and arrange the circuits for the ensuing assizes. The following are the arrangements that were made: Western Circuit. — Lord Coleridge, Chief Justice, and Mr. Justice Cave. Home Circuit.—Mr. Justice Cave. South-Eastern Circuit.—Mr. Baron Pollock. Oxford Circuit (including Stafford and Birmingham).—Mr. Justice Hawkins and Mr. Justice Charles. Midland Circuit (including Warwick and Birmingham).—Mr. Justice Grantham and Mr. Justice Wills. North-Eastern Circuit. — Mr. Justice Mathew and Mr. Justice A. L. Smith. Northern Circuit.—Mr. Justice Day and Mr. Justice Lawrance. South Wales Circuit (including Chester). —Mr. Justice Vaughan Williams. North Wales Circuit (including Chester and Glamorgan).—Mr. Justice Wright. Mr. Justice Denman and Mr. Justice Stephen will remain in town. These circuits are expected to commence about the middle of next month, but before then another meeting of the judges will be held to fix the dates.

INNER TEMPLE.—His Honour Judge Bristowe, the Treasurer, and the Masters of the Bench of the Inner Temple, entertained at dinner January 21, being the Grand Day of Hilary Term, the following guests: The Bishop of Southwell, Mr. Justice Chitty, Mr. Justice Wills, Mr. Justice Lawrance, Mr. Justice Romer, the President of the Royal College of Physicians, the Dean of Rochester, the Master of Trinity Hall, General Sir George Higginson, K.C.B., the Rev. Canon Ainger, reader at the Temple Church, Sir Reginald Cust, Mr. H. W. Lawrence, the subtreasurer, and Mr. Pickering, the librarian. The Benchers present were Mr. Mackeson, Q.C., Mr. Hare, Mr. Marten, Q.C., Mr. Baylis, Q.C., Mr. Justice Cave, His Honour Judge Holl, Mr. Marshall Griffith, Q.C., Mr. Poland, Q.C., Mr. Justice Grantham, Mr. Millar, Q.C., Mr. Lumley Smith, Q.C., Mr. Potter, Q.C., Mr. Addison, Q C., M.P., Mr. Graham, Mr. Myburgh, Q.C., Mr. Horace Smith, Mr. Colt, and Mr. Ledgard, Q.C.

ELECTION PETITION IN THE CITY.—On January 20, at a meeting of the Court of Aldermen at Guildhall, at which the Lord Mayor presided, a petition was heard from certain electors of the ward of Portsoken against the return of Mr. Edwin Bell as a common councilman, and asking that such return be declared invalid. Mr. Macmorran and Mr. Stephen Lynch were counsel for the petitioners; Mr. Candy, Q.C., for the respondent.—The petition, which was read by the town clerk, alleged that the qualification in respect of which Mr. Bell had been elected was not a *bonâ fide* one. He claimed to be qualified in respect of No. 37 Houndsditch, of which he was the lessee, but for some years past the premises had been divided and sublet. Mr. Bell had reserved a right of access to a small room between the two subdivisions. This room was unfurnished and unoccupied, and it was only used as a ladies' cloak-room for meetings of the Concordia Club. Mr. Bell had mortgaged the premises, and an order *nisi* for foreclosure would be made absolute next month unless the principal and interest were paid. In these circumstances the petitioners demurred to Mr. Bell's qualification, and asked that his return might be declared void.—Mr. Macmorran questioned the jurisdiction of the Court, but the point was given against him.—After the arguments of counsel on both sides had been heard, Mr. Bell was called, and proved that he was the leaseholder of No. 3, the Circus, Minories, and occupied the top floor, where he had a bedroom, in which he slept when he was detained in the City. The premises were rated at 40*l.* per annum. He also had other property in the ward rated at 400*l.*—In the result the Recorder announced that the Court dismissed the petition, with costs.

## BIRTHS.

On Dec. 25, at Waltair, Madras Presidency, the wife of John G. Smith, Esq., Barrister-at-Law, of a son.

On Jan. 7, at Mostyn House, Sunningsfield Road, Hendon, the wife of Alfred Hardie, B.A., LL.B., Barrister-at-Law, of a son.

On Jan. 16, at Bargate, Grimsby, the wife of Charles S. Barton, Solicitor, Grimsby, of a daughter.

## MARRIAGES.

On Dec. 27, at All Saints' Church, Borella, Colombo, Ceylon, by his Grace the Archbishop of Colombo, John Joseph Francis, of Gray's Inn, Barrister-at-Law, Queen's Counsel, Hong Kong, Knight of St. Gregory the Great, to Anna Magdalen Teresa, the eldest daughter of Heinrich Julius Fabel, of Frankfort-on-the-Main.

On Jan. 13, at the Parish Church, Sutton Coldfield, Warwickshire, Edgar E. Lamb, of King's Norton, to Sophy, second daughter of the late Dr. Henry Kennedy, Barrister-at-Law, of 89 Marine Parade, Brighton.

## DEATHS.

On Jan. 12, at 1 Abbotsford Villas, Twickenham, Elizabeth Frances daughter of the late John Hodgson, Q.C., and dearly loved sister and life-long companion of Francis Cotterell Hodgson, of King's College, Cambridge, and the Education Department, Whitehall.

On Jan. 15, at his residence, 13 Hampstead Hill Gardens, N.W., Charles Gatliff, late of 8 Finsbury Circus, Solicitor, in his 81st year.

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# The Law Journal.

*SATURDAY, JANUARY* 31, 1891.


## 'OBITER DICTA.'

THE appointment of Mr. Jeune, Q.C., to be a judge of the Probate, Divorce, and Admiralty Division, has falsified the rumours which were current last week, and has added strength to the judicial bench. The talented son of a talented father, the new judge was born in 1844, and educated at Balliol College, Oxford, his elevation, as pointed out by a correspondent of the *Times*, giving that college the extraordinary distinction of having, at the present time, no less than seven representatives on the bench. Mr. Justice Jeune is best known as an ecclesiastical lawyer, but his talents and experience are such as to justify the prediction that his appointment will prove to be one of the best that the present Lord Chancellor has made. Mr. Justice Butt, who, we regret to learn, is in a very critical state of health, now becomes President of the Division.

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THE Midland Circuit has just commenced, and in a little more than a fortnight all the winter circuits will be going on. Thirteen of the fifteen judges of the Queen's Bench Division are told off for the ensuing assizes, and, although they will not all be absent at one and the same time, it is to be feared that the common law business in London will practically be brought to a standstill, as is now usually the case during the circuits. The two judges to remain in town are Mr. Justice Denman and Mr. Justice Cave, but the former is still too ill to resume his judicial duties.

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THERE is a growing practice amongst certain Queen's Counsel on the common law side of appearing in cases without juniors. In a case in the Crown Paper, which was argued last week before Mr. Justice Cave and Mr. Justice Williams, a Queen's Counsel appeared on either side, but no junior had been instructed in the case. Until very recently it has always been thought to be beneath the dignity of a Queen's Counsel to appear without a junior, but there are now certain leaders who appear to entertain a different opinion. Hitherto the only instance in which it was considered permissible for a leader to appear alone was where he was representing a defendant in a jury or non-jury action. In such cases the services of a junior are often superfluous, and Queen's Counsel have frequently been instructed alone.

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IN the case of *In re Soltykoff, ex parte Margrett* (noted last week) the Court of Appeal went the length of holding that an infant cannot be liable upon an acceptance given for the price of necessaries supplied to him. Prince Alexis Soltykoff, a son of the well-known owner of racehorses, had accepted, when under age, four bills of exchange in payment for certain goods which it was admitted were necessaries. The drawer indorsed the bills to Margrett, and upon their not being paid at maturity the latter filed a petition against the prince in the Bankruptcy Court. The registrar dismissed the petition, and the Court of Appeal held that he was right in so doing. The Court were of opinion that as Margrett had not himself supplied the goods, the question whether they were necessaries was immaterial. His claim was merely upon the bills, and it was well settled that an infant could not make himself liable upon a bill. The Master of the Rolls, however, said that the cases showed that an infant could not bind himself by a bill of exchange even to the person who supplied the goods, and Lord Justice Lopes expressed himself to the same effect, while Lord Justice Bowen did not in any way dissent. Although these remarks were not strictly necessary in the particular case, there can be little doubt that the Court would so hold if the question were directly brought before them.

THE Attorney-General, at a meeting held not long ago at Exeter Hall to protest against the gambling tendencies of the present day, took occasion to remark that he did not see in what way further legislation against gaming and betting could usefully be placed on the statute-book. We beg respectfully to differ from so high an authority, and to refer to two branches of the law which may be very usefully amended. First, the status of professional bookmakers, which received so strong a confirmation in *Read* v. *Anderson*, 53 Law J. Rep. Q. B. 532 (where a majority of the Court of Appeal held that the authority to a bookmaker to make a wagering contract could not be renounced), should be lowered to the level at which it stood before that unhappy decision was pronounced. For ourselves, we have little doubt that Lord Esher (who differed from Lord Justice Bowen and Lord Justice Fry in *Read* v. *Anderson*) and the late Mr. Justice Manisty (in *Cohen* v. *Kettell*, 58 Law J. Rep. Q. B. 241) were in the right, and that *Read* v. *Anderson* is bad law. Secondly, the defect in the Betting Houses Act, which was on Wednesday last disclosed by *Wells* v. *Hills*, should be at once repaired. In that case a conviction for keeping a betting-house within the Act was affirmed; but the Court, before coming to this conclusion, had sent the case back to the justices to find as a fact whether money was paid or not. It seems, therefore, open to considerable doubt (though, apart from *Wells* v. *Hills*, we should have thought that the Act is perfectly general, and applies to credit as well as prepaid betting) whether the Act applies to betting through bookmakers on credit. Solve both the questions we have referred to in the direction of severity against betting, and much will have been done by the Legislature to check it.

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SEVERAL bills introduced during the present session of Parliament bear witness to the increasing desire for State intervention and to the abandonment of the old *laisser-faire* theories, of which, in the practical sphere, Lord Bramwell and, in the speculative, Mr. Herbert Spencer are such doughty champions. Every class and trade wants to be organised and registered. One of the most curious developments of this tendency is the Midwives' Registration Bill, which has been introduced by Mr. Fell Pease, Sir F. Fitzwygram, Sir Guyer Hunter, Sir R. Lethbridge, Dr. Farquharson, Mr. Rathbone, and Mr. Pritchard Morgan. We suppose Sir G. Hunter and Dr. Farquharson have induced good-natured friends to back their medical fad, and will be asked to back some other fad in return. The bill provides for the examination of ladies by the General Council of Medical Education, and registration subject to rules framed by the council and approved by the Privy Council. After the publication of these rules every County Council is to provide for the execution of the Act within its county by appointing a sufficient number of examiners, granting certificates of competency, and keeping a record and register of women so qualified to discharge their responsible functions. Fees, of course, are to be paid for the examination certificate and registration, and section 6 provides that no unregistered woman shall, after January 1, 1892, be able to recover any charge for services rendered as a midwife. There is, however, no penalty in the bill to be imposed on unregistered practitioners in this useful but not hitherto aristocratic profession, and it is probable that the Act, if passed, would not be very operative. But there is, perhaps, no particular reason why a number of excellent people should be deprived of the opportunity of having letters attached to their names, and in case the bill passed we should understand that the letters R.M. in the case of a man meant 'resident magistrate,' but in that of a woman 'registered midwife.'

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MORE ambitious and more defensible measures of the same class are the Teachers' Registration Bill, brought in by Sir R. Temple, Sir L. Playfair, and Lord Lymington, and the Architects' Registration Bill, of which the authors are Mr. Noble, General Goldsworthy, and Mr. Justin M'Carthy. Sir Richard Temple and Sir Lyon Playfair are specialists in education, and may be supposed to know what they are about. But none of the introducers of the other bill have any connection with the profession of architect; but, perhaps, they are bringing in the bill because they have suffered from architects. The Teachers' Bill is of a much graver character than its title indicates. It is in reality a bill for bringing almost the whole of the secondary education of the country under one system of control. It is true that the control so established is not directly State control, but it will go far to bring about absolute State control more or less disguised. It is a very big bill, of which 'Registration and Organisation of Teachers' is by far the less important part. The real object of the measure is far too large for private members to tackle, being nothing less than to bring all the schools in the Kingdom, 'at which intermediate education is supplied,' except Eton, Winchester, Westminster, Charterhouse, Harrow, Rugby, and Shrewsbury, under the government of one educational council of sixteen, of whom six are to be direct nominees of the Crown, two of the Education Department, and the remaining eight of the Universities of Oxford, Cambridge and London, and the College of Preceptors. And these members of the council, to whom are to be entrusted the government of St. Paul's, Marlborough, Clifton, Cheltenham, Manchester, and other great schools, are to be paid fees like the directors of a company. The only assignable reason that no particular notice has been taken of this measure is, no doubt, that the provisions with respect to the appointment of an educational council have not the ghost of a chance of passing. The Architects' Bill is of a complicated character, and is apparently intended to be as stringent and operative in its effects as the laws regulating the practice of medicine and surgery.

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IN reference to the inquest on the body of the late Duke of Bedford, attention may be directed to the provisions of the Consolidating Coroners Act, 1887 (50 & 51 Vict. c. 71), which lays down the law in a very clear manner. By section 3 an inquest is always to be held 'where a coroner is informed that the dead body of a person is lying within his jurisdiction, and there is reasonable cause to suspect that such person has died either a violent or an unnatural death, or has died a sudden death of which the cause is unknown.' By section 4, subsection 3, the coroner's jury, 'after viewing the body and hearing the evidence, shall give their verdict, and certify it by an inquisition in writing setting forth, as far as such particulars have been proved, who the deceased was, and how, when, and where

he came by his death.' By section 18, subsection 2, an inquisition may be in one of the forms scheduled to the Act, the schedules of which contain, amongst others, a form applicable to *felo de se*, and a form applicable to suicide by a person of unsound mind; while, by subsection 3, 'the coroner, after the termination of an inquest on any death, shall send to the registrar of deaths, whose duty it is by law to register the death, such certificate of the finding of the jury and within such time as is required by the Registration Acts'—*i.e.* within five days after the finding of the jury (see section 16 of the Births and Deaths Registration Act, 1874). Finally, by section 6 a fresh inquest may be held (see, as to this, *Regina* v. *Carter*, 45 Law J. Rep. Q. B. 711) where, by reason of any irregularity in the inquest first held, 'it is necessary or desirable in the interests of justice' that another inquest should be held. The better opinion seems to be, notwithstanding *dicta* of Lord Mansfield and Lord Kenyon to the contrary, that the coroner may in his discretion exclude the public from his Court (see 'Jervis on Coroner,' 5th edit. at p. 24, citing *Gurnett* v. *Ferrand*, 6 B. & C. 611), and it seems also beyond all doubt to be within the discretion of any juror to divulge to any member of the public or refuse to divulge any part of the evidence given at the inquest.

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LORD JUSTICE KAY, in his judgment in *The Attorney-General* v. *Morgan*, made a curious calculation as to the proportion of precious metal to other matter indicated by the expression—one ounce of gold per ton of quartz rock. 'At 12 ounces to the pound,' he said, '1 ounce is not one twenty-six thousandth part of a ton.' It seems clear that the learned judge was here guilty of a confusion between the two independent systems of troy weight and avoirdupois weight. An ounce which should consist of one-twelfth part of a pound avoirdupois would be one twenty-six thousand eight hundred and eightieth part of a ton, and thus we obviously arrive at the basis of the calculation. But no such ounce is known. The ounce troy is one-twelfth part of the pound troy; but the pound avoirdupois contains about 14½ ounces troy. Consequently the ounce troy is less than one thirty-two thousandth part of a ton. The point taken in the judgment is, of course, not weakened but strengthened by correction of the figures, inasmuch as the error was on the side of understatement.

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IN dismissing an application for a new trial on Saturday week last, the Master of the Rolls took occasion to mention what he characterised as 'a scandalous multiplication of costs.' The solicitor to one of the parties had supplied the Court with three copies of the shorthand notes of the summing-up of the judge who tried the case. The Master of the Rolls observed that all that the Court required was given in the note taken by counsel, and that the copies of the shorthand notes were entirely unnecessary. He added that the Court wished public notice to be taken of the fact that, if a solicitor unnecessarily increased costs by the multiplication of documents, and made his client pay for them, he was guilty of misconduct for which he might be made answerable to the Court, under Order LXV., rule 11, and that it might be the duty of the Court to take action under that rule in cases where they thought there was a *primâ facie* case against a solicitor of unduly increasing the costs in that way. These observations of the Court of Appeal will probably check an abuse which has been frequently condemned.

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AN important point of bankruptcy law came before Mr. Justice Kekewich in *In re Croom*; *England* v. *The Provincial Assets Company*, reported in our Notes of Cases for this week. The short question of law was whether, in the case of a scheme of arrangement under section 18 of the Bankruptcy Act, 1883, property acquired by the debtor subsequently to the date of the approval of the scheme by the Court passes to the trustee under the scheme, or belongs to the debtor. In the case before Mr. Justice Kekewich the scheme had been approved by the Court on July 16, 1888, and the after-acquired property consisted of an interest to which the debtor became entitled under a will. The will was dated January 27, 1888, but the testator did not die till September, 1889. The interest of the debtor, therefore, at the date when the scheme was approved by the Court was not known to exist, and did not in fact exist, except as a mere expectancy. Mr. Justice Kekewich, looking to the provisions of sections 18, 28, and 44 of the Bankruptcy Act, 1883, and the contract between the parties—that is, the scheme of arrangement whereby the whole of the debtor's estate was assigned to a trustee for payment of the debts in full by instalments—held that the after-acquired property belonged to the debtor, and not to the trustee. The view of Mr. Justice Kekewich is in accordance with the *dictum* of the late Lord Justice Baggallay in the case of *Ex parte Clark, in re Clark*, 53 Law J. Rep. Chanc. 1,063; L. R. 13 Q. B. Div. 426, where he said: 'Speaking offhand, I am disposed to think that the approval of the scheme by the Court would be equivalent to the discharge of the debtor.'

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IN *Jenkins* v. *Bushby* (Notes of Cases, p. 9) the Court of Appeal, in a considered judgment, elaborately reviewed the rules which relate to the trial of an action by a judge with a jury (Order XXXVI., rules 2–7). The construction which their lordships thought right to put upon those rules, in order to give full effect to all of them, had already been laid down in previous cases, notably in *The Temple Bar*, 55 Law J. Rep. P. D. & A. 1; L. R. 11 P. Div. 6; *Timson* v. *Wilson*; *Fanshawe* v. *The London and Provincial Dairy Company*, L. R. 38 Chanc. Div. 72. But the reason for reinvestigating the subject in *Jenkins* v. *Bushby* was because there appeared to be still some misunderstanding about it. The plaintiffs in that case desired that their action, which was instituted in the Chancery Division, should be tried by a judge with a special jury at the Glamorganshire Assizes. A view of the *locus in quo* would, they said, be necessary, and the best tribunal to try the case would therefore be a jury. Mr. Justice Stirling nevertheless sent the whole action to be tried at the assizes by a judge without a jury, and that was the order appealed from. The Court of Appeal were of opinion that, under the circumstances, the order was wrong, and that the trial ought to be with a jury. A view of the locality being essential, the choice, as regarded the mode of trial, really lay between a trial by a judge and jury, with a view by the jury, and a trial by some referee who could go to the locality. Of those two modes the former appeared to

the Court of Appeal to be the best. Their lordships did not think that rule 6, upon which the plaintiff relied, was applicable, but that, on the contrary, so far as their appeal was based on rule 6, it failed. Rule 7, however, seemed to the Court of Appeal to apply to the case. And as the plaintiffs were in a position to discharge the onus thrown upon them by that rule of showing some good reason why their request should be acceded to—viz. that a view of the locality by a jury was all important—Mr. Justice Stirling's order was reversed.

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THE recent case of *In re Smith, ex parte Hepburn and others*, 59 Law J. Rep. Q. B. 554, was a decision of considerable importance upon the question of the rights of a landlord upon the bankruptcy of his tenant. Smith, who was the lessee of certain land for a term of years, mortgaged it to Messrs. Hepburn by way of underlease. Smith having become bankrupt, his trustee served on the mortgagees a notice of motion for leave to disclaim the lease under section 55, subsection 3, of the Bankruptcy Act, 1883. The mortgagees thereupon, by deed of assignment, transferred the mortgage to one Adcock, a clerk in their employ, to hold the same in trust for themselves. The trustee having obtained leave to disclaim the lease, Mr. Justice Cave, upon the application of the original lessor, made an order, under section 55, subsection 6, excluding Adcock from all interest in the property, and also excluding the mortgagees, unless within two months they should apply for an order vesting the property in them subject to the same liabilities and obligations as the bankrupt was subject to under the lease at the date when the petition was filed. The mortgagees appealed, but the Court of Appeal held that the order was properly made, and that the assignment to Adcock must, as between the mortgagees and the original lessor, be treated as absolutely void. Lord Esher, M.R., in giving judgment, said: 'The only effect and the only intention of that transaction was to defeat the landlord's rights and to evade the Act of Parliament. It did not in any way alter the rights of the parties to the transaction. It seems to me that, in such a case, the Court ought to say that the transaction is a sham and an attempt to evade the law, and ought to treat it as absolutely void.'

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MANY persons who would wish to be considered as having a high standard of honour as between man and man seem to have little sense of honesty when dealing with a company. It may be that they think that a company will not suffer much by their petty dishonesty, yet they would not defend a poor man who stole a 5*l.* note from a millionaire on the same ground. Railway companies are frequently and unblushingly defrauded in this way, and we are glad to see that the Great Western Railway Company are taking criminal proceedings against some passengers who travelled first-class with second-class tickets, and refused to pay the excess fare when it was demanded. We refer to the case of *Noble* v. *Killick and others* (Notes of Cases, *ante*, p. 4). The metropolitan magistrate before whom the case came refused to allow the summons to proceed, on the ground that the company, by demanding the excess fare, had forfeited their right to take criminal proceedings. This decision, if it had been allowed to stand, would have produced very inconvenient results, as the company would have been compelled in self-defence at once to summon a passenger who had been travelling in a class different to that marked on his ticket, unless the passenger volunteered payment of excess, or forfeit their right to have the offender punished by the magistrate. It frequently happens that a person travels in a superior class in order to enjoy the company of a friend, and means to pay the difference at the end of his journey. If he forgot to mention this to the ticket-collector, the latter could not ask him to pay it, as it might be urged that this would be a demand on the part of the company, and therefore a waiver of criminal proceedings. The innocent passenger might then have the annoyance of being served with a summons, and having to appear in the police court. Everyone is presumed innocent until he is proved guilty (at least, in the United Kingdom), and it would be unreasonable to compel the company to take criminal proceedings when a word would have obtained the extra money for the company and saved the passenger from an awkward position. At all events, we are thankful that a Divisional Court have held that the magistrate was wrong in stopping the case, and have remitted it to him.

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THE appropriate terms in which Mr. Inderwick, Q.C., addressed Sir James Hannen on his taking leave of the Court last week must have found an echo in the hearts of hundreds of barristers and solicitors whose duties have brought them in contact with one of the most courteous, able, and impartial judges who have ever upheld the traditions of the English bench. No work is more anxious or delicate than that of the solicitor and counsel entrusted with a probate action or a divorce suit, in both of which 'the seamy side' of human nature is so often disclosed. But it is an undoubted fact that the decisions of the ex-President of the Probate Division were accepted, if not always with satisfaction—for one side must, of course, be disappointed—yet with the knowledge that they were the outcome of a clear, unprejudiced, judicial mind which had noted and weighed every point. If this is high commendation of a judge, it is none the less what suitors have a right to expect; and what, moreover, is absolutely essential in a Court entrusted with such grave issues.

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A CORRESPONDENT recently asked (*ante*, p. 59) whether a copyright play first produced in England, which has been taken down in shorthand at a London theatre, can be represented at a club where no payment is made for admission (such representation being a drawing-room performance) without infringing the provisions of the Copyright Acts or the author's rights. In the first place, the mode of acquiring the language of the play—that is to say, whether it be by procuring a copy in the ordinary way or by taking down the words in shorthand from the lips of the actors—is perfectly immaterial. The right reserved to the author by the statute 3 Wm. IV. c. 15 is the sole right of representation in public during the statutory term of playwright. Again, the question of payment for admission is also immaterial, *Duck* v. *Bates*, 53 Law J. Rep. Q. B. 338. The test is whether the representation is other than domestic and private. If any portion of the public are freely admitted, either with or without payment, the representation will be an in-

fringement of the author's rights. This is a question of fact which must be determined in each case, and although in *Duck* v. *Bates* it was held that a performance in the board-room of a London hospital for the amusement of the patients and nurses was not within the prohibition of the statute, yet the Court of Appeal expressly warned those who should go beyond the facts of that case, that they might incur the statutory penalties.

## AMENDMENTS TO THE SETTLED LAND ACT.

ENGLISH law passes, roughly speaking, through six stages: first, there is the common law, growing up by immemorial custom 'from precedent to precedent,' secondly, the Legislature steps in and alters the common law, bringing it into harmony with the growing wants of the nation; thirdly, the judges interpret the law; fourthly, the Legislature again interferes to support or oppose the judicial interpretations; fifthly, a Consolidation Act is passed which codifies the law; and sixthly, the judges are again called on to explain what still is ambiguous and to throw light on what still is dark. The law of settled land is in the fourth stage of development, and we propose to glance at most of the amendments and additions which the Legislature in its wisdom has made in respect of the Settled Land Act, 1882. The Settled Land Act, 1884 (47 & 48 Vict. c. 18), section 4, enacted that the fine received on the grant of a lease should be considered as capital. Section 5 authorised a tenant-for-life, in giving notice to the trustees, to give a general notice in the case of a sale, exchange, partition, or lease. This still leaves it necessary to give a specific notice in the case of a mortgage or charge (Lewin, 8th ed. p. 558). By the same section a trustee may in writing waive notice, or accept a shorter one than that provided by section 45 of the principal Act. It should be observed that nothing is said about waiving the notice to the solicitor for the trustees. Sections 6 and 7 set at rest the crucial question as to the position of trustees for sale, who can now exercise their trust, unless the Court gives the tenant-for-life power to sell, without any consent not required by the terms of the settlement. Further, where the consent of the tenant-for-life is required by the Act, and two or more persons together constitute the tenant-for-life, the consent of one of such persons is sufficient. The estate of a tenant by the courtesy is to be deemed, by virtue of section 8, to be an estate arising under a settlement made by his wife. Section 11 of the Working Classes Act, 1885 (48 & 49 Vict. c. 72), allows settled land to be sold, exchanged, or leased on terms favourable for the erection of buildings for the working classes, and adds to the list of improvements sanctioned by section 25 of the principal Act 'dwellings available for the working classes.' The recent Act of 1890 (53 & 54 Vict. c. 69, s. 18) defines 'working classes' as including 'all classes of persons who earn their livelihood by wages or salaries; provided that this section shall apply only to buildings of a ratable value not exceeding 100*l.* per annum.' Under the Extraordinary Tithe Redemption Act, 1886 (49 & 50 Vict. c. 54), s. 6, money liable to be laid out in the purchase of lands to be settled may be applied in redeeming extraordinary charges and rent-charges under that Act, and the tenant-for-life can mortgage or sell in order to raise money for redemption. The Settled Land Acts (Amendment) Act, 1887 (50 & 51 Vict. c. 30), permits certain improvement-charges, previously payable by limited owners under the provisions of Acts of Parliament, to be paid out of capital. Certain provisions as to the constitution of Land Commissioners and their powers contained in section 45 of the principal Act were repealed by the Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30), s. 13, and their powers and duties were transferred to the Board of Agriculture. The Settled Land Act, 1889 (52 & 53 Vict. c. 36), permits building leases and agreements for them under the Act of 1882 to contain an option to be exercised at any time within an agreed number of years not exceeding ten, for the lessee to purchase the land leased at a price fixed at the time of the making of the lease or agreement, such price being the best which, having regard to the rent reserved, can reasonably be obtained, and to be either a fixed sum of money or such a sum of money as shall be equal to a stated number of years' purchase of the highest rent reserved by the lease or agreement, such price to be considered capital. The Court of Chancery of the County Palatine of Lancaster had the powers of the High Court given to it by section 46 (8) of the principal Act as regards lands in that county palatine; and by 52 & 53 Vict. c. 47, s. 10, the powers conferred on the High Court by the Acts of 1882 and 1884 as regards land and estates in the County Palatine of Durham may be exercised by the County Palatine Court of Durham. We must not forget to notice that an incumbent has for some purposes the powers of a tenant-for-life, as the Glebe Lands Act, 1888 (51 & 52 Vict. c. 20), s. 8 (4), provides that, 'subject to the provisions of this Act, the provisions of the Settled Land Act, 1882, with respect to the sale of land by a tenant-for-life shall, so far as circumstances admit, apply to a sale under this Act by an incumbent in like manner as if he were the tenant-for-life of the land, and accordingly he shall have the like power with respect to contracts as a tenant-for-life under that Act, and may do all things necessary and proper for carrying into effect a sale under this Act.' The Act of last year (53 & 54 Vict. c. 69) has introduced many desirable changes. Section 4 provides in effect that a settlement on marriage, or as part or by way of any family arrangement, of a life-tenant's interest in settled land is to be deemed one of the instruments creating the main settlement, and not an instrument vesting in any person any right as assignee within the meaning of section 50 of the Act of 1882. Section 5 authorises easements, rights, or privileges to be created on an exchange or partition, or to be given or taken in exchange. A tenant-for-life may, under section 6, complete by conveyance any contract entered into by a predecessor, if the latter could have bound his successors by such a conveyance, and under the next section may grant leases for twenty-one years at the best rent, and not exempting the lessee from punishment for waste without giving notice to the trustees, and even if there are no trustees, and the lease need not be under seal if not for more than three years from the date thereof. In section 8 there are provisions for the rent under mining leases being made to vary according to the minerals or substances gotten. A tenant-for-life can, by virtue of section 9, grant settled land in fee simple for building purposes, reserving a rent-charge in fee simple to which all the powers and remedies attached to rent-charges by the Conveyancing Act, 1881, s. 44, shall be incidental. The rent-charge will itself become subject to the settle-

ment in the place of land sold. Although section 15 of the principal Act is repealed by section 10, it is re-enacted with certain modifications, so that the principal mansion-house, pleasure-grounds, park and lands usually occupied therewith, if exceeding twenty-five acres in extent, cannot be sold, exchanged, or leased without the consent of the trustees or an order of the Court, but a farmhouse is not to be considered a principal mansion-house. Under section 11 the tenant-for-life can raise money by mortgage of the settled land for discharging an incumbrance, and for payment of the costs of the transaction, but an annual sum payable only during a life or lives, or during a term of years absolute or determinable, is not to be deemed such an incumbrance. Section 12 authorises the tenant-for-life and the trustees to buy from and sell to, and make exchanges and partitions with each other, giving the trustees in those cases the powers of a tenant-for-life. Further improvements are sanctioned by section 13 in the nature of bridges, additions to or alterations in buildings to enable them to be let, the erection of buildings in substitution for buildings within an urban sanitary district taken by a local or other public authority, or for buildings compulsorily taken, and the rebuilding of the principal mansion, with limitations as to the expense of the last two items. By section 15 the Court may order payment for improvements out of capital, though a scheme was not submitted to the trustees or the Court before they were executed. Any capital money paid into Court may be paid out to the trustees (section 14). Section 16 extends the list of persons who, in the absence of trustees of the settlement within the meaning and for the purposes of the Act of 1882, shall be considered as such trustees. 1. Trustees under the settlement with a power of or trust for sale of other land comprised in the settlement and subject to the same limitations as the land to be sold, or with power of consent to or approval of the exercise of such a power. In default of them, then (2) the trustees with a future power of or trust for sale of the land to be sold, or with power of consent to or approval of the exercise of such a future power of sale, and whether the power or trust takes effect in all events or not. It should be noticed, in passing, that this section only mentions land to be sold, and omits any reference to land to be leased, mortgaged, charged, partitioned, or given in exchange. The moot point as to whether the provisions of the Conveyancing Act relating to the appointment, discharge, and retirement of trustees apply to trustees for the purposes of the Settled Land Acts is set at rest by section 17, which provides that they are to, and is retrospective in its operation. We have referred to section 18 already as defining the meaning of the expression 'working classes.' Section 19 gives power to any judge of the High Court to vacate the registration of a writ or order affecting land.

## CLAIMS FOR INTEREST UNDER 3 & 4 WILL. IV. c. 42, s. 28.

AT common law it was the general rule that interest was not payable on any debts unless expressly agreed on, or unless a promise could be implied from the usage of trade or other circumstances, or unless the debt were secured by a bill of sale or promissory note (Chitty on Contracts, 8th edit. p. 595; Shelford's Real Property Statutes, 8th edit. p. 256). But the 3 & 4 Will. IV. c. 42, s. 28, it will be remembered, enacts, amongst other things, that upon all debts or sums certain the jury may allow interest to the creditor at a rate not exceeding the current rate of interest from the time—in the case of debts or sums payable otherwise than by virtue of some written instrument at a certain time—when 'demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment.' The question, what is a sufficient notice that interest will be claimed, is one which is still of no unfrequent occurrence. The latest case on the subject is that of *The Rhymney Railway Company* v. *The Rhymney Iron Company*, 59 Law J. Rep. Q. B. 414; L. R. 25 Q. B. Div. 146, where the Court of Appeal, overruling Mr. Justice Grantham on this point, held that a claim for interest made in a writ of summons for the first time is not such a demand as is required by the section, and, accordingly, disallowed the plaintiffs any interest on the sum recovered in the action from the date of the writ. The action in that case was an action by a railway company for charges in respect of the carriage of goods. The point was very shortly disposed of in the judgments of Lord Esher and Lord Justice Lopes, and no authorities appear to have been cited. The nearest case appears to be that of *Ward* v. *Eyre*, 49 Law J. Rep. Chanc. 697; L. R. 15 Chanc. Div. 130, where the Court of Appeal, affirming the decision of the late Master of the Rolls, held that an allegation in an answer to a bill in Chancery, whereby a London agent alleged a balance on account due to him from the plaintiff and claimed interest thereon, was not a sufficient demand in writing or notice within the section. Sir George Jessel held that the necessary requirements of the statute were three, which he stated as follows: 'First of all, there must be a debt or sum certain payable; secondly, there must be a demand of payment in writing by someone, which I take to mean the creditor or his agent; and, lastly, the demand must give notice that interest will be claimed from the date of such demand until the time of payment.' It is obvious that interest might be claimed from the date of the writ consistently with these requirements if Sir George Jessel's statement is to be taken as exhaustive; and a perusal of the judgments of Lord Justice James and Lord Justice Baggallay in the same case on appeal will show that they, too, abstained from laying down any rule that interest cannot be claimed under the Act by the writ of summons or other initiatory step in the action, the actual result of the case as an authority on this point being, we think, accurately stated in the headnote to the LAW JOURNAL REPORT, which is as follows: '*Quære*, whether a statement of claim or defence, averring a sum certain to be due and claiming interest, is, when delivered, a sufficient demand of payment and notice claiming interest.' This question, however, appears to be set at rest by the recent decision of the Court of Appeal in the case we have mentioned, which to the three requirements stated by Sir George Jessel seems to add a fourth—viz. that the demand contemplated by the Act is one before action. Before leaving this subject we may remind our readers that a proper demand in writing and notice under the section, in addition to the delivery of his bill, is still the only way in which, as between himself and his client, a solicitor can obtain interest on profit

charges in respect of contentious business, though as to actual disbursements, as distinguished from profit charges, the taxing-master is now empowered to allow interest at such rate as he thinks just on such disbursements (33 & 34 Vict. c. 38, s. 17); while, in respect of non-contentious business, section 28 of 3 & 4 Wm. IV. c. 42, seems practically superseded by Order VII. made under the Solicitors' Remuneration Act, 1881, which entitles a solicitor to charge interest at 4*l.* per cent. on his 'disbursements and costs from the expiration of one month from demand from the client.' We may add that in the interpretation of this rule the Court of Appeal has adopted the sensible view that the mere delivery of the bill amounts to a sufficient demand (*Blair* v. *Cordner*, 56 Law J. Rep. Q. B. 642; L. R. 19 Q. B. Div. 516), but it is not the practice for the taxing-master to compute such interest on taxation under the common order (*In re Keeping and Gloag*, 23 L. J. N. C. 1888, p. 63).

# Correspondence.

## THE APPEAL IN THE BISHOP OF LINCOLN'S CASE.

SIR,—It seems to be generally taken for granted that the appeal in the above case will bring up for review before the Privy Council the whole of the points which have been so exhaustively discussed in the archbishop's learned judgment. It may be so, but it is at least just possible that the appeal may be disposed of *in limine* on altogether different grounds.

Centuries before our present Courts of law adopted what are now considered among the leading principles of English justice, two fundamental principles were standing rules of every Ecclesiastical Court: (1) No man can be held to be guilty unless he either pleads guilty or is proved to be guilty; the other (2) that no one may be twice placed on his trial for the same offence.

As early as the fourth century—and, indeed, in the 'Apostolic Constitutions' themselves, Book II.—St. Ambrose, in words which have since been incorporated in Gratian's 'Decretum,' A.D. 1144 (Caus. II. Qu. i. c. 17), lays it down that 'It is not the part of a judge to condemn without an answer, because Christ did not condemn Judas altho' he knew him to be a thief.' St. Augustine, whose words are also incorporated in the 'Decretum' (Caus. XI. Qu. iii. c. 75), says: 'Altho' many things may be true, yet no judge dare believe them until they are established by certain proofs,' and (*Ibid.* Caus. II. Qu. i. c. 1) 'We cannot pass sentence on anyone unless he is either properly convicted or spontaneously confesses.' The same language is used by St. Gregory in the sixth century (*Ibid.* Caus. XI. Qu. iii. c. 74) and by Pope Nicolaus in the ninth century (*Ibid.* Caus. XV. Qu. v. c. 2). The fourth Lateran Council, A.D. 1215, Caus. 8 (in 'Decret.' Greg. IX. Lib. V. tit. i. c. 24), which is generally allowed to be authoritative in this country, lays it down that, 'Not only when a subject, but also when a prelate is charged with an excess, the truth ought carefully *to be enquired into* before the ancients of the Church'—the ancients spoken of evidently being canonists, as in Concil. London., A.D. 1075, Caus. 1—where the bishops referred a question of precedence to the ancients, who took a day to consider it.

The other principle is also insisted upon by canonical enactments, and to prevent a person being tried again a second time on the same charge the spiritual Courts had a peculiar machinery of their own, which consisted in imposing perpetual silence on a plaintiff or accuser who had failed to substantiate his case. This practice did not prevent another person from making complaint of the very same thing, since an accuser might conceivably withdraw in collusion with the accused (see Lyndwode, p. 73), but it effectually prevented the same person from again moving in the same matter, since by so doing he would render himself liable to the penalties reserved for the contumacious. The decretals give many instances of silence being thus imposed. In the year 1180 A.D. Alexander III. addressed a decretal to the Archbishop of York concerning the church of Pontefract and its claimants (in 'Decret.' Greg. IX. Lib. V. tit. iii. c. 12), in which he enjoined perpetual silence on R. the claimant, not on the ground that his claim was bad in itself, but because he had himself been party to a simoniacal contract. In the year 1208 A.D. Innocent III. (in 'Decret.' Greg. IX. Lib. V. tit. xvi. c. 6) imposed perpetual silence on a wife who had failed to substantiate a charge of adultery against her husband, and (*Ibid.* Lib. V. tit. i. c. 15) on a clerk who, after promising to abide by the archbishop's decision in a complaint against his bishop, sought to go on with his complaint, notwithstanding the archbishop's direction to drop it. It is true that in Edward II.'s time, A.D. 1315, when the prelates wished to extend the principle forbidding a repetition of litigation to Courts spiritual and temporal among themselves, the King made answer (Coke, 2 Inst. 622): 'When any one case is debated before judges spiritual and temporal (as above appeareth upon the case of laying violent hands on a clerk), it is thought that, notwithstanding the spiritual judgment, the King's Court shall discuss the same matter as it shall deem expedient;' but the very terms of the answer imply that both then, as in after times, it was the rule alike of temporal and spiritual Courts that no one could be twice vexed for the same matter, and that the only cases in which departure from this rule was permitted were when proceedings had been taken in the spiritual Court *pro salute animæ*, and proceedings were also necessary in the temporal Court *pro salute reipublicæ*.

The Privy Council, to which the appeal is now pending in *The Bishop of Lincoln's Case*, is, in the eye of the law, not a temporal but a spiritual Court, and the appeal is made to it not by the Bishop of Lincoln, but by the Bishop of Lincoln's accusers. How can such an appeal lie consistently with the principle just enunciated?

For convenience, the articles may be divided into two parts, (1) those on which the Bishop of Lincoln has been condemned, and (2) those on which he has been acquitted. As regards the former, there is no doubt the Bishop of Lincoln might have appealed had he thought fit so to do, but since he has not thought fit so to do, but has submitted, that part of the accusation is finally disposed of.

In respect of the other articles on which he has been acquitted, it seems to be forgotten that he has been acquitted—whether rightly or wrongly is immaterial to the present issue—and that this is a criminal case. If a man who is acquitted of stealing cannot be put on his trial again, even when an Irish jury under the in-

fluence of party feeling has acquitted him in the face of the facts, how can an English bishop be put on his trial again when he has been acquitted by a Court of competent jurisdiction which no one accuses of bias?

There may or there may not be good grounds for believing that, if the bishop had himself appealed to the Privy Council on the points on which he has been condemned, his appeal would have resulted in the reversal of his condemnation on these points. But on what principle of English canonical or temporal law can an accuser, who has failed once, continue to harass one who has been acquitted under the disguise of an appeal?

OSWALD J. REICHEL.

## COSTS UNDER ORDER XIV. RULE 1.

SIR,—I shall be glad to learn what is the experience of some of my professional brethren who practise in district registry chambers as to costs allowed when judgment obtained by plaintiff under Order XIV.

The district registrar in the town where I practise formerly allowed solicitors to take the 'allowance' (7*l.*) instead of undertaking all the trouble, delay, and extra expense of 'taxing costs.' But he has recently stated that, owing to a decision of one of the judges of the High Court in chambers, a fixed sum can no longer be allowed as formerly.

I forget the name of the case; but, assuming the registrar is right, is not this an instance where the Law Society should take steps to get the former practice reintroduced?

A COUNTRY SOLICITOR.

January 26.

# Unreported Cases.

## COUNTY COURTS.

### PRINCIPAL AND SURETY—GIVING TIME TO PRINCIPAL DEBTOR—DISCHARGE.

AT the Ilkeston County Court, on Wednesday, January 7, before his honour Judge Barber, Q.C., the case of *The Black Lion* 20*l. Loan Club* (*Lim.*) v. *Ryde & Smith* was heard. His Honour: This is an action commenced in the Queen's Bench Division of the High Court (Nottingham District Registry), which by an order dated November 18, 1890, was transferred by the master in chambers, pursuant to section 65 of the County Courts Act, 1888, to this Court for trial; and by another of the same date, the master gave the defendant Ryde liberty to defend. The plaintiffs claim to recover from the defendant Ryde the sum of 32*l.* 7*s.* 4*d.*, which they allege to be the balance due to them on the following promissory note: 'Nottingham, June 1, 1888. 46*l.* On demand we jointly and severally promise to pay the Black Lion 20*l.* Loan Club (Lim.) the sum of 46*l.* sterling for value received, with interest at the rate of 2*l.* 10*s.* per annum.' This note is signed by Charles John Smallwood, Wm. Ryde, and Edward Henry Smith, and their signatures are attested by Mr. Thomas Carter Cave, who was then and is now the secretary of the club. Smallwood was a member of the club, and, in accordance with the rules of the club (a copy of which was put in), required and obtained from the club an advance of 40*l.* for his own purposes, and not being able at the time to pay the prescribed premium of 6*l.*, the club also advanced this sum to him to be applied for the purpose of paying the premium, thus increasing the principal debt to 46*l.* The defendants in this action derived no benefit from the advance; as between themselves and the club they were simple sureties for their friend's debt, and the club knew it when they took the note. There are certain defences raised in Ryde's statement which may be conveniently disposed of at this point, leaving for a subsequent part of my judgment the only substantial question which was raised in argument. It is suggested that the note was given merely for the accommodation of Smallwood, from whom no consideration proceeded; but it is quite clear (and I so hold) that as between themselves and the club the sureties, with full knowledge of what they were doing, guaranteed the principal debtor's debt, and the club accepted such guarantee. Another suggestion is, that there was an express agreement that the defendant should be liable only for a moiety of the debt and as surety for Smallwood only, and that the plaintiff had notice and knowledge of such an agreement having been made. No such an agreement was attempted to be proved at the trial; and it was conclusively proved that the note was intended to be a joint and several note for the whole 46*l.*, as it purports to be. There is another defence which ought never to have been made unless the defendant had strong evidence to support it—viz. that the signatures of the defendants to the note were obtained under false representations. There is not a tittle of evidence to justify any such charge. I now proceed to the only material issue which I have to decide, which depends on some further facts. The particulars showing how the 32*l.* 7*s.* 4*d.* was the amount due when the action commenced are thus made out: to the loan of 46*l.* is added 2*l.* 8*s.* 4*d.* for interest, making together 48*l.* 8*s.* 4*d.*; from this is deducted 8*l.* 11*s.* paid by Smallwood, thus reducing the principal debt to 39*l.* 17*s.* 4*d.*, and this is further reduced by 7*l.* 10*s.* paid by the defendant Ryde, thus making the amount now claimed 32*l.* 7*s.* 4*d.* It appeared from the evidence and also the correspondence that Smallwood (the date was not given) lost his situation in consequence of some bodily injury he received; he promised repeatedly to pay as soon as he got a situation he had in view, and the club was unwilling to press him too hard. He got the situation, but soon after lost it, and was adjudicated a bankrupt. The whole period during which he was allowed the indulgence of a little time for payment of his arrears was not long, and there is no evidence that the plaintiffs have lost or prejudiced their remedy against the sureties by their own laches or delay. When Smallwood lost his last situation, and before his bankruptcy, the plaintiffs began to press Mr. Ryde, and a correspondence took place between the latter and the secretary of the club, commencing with a letter of the secretary, dated April 16, 1890, claiming the sum of 24*l.* 19*s.* 5*d.*, the full amount then due; and he explains to Ryde, in a letter of April 21, 1890, the circumstances under which they had allowed Smallwood a little indulgence. After this it appears that the club, not wishing to press the defendant Ryde too hardly, authorised their secretary to accept payment from Ryde at the rate of 2*l.* 10*s.* a month. Accordingly the defendant Ryde made three payments of 2*l.* 10*s.* each without any demur. During the early part of October the secretary pressed him for further payments, and eventually the defendant Ryde wrote and sent to Mr. Cave a letter of October 15, 1890, in which he said, 'I have taken legal advice, and consider I am not liable in the slightest degree to be called upon for any further payments.' Thereupon this action was at once commenced. The defence relied on is that because the plaintiffs allowed Smallwood for a few months a little time, asking him each month to pay up, and only postponing further pressure on the faith of his promises that when he got the new situation which he was then expecting and afterwards did get, the sureties are absolutely released from liability under the note. The law on this point is, to my mind, most clear. In *Samuell* v. *Howarth*, 3 Mer. 272, 278,

Lord Eldon thus states it: 'The rule is this—that if a creditor, without the consent of the surety, gives time to the principal debtor, by so doing he discharges the surety; that is, if time is given by virtue of positive contract between the creditor and the principal, not where the creditor is merely inactive.' In the case of *The Oriental Financial Corporation* v. *Overend, Gurney & Co.*, 41 Law J. Rep. Chanc. 332; 7 Ch. App. 142, the same principle is enunciated by Lord Hatherley: 'It is not simply neglecting to sue the principal, but there must be a positive agreement with the principal that the creditors will postpone the suing of him to a subsequent period.' I may also refer to *Wright* v. *Hickling*, 36 Law J. Rep. Chanc. 40; L. R. 2 C. P. 199, and the still later case of *Clarke* v. *Birley*, 58 Law J. Rep. Chanc. 616; 41 Chanc. Div. 422, where, in far more difficult circumstances than I have to deal with here, the same principle was strictly adhered to. In this case there is no evidence of any positive contract, or indeed of any contract at all, between the plaintiffs and Smallwood; if there were, why was not Smallwood called as a witness, and why did the defendant, after he knew all the circumstances, pay the three instalments of 2*l.* 10*s.* each? In my opinion, the plaintiffs are entitled to recover the amount they claim. It appears to me that they were not bound to set off against the liabilities of the sureties the subscriptions paid by Smallwood as a member of the club, but as by so doing they have reduced, and not increased, his liability, I see no reason why I should not give them judgment for the whole amount claimed. I have purposely postponed referring to an important case of *Greenough* v. *M'Clelland*, 2 L. T. Rep. (N.S.) 571). The second headnote is misleading, and the principle of the decision is, when carefully examined, quite consistent with the law as I have stated. They find that the defendant was a surety only (a fact not really questioned here), and they base their decision on the principle laid down in *Pooley* v. *Hawardine*, 26 Law J. Rep. Q. B. 156; 7 E. & B. 431, and after observing that the Court of Queen's Bench had reviewed all the cases in the course of their judgment, incorporate the following extract from it into their own judgment: 'We give our judgment for the defendant on the present plea, on the ground that it appears to us sufficiently to state that the relation of principal and surety existed between the defendant and the principal debtor *inter se*, and that the plaintiff had knowledge of that fact when the notes were made and received by him, and when he entered into a binding agreement to give time to the principal debtor.' Williams, J., who gives the judgment of the Court, added these few words: 'These two facts' (*i.e.* the suretyship and that the plaintiff entered into a binding agreement with the debtor to give him time) 'exist in the present case, and therefore the principle is expressly applicable to it and ought to be binding.' The principle is not applicable to this case, because no positive or binding agreement for postponement has been proved.—Stevenson (instructed by F. F. Walker, Nottingham) for the plaintiffs; J. Wheatcroft (Belper) for the defendants.

## CALLS TO THE BAR.

THE following gentlemen have been called to the bar during the present Hilary term:—

*By the Honourable Society of Lincoln's Inn.*

Frank Campbell Gates, Balliol College, Oxford.
George Russell Northcote, M.A., Fellow of New College, Oxford.
Thomas Sutton Timmis, jun., Christ Church, Oxford.
James Latimer Crawshay St. Clair, a Lieut.-Colonel in Her Majesty's army.
Herbert John Mongan, LL.B, Cambridge.
William Stoney, B.A., Oxford.
Kenneth Forbes Wood, B.A., Oxford.
George Chatfield King, B.A., Sydney, New South Wales, and B.A., Oxford.
Albert Charles Clauson, St. John's College, Oxford, a Tancred law student.
Roger Bernard Lawrence, B.A., London.
Frederick Beechey, Calcutta University.
Gerald James Thorne Seckham, B.A., Cambridge.
Henry Theodore Dempster Sweet, of the Madras Forest Department.
Oruganti Sivarama Krishnamma, B.A., Madras.

*By the Honourable Society of the Inner Temple.*

Gerald Yeo, B.A., Oxford.
Walter Leopold Buller, Cambridge.
Frank Mildred Birch.
Charles Taylor, M.A., Oxford.
Alexander Dingwall Bateson, B.A., Oxford.
Benjamin William Campion, B.A., Cambridge.
Richard Denison Cumberland-Jones, B.A., Cambridge.
William George Torr, B.A., Oxford.
Mark William Dixon, B.A., Oxford.
Stamford Hutton, B.A., Cambridge.
Thomas Percy Draper, B.A., Cambridge.
Norris Tildasley Foster, B.A., Oxford.
William Sharpe Stretton, LL B., Cambridge.
Pelham Rawstorn Papillon, B.C.L., M.A., Oxford.
George Walter Scott, B.A., Calcutta.
Pepyat Williams Evans, M.A., B.C.L., Oxford.
William Rennie, B.A., LL.B, Cambridge.
Charles Meikle Nelson, B.A., Oxford.

*By the Honourable Society of the Middle Temple.*

Ernest Frederick Abbott.
Cottari Soorya Prakasha Rao Nayudu, B.A., Downing College, Cambridge.
Percy Harland Atkin.
Andries Stockenström, B.A., Cambridge.
Hubert Morgan Brown, LL.B., Cambridge.
William Henry Adams.
Arthur John Aloysius O'Connor.
Richard Whitbourn Turner, B.A., Trinity Hall, Cambridge.
Louis George Gustave Roobery.
James Aitken.
Hubert Bayley Drysdale Woodcock (Middle Temple Common Law Scholar, 50 guineas).
Kaikhosro Edalji Ghamat (Middle Temple Common Law Scholar, 20 guineas).
Raghunath Das Garge.
Malwa Ram Mehta.
Henry Cowper Gollan, M.A., Edinburgh.
Peter Horace Martyr.

*By the Honourable Society of Gray's Inn.*

William Henry Cromie, University of London, first-class studentship (200 guineas) in Jurisprudence and Roman Law, Trinity, 1889, the Society's Lee prize, 1890, Barstow Law Scholarship, 1890.
James Richard Atkin, obtained the highest position at the examination for the Arden Scholarship held in Michaelmas Term, 1890, Demy of Magdalen College, Oxford.
Owen Cook, Her Majesty's Civil Service, Gray's Inn Holt Scholar, 1888.
William Richard Vale, University of Melbourne.
Thomas Probert Perks, LL.B., London, Lecture prize of 70*l.* (Hilary, 1891), in equity and common law.

The following scholarships have been awarded by the Treasurer and Masters of the Bench to students of the Honourable Society of the Middle Temple, viz.:—

Real and Personal Property: P. E. Baldwin, a first-class scholarship of 50 guineas; R. W. Turner, a second-class scholarship of 20 guineas.

Common and Criminal Law: E. J. R. Surrage, a first-class scholarship of 50 guineas; W. J. Brown, a second-class scholarship of 20 guineas.

Equity: H. W. H. Knott, a first-class scholarship of 50 guineas; F. R. M. Cleaver, a second-class scholarship of 20 guineas.

International and Constitutional Law: R. C. Maxwell, a first-class scholarship of 50 guineas; J. Morrison, a second-class scholarship of 20 guineas.

## THE NEW JUDGE.

HER MAJESTY has been pleased to approve of the name of Mr. Francis Henry Jeune, Q.C., to be one of the Justices of the High Court of Justice, a vacancy having arisen in that Court by the appointment of Sir James Hannen to be a Lord of Appeal in Ordinary. Mr. Francis Henry Jeune, Q.C., has been appointed a Judge of the Probate, Divorce, and Admiralty Division, to fill the vacancy caused by the recent appointment of Sir James Hannen to be a Lord of Appeal in Ordinary. Mr. Jeune, who is the eldest son of the late Bishop of Peterborough, Dr. Magee's predecessor, was born in 1844, and was educated at Balliol College, Oxford. He had a brilliant university career, obtaining a first class in Classical Moderations in 1863 and a first in *Literæ Humaniores* in 1865. He also won two university prizes for historical essays, the Stanhope in 1863, and the Arnold in 1867. He has been a Fellow of Hertford College. Immediately on taking his degree in 1865 he came to London to read for the bar. He was called at the Inner Temple in November, 1868, and was created a Queen's Counsel in 1888. Mr. Jeune is the holder of several ecclesiastical appointments, and, in addition to being a well-known ecclesiastical lawyer, has been extensively engaged in commons and right-of-way cases. It may be remembered that Mr. Jeune was junior counsel for the Claimant in the civil action for the Tichborne estates, the present Lord Chancellor being one of the leading counsel on the same side. Mr. Jeune married, in 1881, Mary Susan Elizabeth, daughter of Keith William Stewart-Mackenzie, of Seaforth, and widow of Colonel the Hon. John Constantine Stanley, next brother of the present Lord Stanley of Alderley. The new judge was sworn in before the Lord Chancellor at Westminster on Thursday morning, and took his seat in Court the same day. Mr. Justice Butt will now become President of the Division.

## INCORPORATED LAW SOCIETY.

THE following notice has been issued:—

Incorporated Law Society,
Chancery Lane, London, W.C.:
January 15, 1891.

Dear Sir,—In pursuance of the resolution passed at the adjourned annual general meeting, held on July 15, 1881, to the effect that meetings of the society should be held in January and April, I am directed to inform you that a special general meeting of the members of the society will be held in the Hall of the society on Friday, the 30th inst., at two o'clock precisely, to consider the subjects hereafter mentioned, and of which notice has been duly given:—

Mr. Charles Ford will move: 'That this society in general meeting assembled hereby affirms its former declaration that the interest of suitors and the due administration of justice require that motions in the Courts of the Chancery Division should be set down in a list, and taken in the order in which they appear in such list, no precedence being given to leaders of the bar.'

Mr. F. K. Munton will move: 'That, having regard to the strongly expressed opinion at the annual provincial meeting at Nottingham (when dissenting from the principle of abolishing imprisonment for debt), that it would be expedient to procure legislative rules to guide the judges as to the sufficiency of evidence on which imprisonment for debt should be ordered, the council should now appoint a small committee to consider the matter, and report upon it.'

I am, dear Sir, faithfully,
E. W. WILLIAMSON, Secretary.

## EXAMINATIONS AT THE INCORPORATED LAW SOCIETY IN THE YEAR 1890.

### SPECIAL PRIZES OPEN TO ALL CANDIDATES.

*Scott Scholarship.*

THOMAS EDWARD SILVESTER being, in the opinion of the council, the candidate best acquainted with the theory, principles, and practice of law, they have awarded to him the scholarship founded by Mr. John Scott, of Lincoln's Inn Fields. Mr. Silvester served his clerkship with Mr. Frederick Theobald Langley, of Wolverhampton, and Mr. Henry John Smith, of London, and obtained the Clement's Inn and Daniel Reardon prizes at the Honours Examination held in January, 1890.

*Broderip Prize.*

Harry Opie Smith having shown himself best acquainted with the law of real property and the practice of conveyancing, having passed a satisfactory examination and attained honorary distinction, the council have awarded to him the prize, consisting of a gold medal, founded by Mr. Francis Broderip, of Lincoln's Inn. Mr. Smith served his clerkship with Mr. William Every, of Honiton, and Messrs. Torr, Janeways, Gribble & Oddie, of London, and obtained the New Inn prize at the Honours Examination held in January, 1890.

### LOCAL PRIZES.

*Timpron Martin Prize for Candidates from Liverpool.*
*Atkinson Prize for Candidates from Liverpool or Preston.*

William Newby Gradwell having, from among the candidates from Liverpool, passed the best examination, and attained honorary distinction, the council have awarded to him the prize, consisting of a gold medal, founded by Mr. Timpron Martin, of Liverpool; and having, from among the candidates from Liverpool or Preston, shown himself best acquainted with the law of real property and the practice of conveyancing, otherwise passed a satisfactory examination, and attained honorary distinction, the council have awarded to him the prize, consisting of a gold medal, founded by Mr. John Atkinson, of Liverpool. Mr. Gradwell served his clerkship with Mr. Palgrave Simpson, of the firm of Messrs. Simpson, North & Johnson, of Liverpool, and obtained the John Mackrell prize and a second-class certificate at the Honours Examination held in November, 1890.

*Birmingham Law Society's Prize for Candidates from Birmingham.*

Arthur John Lees having, from among the candidates from Birmingham, been the first in order of merit, and recommended by the examiners as entitled to honorary distinction, and awarded a prize, the council have awarded to him the gold medal of the Birmingham Law Society. Mr. Lees served his clerkship to Messrs. Thursfield & Messiter, of Wednesbury, and Messrs. Bower, Cotton & Bower, of London, and obtained a prize from the Incorporated Law Society at the Honours Examination held in January, 1890.

*Stephen Heelis Prize for Candidates from Manchester or Salford.*

John Okell having, from among the candidates from Manchester or Salford, passed the best examination, and attained honorary distinction, the council have awarded to him the prize, consisting of a gold medal, founded in memory of the late Mr. Stephen Heelis, of Manchester. Mr. Okell served his clerkship with Mr. Robert Okell, of Manchester, and Messrs. Chester & Co., of London, and obtained a third-class certificate at the Honours Examination held in January, 1890.

On report of the Examination Committee, and
By Order of the Council,
E. W. WILLIAMSON,
Secretary.

Law Society's Hall.
Chancery Lane, London: January 23.

## LONDON COUNTY COUNCIL.

THE usual weekly meeting of the Council of the Administrative County of London was held on Tuesday, January 27, in the Council Hall, Spring Gardens, Sir John Lubbock, M.P., the chairman, presiding.

### THE SOLICITOR TO THE COUNCIL.

The general purposes committee presented a report with regard to the steps which should be taken with a view to the appointment of a successor to Mr. Ward in the office of solicitor to the council. They had had before them information as to the number of, and amount paid to, the salaried officers in the solicitor's department at different times during the last ten years, expenditure for Parliamentary business over the same period, salaries of that portion of the staff which had been chiefly occupied with Parliamentary business, and the number and amount of purchases carried out under each street or other improvement scheme since 1877 to illustrate the amount of conveyancing work. The duties and responsibilities hitherto attached to the office of solicitor to the late Board of Works and of the County Council were described as follows:—

(*a*) The solicitor to the London County Council has been called 'The Solicitor,' and conducted all legal business of the council, attended the meetings of the council and Parliamentary committees of the Houses of Parliament, taking the instructions of the chairman, vice-chairman, or deputy-chairman as to any matter not the subject of an order of the council or a committee, and, as regards the latter matters, keeping the chairman, vice-chairman, or deputy-chairman informed thereof.

(*b*) Reported to and advised on all legal matters of the different committees of the council, and attended them when necessary.

(*c*) Has been responsible for the entire staff in the solicitor's department and its conduct, and for the due expenditure of all moneys and fees disbursed in or connected with legal business, and for all books and accounts required to be kept. On the late solicitor's being appointed solicitor to the late Board of Works, in 1878, the salary was fixed at 1,200*l.* per annum, in 1881 it was increased to 1,500*l.*, and in 1884 to 1,750*l.*; and on his retirement he was granted a pension of 962*l.* 10*s.* per annum. After explaining the way in which the business of the department had hitherto been conducted, the committee recommend that the office of solicitor to the council be filled up, and that the salary attached to the office be 1,500*l.* per annum, and that an advertisement, inviting applications for the office, be inserted in certain publications, and that a copy of the advertisement be sent to the secretary of the Incorporated Law Society. After noticing the duties of the Parliamentary agent, the committee recommend that for such duties the Parliamentary agent be paid, in lieu of the Parliamentary taxed charges hitherto paid to him, a fixed amount of 1,100*l.* for work performed during the Parliamentary session, commencing in the autumn of the year 1890 to 1891, such sum being the average of the taxed charges for the same duties during the last ten years, and that such salary be paid quarterly, the first payment to be considered as due on December 31 last, and in substitution of any costs now payable for such duties; and, further, that the appointment be made on the condition that the Parliamentary agent shall not claim or be entitled to any superannuation or pension.

Consideration of the report was postponed until next meeting.

## ELECTION OF COUNTY COUNCILLORS IN BOROUGHS.

THE Local Government Board have issued the following circular to all boroughs returning two or more county councillors:—

Sir,—I am directed by the Local Government Board to state that their attention has been drawn to certain apprehended difficulties in holding the triennial election of county councillors in boroughs.

The effect of section 75 of the Local Government Act, 1888, which makes section 52 of the Municipal Corporations Act, 1882, applicable to the election of county councillors, is to require that the ordinary day of election of county councillors shall be the same as that of town councillors—viz. November 1; and subsection (1) of the first-mentioned section provides that in a year in which county councillors are elected, the elections of those councillors, and of councillors of a borough, shall be conducted together.

The first election in accordance with these provisions will be held on November 2 next, November 1 in the present year falling on a Sunday.

It appears to the board that the provision that the elections shall be conducted together requires not only that the two elections shall be held simultaneously, but also that where the elections are contested the polling shall be conducted for the same districts and at the same polling places and that the same officers and staff shall, as far as practicable, be employed for both elections.

In order that the elections may be conducted in accordance with these requirements in the case of a borough entitled to return more than one county councillor, it appears to be necessary that the electoral divisions for the election of county councillors should be coextensive with one or more wards or polling districts for the election of town councillors. Where this is not at present the case, the board would strongly impress upon the town council the desirability of taking steps to remove the obstacle thus occasioned to the elections being held together.

It seems to the board that this may be effected by the division of the borough or the wards of the borough into polling districts by the town council, under section 64 of the Municipal Corporations Act, 1882, or by the alteration of the polling districts if the borough is at present divided into such districts. For example, in the case of a borough returning two county councillors, which has not been divided into wards or polling districts for the election of town councillors, it appears to the board that such polling districts should now be formed to correspond with the electoral divisions for the election of county councillors. If the borough is divided into two wards which are not conterminous with the electoral divisions, but contain portions of each division, each ward should be divided into polling districts coextensive with the parts of the ward in each electoral division.

It may be that in a few exceptional instances the part

of an electoral division in a particular ward is extremely small. In such a case the town council may consider that it would be better that the electoral division should be altered rather than that the small overlapping area should be formed into a separate polling district. The board think that the electoral divisions should not be altered unless serious inconvenience would otherwise follow; but if this course cannot be avoided, it will be competent for the town council to apply to the Board to make the requisite alteration under section 54 (1) of the Local Government Act.

It is important that any alterations of areas that may be carried out in accordance with the suggestions in this letter should be made before the overseers commence the preparation of the burgess lists for the present year; and the Board are desirous, therefore, that the subject should be considered by the town council at the earliest possible date. Should an alteration in the electoral division be requisite, it is essential that the necessary application to the Board should be made at once, as a local inquiry would have to be held before any such alteration could be effected.

The Board may take this opportunity of pointing out the necessity for strict compliance by the overseers with the instruction in the precepts which they will receive from you, that if their parish is divided into, or forms part of, more than one polling district, electoral division, or ward, they must make out a list of burgesses for each part which is in a separate polling district, or separate electoral division, or separate ward, as if it were a separate parish. Neglect of this requirement might give rise to serious difficulties in holding the elections, and the Board suggest that the special attention of the overseers should be called to the matter when the precepts are sent to them.

I am, &c.,
HUGH OWEN, Secretary.

## LORD SPENCER ON NEWSPAPERS.

LORD SPENCER, K.G., presided on Saturday, January 17, at Northampton, at the annual dinner of the Northampton District of the Institute of Journalists. There was a large attendance, including Sir Algernon Borthwick, M.P. (the president of the institute), Sir George Gunning, and his Honour Judge Snagge. The Bishop of Peterborough wrote regretting that a previous engagement prevented his attending.

Lord Spencer, in the course of his speech, said that every Parliamentary bill to relieve newspapers had tended to develop their influence and their power. From Mr. Fox's Libel Act in 1792 to Sir Algernon Borthwick's Libel Act in 1888, all the Acts which had tended to relieve newspapers of their disabilities had been direct incentives to their progress and to the educational work which they had taken up. The first Act which he had named might be called the Magna Charta of the newspaper press in these realms. The last Act had been one of enormous value, and they had to congratulate Sir Algernon Borthwick on having succeeded in carrying it through Parliament. This matter of legislation in regard to the press had not been wholly one-sided, and if he gave credit, as he did most sincerely, to his friend Sir Algernon for having carried that bill, he hoped he should not be unduly trenching on political matters if he took some consolation to himself from the fact that, from Mr. Fox to another great statesman, the party to which he had the honour of belonging had done a great deal towards this legislation. No one would contradict him when he said that the repeal of the stamp duty and the repeal of the paper duty had done more in the direction of spreading education and spreading the influence of a good press than any other measures that had ever been passed. Those measures were due to Mr. Gladstone more than to any other prominent statesman in this country. The growth of the press was wonderful. Not half a century ago there were only 400 newspapers in the United Kingdom, and now there were 2,200, and no less than 470 or 480 of these were in the metropolis alone. That was a marvellous development, and a marvellous influence for good or evil in the country. And the preponderance for good was very large. How marvellous, again, was some of the work that was done in the newspapers to-day. He looked to politics, which was the trade to which he belonged. How much he owed to the press in regard to that. Nothing could be more marvellous than the system which now prevailed of reporting public speeches. A great speaker had every word of his speech reported within a few hours of its delivery word for word. Then how much speakers owed to the newspaper reporters. He supposed there were not twenty speakers in England whose speeches would bear being reported exactly as they were delivered without correction whatever. Speakers, reckoned as very good speakers, had various tricks; they repeated certain words and certain sentences and certain phrases when they were passing from one subject to another. These would be monotonous and ridiculous if they were repeated in print. They also in their struggles, even with their prepared speeches, very often flounded in their grammar. A gentleman reading the speech might think how wonderful it was that a man could get up on his legs and make a long speech, very often of an hour and a half, and very often far too long, in such exquisite language. He did not remember that for its finishing-touch the speech owed a debt, not to the speaker, but to the reporter. He corrected the speaker's mistakes, omitted his repetitions, and dished up his speeches in excellent language, and yet somehow or other he managed to maintain the particular style that the speaker had. Speakers therefore were under a debt of the deepest gratitude to reporters for sending out their speeches in a readable form to the public.

## AT THE LAW COURTS.

THE Hilary Sittings at the Law Courts began on Monday, January 12, and the most noteworthy point about it, whether to the legal profession or the public, is the marked decline in the number of causes down for trial. Last year there were 1,014, this year there are 963—a difference of 51. The Court of Appeal, too, has a comparatively light list. It would serve no end to cumber the discussion with a mass of figures. Suffice to say that the record of the last few years points in the same direction, and that the purely professional journals have some reason for the lamentations in which they are indulging over the decline of legal business. That decline is scarce to be measured by the figures quoted. The population grows fast, our wealth still faster. Under normal conditions we ought to be litigating not much less but much more than ever. Of course the public has not the least sympathy for the lawyer in his distress. Were the Courts shut up for 'lack of argument,' were leading counsel restored to the briefless condition of their earlier days, were the poet's vision realised of 'vile attorneys now a useless race'—even the man in the street would credit the millennium. The interests of a particular class or a particular profession are nothing as against the public weal; and if the decline could be explained by the consoling fact that people were growing more honest or less quarrelsome, then might we all rejoice. But what if the need be great as ever, while the remedy is not as efficient? What if the work is there to be done,

and from various causes the work is simply not being brought to be done? It does seem to be a fact that a man will submit to injustice, forego his right, in fact do anything rather than appear as party to an action. Both professional and non-professional prints are agreed on this; so the practical reformer may well ask why it is so, and can the matter be remedied?

The obvious stumbling-block is costs, in which meagre word the difficulty is briefed. 'Were money no object and time of no importance, then were the Court of Chancery the most perfect of institutions;' so a great lawyer remarked of that once powerful institution, and so perhaps the ordinary layman thinks of all legal tribunals. But this has not very much to do with it. Small fees do not encourage litigation. In the Scots local Courts, where the scale of charges is notoriously inadequate, in most cases the business seems shrinking year by year. Opposite forces may produce the same result: 'Cold performs the effect of fire;' and if in one case the clients and in another the lawyers shun the tribunals, the results may be the same. But an action in the Supreme Court must always be costly. Probably a chief cause of complaint is the want of finality. Certain decisions may be appealed against as many as four times; with the expenses increasing in an increasing ratio with every move. There must be some liberty to appeal, otherwise there would be no uniformity in decisions; but at present that liberty is too great. A still more clamant cause of complaint is the bad arrangement of time, so that suitors and witnesses are often kept hanging about the Court for days before their causes come on. The judges' work is so heavy that materially to increase their weekly task would not be just; but some years ago they sat far longer than they do now. At any rate the change we are about to suggest would probably be as acceptable to them as it would certainly be to people having business in the Courts. The hours are from 10.30 to 4, with half an hour's interval. If the sitting were from 10 to 5, with an hour's interval, that would give five more hours a week; and in return therefor the Saturday sitting, which lasts about three hours, might be given up. The advantage to the suitor would be that his case would be tried on the day appointed very much oftener than now. Again, the system of circuits, by which most of the judges on the Queen's Bench Division are withdrawn for weeks at a time from town, is badly in need of revision; and arrangements once made should be more rigidly adhered to than they are. By small reforms like these the efficiency of our legal system would be vastly increased—there is neither need of nor room for sweeping changes.

After all, the decline of business in the Supreme Court has good points about it. Costs are felt most heavily where the subject-matter in dispute is small; and actions of this sort are either begun in the County Court or are sent down there at an early stage in their career in constantly increasing numbers. The statistics of these important tribunals show this; show, too, that the public does get a good deal of its law both cheaply and quickly enough. Moreover, it may be that we are less inclined to be quarrelsome than our fathers were before us. Let us hope that we are.—*National Observer.*

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HER MAJESTY has been pleased to approve, on the recommendation of the Lord Chancellor, of the names of the following gentlemen for appointment to the rank of Queen's Counsel: John Francis Rotton, John Edward Barker, William Cecil Smyly, Ralph Wardlaw M'Leod Fullarton, James Douglas Walker, George Farwell, Charles Edward Heley Chadwyck-Healey, Ernest Laurence Levett, and William Robert Bousfield. These gentlemen on Tuesday last duly took their seats within the bar.

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, BOWEN, L.J., and FRY, L.J.

THURSDAY, JANUARY 22.

*Steinman & Co.* v. *Angier Line* (1887) (*Lim.*) (*Damage to Cargo*) (appeal of defendants from judgment of Smith, J., dated August 5, at a trial without a jury at Derby).—*Cur. adv. vult.*

FRIDAY, JANUARY 23.

*Jones* v. *Williams* (appeal of plaintiff from judgment of Denman, J., and Wills, J., dated January 29, after trial before Manisty, J., with a special jury at Carmarthen).—Dismissed.

*Winfield & Sons* v. *Snow Brothers* (appeal of plaintiffs from judgment of Hawkins, J., dated August 14, at trial without a jury at Birmingham).—Dismissed.

*Dobell & Co. and others* v. *SS. Bencroy Company* (*Lim.*) (appeal of defendants from judgment of Smith, J., dated July 29, at trial without a jury at Liverpool).—Dismissed.

SATURDAY, JANUARY 24.

*Smith* v. *Northern Enamelled Iron Company* (*Lim.*) (appeal of plaintiff from judgment of Hawkins, J., dated August 18, at trial without a jury at Birmingham).—Judgment varied.

*Farnham* v. *Peel* (appeal of defendant from findings of judge and judgment of Lawrance, J., thereon, dated August 13, at trial without a jury at Birmingham).—Part heard.

MONDAY, JANUARY 26.

*Cusack and another* v. *London and North-Western Railway Company* (Q. B. *Crown Side*) (appeal of plaintiffs from order of Pollock, B., and Charles, J., dated January 12, refusing extension of time for appealing from County Court).—Allowed.

*Owners of Empress of India and Cargo* v. *Owners of SS. Rheinfels* (appeal of defendants from refusal of Butt, J., dated January 20, of order for affidavit of discovery).—Order varied by consent.

*Stevens* v. *Hinshelwood & Co.* (application of defendants for judgment or new trial on appeal from verdict at trial before Lawrance, J., in Middlesex).—Granted.

*Same Action* (application of plaintiff for judgment).—Refused.

TUESDAY, JANUARY 27.

*Bennett* v. *M'Donald* (application of defendant for judgment or new trial on appeal from verdict and judgment at trial before Grantham, J., in Middlesex).—Dismissed.

*Crumbie* v. *Wallsend Local Board* (application of defendant for judgment or new trial on appeal from verdict and judgment at trial before Wills, J., at Newcastle).—Dismissed.

WEDNESDAY, JANUARY 28.

*Shrapnel* v. *Everett* (application of defendant to set aside judgment entered for plaintiff at trial before Grantham, J., and for inquiry as to title and validity of patent).—Granted.

*Jamieson* v. *Jamieson* (application of plaintiff *in formâ pauperis* for new trial on appeal from verdict at trial before Grantham, J., in Middlesex).—Refused.

*Jamieson* v. *Carden and others* (application of plaintiff *in formâ pauperis* for new trial on appeal from verdict at trial before Grantham, J., in Middlesex).—Refused.

*Sheppards, Pelly & Co.* v. *Wilkinson and another* (application of defendants for new trial on appeal from judgment dismissing counter-claim at trial before Pollock, B., in Middlesex).—Refused.

*Heath* v. *Moore* (appeal of defendants Moore and Boyd for new trial on appeal from verdict and judgment at trial before Grantham, J., in Middlesex).—*Same* v. *Same* (application of defendants King, Sell & Railton (Lim.) for new trial).—Withdrawn on terms.

*Foreign Wine Growers' Co. (Lim.)* v. *Hopkins* (application of defendant from judgment or new trial on appeal from verdict and judgment at trial before Denman, J., with special jury at Guildford).—Refused.

*Taylor* v. *London and North-Western Railway Company* (application of defendants for judgment or new trial on appeal from verdict and judgment at trial before Smith, J., with special jury at Manchester).—Refused.

## APPEAL COURT II.

Before LINDLEY, L.J., LOPES, L.J., and KAY, L.J.

THURSDAY, JANUARY 22.

*Hayes* v. *Burgess* (application of defendant for judgment or new trial on appeal from verdict and judgment, dated July 16, 1890, at trial before Grantham, J., in Middlesex. *Hayes* v. *Burgess* (application of plaintiffs for judgment).—Record withdrawn.

*Steel* v. *Dartford Local Board* (application of plaintiff for judgment or new trial on appeal from nonsuit at trial before Grantham, J., in Middlesex).—Application refused.

FRIDAY, JANUARY 23.

*Phelps, James & Co. and others* v. *C. G. Hill and others* (application of plaintiffs for judgment or new trial on appeal from verdict and judgment at trial before Mathew, J., in Middlesex).—*Cur. adv. vult.*

*Turner* v. *Goldsmith* (application of plaintiff to set aside judgment entered for defendant at trial before Grantham, J., with a jury in Middlesex).—Application granted.

Before LINDLEY, L.J., and KAY, L.J.

SATURDAY, JANUARY 24.

*J. W. Sey* v. *W. Griffith & Co.* (appeal of plaintiff from order of Kekewich, J., dated December 15, refusing application to examine plaintiff abroad under existing or further commission).—Varied.

*Ingham* v. *Sutherland* (appeal of defendant E. C. Sutherland from order of Kekewich, J., dated November 21, refusing application to open a foreclosure).—Dismissed for default of appearance.

*Barney and Birmingham, &c., Banking Company (Lim.)* v. *Joshua Stubbs (Lim.) and another. In re Joshua Stubbs (Lim.) and Companies Acts* (appeal of official liquidator from order of Kekewich, J., dated December 3, granting leave to proceed with action and refusing motion to appoint appellant receiver).—Dismissed.

Before LINDLEY, L.J., LOPES, L.J., and KAY, L.J.

MONDAY, JANUARY 26.

*In re Leavesley* (heard January 12).

*Jenkins* v. *Bushby* (appeal of plaintiffs from order of Stirling, J., dated December 1, refusing trial by jury; heard January 14).—Appeal allowed and order varied.

TUESDAY, JANUARY 27.

*Bown* v. *Centaur Cycle Company* (appeal of plaintiff from judgment of Kekewich, J., dated November 19).—Part heard.

WEDNESDAY, JANUARY 28.

*Jones* v. *Watts* (appeal of plaintiffs from order of North, J., dated November 19, allowing objections to taxing-master's certificate).—Dismissed.

*Mills* v. *Dunham* (appeal of defendant from order of Chitty, J., dated December 5, restraining solicitation of orders from customers of plaintiff within certain radius).—Part heard.

## OBITUARY.

MR. CHARLES FREDERICK FORD, late clerk of the papers in the Probate Registry, Somerset House, died on the 6th inst., in his eightieth year. He was a civil servant for fifty-seven years, having entered the old Prerogative Office, Doctor's Commons, so long ago as September, 1830. By his retirement in 1888 the Probate Registry lost its oldest servant, and one of the few remaining links which connect the present age and system with the past was severed. The death at the present time of a man who was acquainted with the old state of things as described by Dickens in 'David Copperfield,' and knew the originals of the characters portrayed under assumed names in one of the 'Sketches by Boz,' and who knew the late Sir John Rolt when that judge was a proctor's clerk in the Commons, is a matter of interest. Mr. Ford was a man whom to know was to like, although his earnestness of purpose and integrity of motive may not through his long life have always met with fitting appreciation.

GRAY'S INN.—The examiners appointed by the Arden trustees have awarded the Arden Law Scholarship of 60*l.* a year, tenable for three years, to Mr. James Richard Atkin, who was called to the bar by the Honourable Society of Gray's Inn on Monday. The special subjects for examination for the Arden Scholarship were the law of partnership and the law of trusts.

MIDDLE TEMPLE. — Wednesday, January 28, being 'Grand Day' in the Middle Temple, in the evening the treasurer (Lord Coleridge) and the benchers entertained a distinguished company at dinner in their hall. The guests included the Bishop of Peterborough (Archbishop-Designate of York), Lord Esher (Master of the Rolls), Lord Macnaghten, Lords Justices Bowen, Fry, and Lopes, Mr. John Morley, M.P., Mr. Justice Mathew, the Master of Balliol, Major-General Montgomery-Moore, the Rector of Exeter College, Oxford, Mr. Henry Craik, C.B., Mr. C. Cavendish Clifford, Mr. Duncan Darroch, Captain Coleridge, the Rev. Canon Ainger (Reader at the Temple Church), and Mr. J. W. Waldron (the under-treasurer). The benchers present were Lord Hannen, Mr. Hunter Rodwell, Q.C., Sir Thomas Chambers, Q.C., Mr. Joseph Brown, Q.C., Judge Prentice, Judge Sir Francis Roxburgh, Mr. Justice Day, Lord Justice Lindley, Mr. Cowie, Q.C., Mr. Hopwood, Q.C., Mr. Murphy, Q.C., Mr. Philbrick, Q.C., Mr. Macrory, Q.C., Mr. Lockwood Webb, Q.C., Sir Richard Couch, Mr. Ambrose, Q.C., M.P., Mr. Graham, Q.C., Mr. Finlay, Q.C., M.P., Mr. Warmington, Q.C., M.P., Mr. Henn Collins, Q.C., Mr. Bigham, Q.C., Mr. Stallard, Mr. Finlason, Mr. Gainsford Bruce, Q.C., M.P., Mr. Shiress Will, Q.C., M.P., Mr. John Digby, Mr. French, Q.C., Sir F. V. Smith, Mr. Crump, Q.C., and Mr. H. D. Greene, Q.C.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## CALENDAR OF THE COUNTY COURTS.

FROM FEBRUARY 2 TO FEBRUARY 7.

| No. of Circuit | His Honour | February 2 | February 3 | February 4 | February 5 | February 6 | February 7 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Pfoulkes | — | Altrincham | Northwich | — | Birkenhead | — |
| 8 | Judge Heywood | — | Manchester | Manchester | Manchester | Manchester | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | — | — | — | Middlesbrough | Stockton-on-Tees | — |
| 19 | Judge Barber | — | Derby | Derby | Chesterfield | Chesterfield | — |
| 26 | Judge Jordan | Stoke | Newcastle | Lichfield | Stafford | Leek | — |
| 47 | Judge Powell | — | Lambeth | Woolwich | Lambeth | Greenwich | — |
| 54 | Judge Metcalfe | Bristol | Bristol | Bristol | Bristol | — | — |
| 58 | Judge Edge | — | Exeter | Exeter | Exeter | Newton Abbot | Torquay |

## NOTICES FOR THE WEEK.

### ROTA OF REGISTRARS.

MONDAY, February 2. — Court of Appeal No. 2: Mr. Clowes. Mr. Justice Chitty: Mr. Carrington. Mr. Justice North: Mr. Farmer. Mr. Justice Stirling: Mr. Pemberton. Mr. Justice Kekewich: Mr. Beal. Mr. Justice Romer: Mr. Leach.

Tuesday, February 3.—Court of Appeal No. 2: Mr. Jackson. Mr. Justice Chitty: Mr. Lavie. Mr. Justice North: Mr. Rolt. Mr. Justice Stirling: Mr. Ward. Mr. Justice Kekewich: Mr. Pugh. Mr. Justice Romer: Mr. Godfrey.

Wednesday, February 4.—Court of Appeal No. 2: Mr. Clowes. Mr. Justice Chitty: Mr. Carrington. Mr. Justice North: Mr. Farmer. Mr. Justice Stirling: Mr. Pemberton. Mr. Justice Kekewich: Mr. Beal. Mr. Justice Romer: Mr. Leach.

Thursday, February 5.—Court of Appeal No. 2: Mr. Jackson. Mr. Justice Chitty: Mr. Lavie. Mr. Justice North: Mr. Rolt. Mr. Justice Stirling: Mr. Ward. Mr. Justice Kekewich: Mr. Pugh. Mr. Justice Romer: Mr. Godfrey.

Friday, February 6.—Court of Appeal No. 2: Mr. Clowes. Mr. Justice Chitty: Mr. Carrington. Mr. Justice North: Mr. Farmer. Mr. Justice Stirling: Mr. Pemberton. Mr. Justice Kekewich: Mr. Beal. Mr. Justice Romer: Mr. Leach.

Saturday, February 7.—Court of Appeal No. 2: Mr. Jackson. Mr. Justice Chitty: Mr. Lavie. Mr. Justice North: Mr. Rolt. Mr. Justice Stirling: Mr. Ward. Mr. Justice Kekewich: Mr. Pugh. Mr. Justice Romer: Mr. Godfrey.

MR. HENRY WILLIAM LORD, Registrar of the Court of Probate for the County of Lancaster, has been appointed a Registrar of the Chief Probate Registry, Somerset House, in succession to Mr. Middleton, who recently resigned, after having held the office for many years.

REPORTERS AND ARBITRATIONS. — A singular incident took place on January 22 in the arbitration case of *Goater and Craven* v. *Godfrey*, which refers to the ownership of a number of racehorses, including one named Primrose Day, a Cesarewitch winner. Mr. Hopkins, the new London police-magistrate, is the arbitrator, and during the proceedings a note was handed him. He then said that he understood that a reporter was in Court, and the proceedings were private. Mr. Lockwood, Q.C., protested against objections being taken by private notes instead of in open Court, and said that he had attended scores of arbitrations where reporters had been present. The arbitrator, however, decided that the reporter should withdraw.

## LAW STUDENTS SOCIETIES.

LIVERPOOL.—At a meeting of this association on Monday, the 26th inst., a debate was held on the following subject for discussion: 'A., a director of a company, intending to send a letter to a co-director containing defamatory statements about B. in regard to the latter's conduct in the affairs of the company, by mistake sends it to C., a shareholder of the company. Is A. liable in an action for damages?'—Mr. E. G. Finch opened in the affirmative, which was also supported by Mr. Barnes.—Mr. A. Forshaw opened in the negative, which was also supported by Messrs. F. W. Archer and H. Todd.—The question was decided in the negative by a majority of fourteen.

## HONOURS AND APPOINTMENTS.

MR. J. BRADLEY DYNE, of Lincoln's Inn, has been appointed by the Attorney-General Conveyancing Counsel to the War Office, in succession to Mr. F. Ramadge, resigned.

Mr. Foster Henry Okey Nash, B.A. (of the firm of Bockett, Stunt & Nash), of 60 Lincoln's Inn Fields, W.C., has been appointed a Commissioner for Oaths. Mr. Nash was admitted in 1883.

Mr. Percy Clarke (of the firm of Ellis, Munday & Clarke), of 23 College Hill, E.C., has been appointed a Commissioner for Oaths. Mr. Clarke was admitted in 1884.

Mr. Charles Alfred Wood (of the firm of Holder & Wood), of 40 Cheapside, E.C., has been appointed a Commissioner for Oaths. Mr. Wood was admitted in 1884.

Mr. James Leake, Jun., of Shifnal, has been appointed a Commissioner for Oaths. Mr. Leake was admitted in 1884.

Mr. Arthur John Edward Newton (of the firm of Arthur Newton & Co.), of 24 Great Marlborough Street, W., has been appointed a Commissioner for Oaths. Mr. Newton was admitted in 1884.

Mr. John James Arnsby Soper, of 59 Chancery Lane, W.C., has been appointed a Commissioner for Oaths. Mr. Soper was admitted in 1884.

Mr. John Hart, LL.B., of 22 Great Winchester Street, E.C., has been appointed Solicitor to Reuter's Telegram Company (Lim.).

Mr. Frederick William Butler (of the firm of Rawlinson & Butler), of Horsham and Crawley, has been appointed a Commissioner for Oaths. Mr. Butler was admitted in 1884.

Mr. William Thornton Jones (of the firm of Glynne, Jones & Jones), of Beaumaris & Bangor, has been appointed a Commissioner for Oaths. Mr. Jones was admitted in 1884.

Mr. John Thomas Roberts, of Carnarvon and Llanberis, has been appointed a Commissioner for Oaths. Mr. Roberts was admitted in 1884.

CREMATION FORBIDDEN IN DENMARK.—A Reuter's telegram, dated Copenhagen, January 16, says: 'In pursuance of a decision pronounced by the Supreme Court to-day, cremation will be prohibited in Denmark, pending the passing of the new law for the disposal of the dead.'

MR. THOMAS STAMFORD RAFFLES, stipendiary magistrate of Liverpool, died yesterday in his seventy-third year. A few days ago he contracted a cold, which turned into congestion of the lungs. He was appointed stipendiary of Liverpool in 1860, and was one of the oldest stipendiaries in the country. He was a barrister of the Inner Temple and an able lawyer. He was the son of the well-known Rev. Dr. Raffles.

THE MUZZLING ORDER.—The justices of the peace in the Osgoldcross Division of Yorkshire recently addressed a memorial to Mr. Chaplin, asking for a repeal of the muzzling order in that division of West Yorkshire. In reply, Mr. Chaplin states that he fears a relaxation of the order just as it is completing its work would be to undo all the good that has been done, but the memorialists may rely upon it that the order will not be maintained longer than is absolutely necessary, and quotes statistics showing a steady decrease of rabies in the county.

THE NORTHERN CIRCUIT.—The following are the arrangements made by the judges (Mr. Justice Day and Mr. Justice Lawrance) for holding the ensuing assizes on the Northern Circuit—viz.: The commissions will be opened at Appleby on Monday, February 9; at Carlisle, on Wednesday, February 11; at Lancaster on Tuesday, February 17; at Manchester, on Monday, February 23; and at Liverpool on Saturday, March 7. Business will commence at each place on the day next after the commission day at 11 o'clock, unless otherwise ordered. Civil business will not be taken at Carlisle before Friday, February 13, or at Lancaster before Thursday, February 19. The trial of special jury cases will commence at Manchester on Thursday, February 26, and at Liverpool on Wednesday, March 11, at the sitting of the Court, unless otherwise ordered. When a cause in the list has been settled, immediate notice thereof must be given to the associate by the party who entered it.

THE HIGH COURT AND THE COUNTY COURTS.—Within the last few days two remarkable instances have occurred of the way in which difficult points of law, especially on the construction of modern Acts of Parliament, arise simultaneously in the High Court and County Courts. In Brentford County Court, on the 9th inst., the official receiver's trustee applied for the judge's ruling in a case—*In re Grubb*—as to whether the discharge of a man who was adjudicated a bankrupt before the Bankruptcy Amendment Act of 1890 came into operation was subject to the penalties provided in section 8 of that Act. His Honour Judge Stonor held that, by virtue of section 38 of the Interpretation Act, 1889, he was not subject to these penalties, but only to those contained in the Bankruptcy Act of 1883. In the Bankruptcy Division of the High Court, on the 13th inst., precisely the same question arose before Mr. Justice Cave in a case—*In re Raison*—which he decided in the same way and on the same grounds. At the Brompton County Court, on Wednesday, the 21st inst., questions arose under the Bills of Sale Acts, 1878 and 1882, as to the correctness of the descriptions of the attesting witness and of the grantor of a bill of sale, which were the same as arose in the important case of *In re Heseltine* in the Court of Appeal on the very same day, as reported in the *Times* of January 23. The counsel concerned applied for an adjournment to await the decision in this case, which Judge Stonor naturally granted, ultimately deciding the case in accordance with the decision of the Court of Appeal.

BALLIOL AND THE BENCH.—Mr. Grigsby writes to the *Times* as follows: 'Sir,—It is a noteworthy fact that, by the elevation of Mr. Jeune to the bench, Balliol College has now seven representatives on the Supreme Court of Judicature—namely, Lord Chief Justice Coleridge, Lords Justices Bowen and Lopes, Justices Chitty, Kekewich, Wright, and Jeune. This record is probably unparalleled. —Yours obediently, W. E. GRIGSBY, Balliol College, Oxon., 7 King's Bench Walk, Temple, E.C., January 27.'

## BIRTHS.

On Jan. 20, at 82 Brooke Road, Stoke Newington, the wife of Frederick Armitage, Solicitor, of a son (Arthur).

On Jan. 20, at Bedford Lodge, Campden Hill, W., the wife of John Lawson Walton, Queen's Counsel, of a son.

On Jan. 20, at Parkview, St. Margaret's, Middlesex, the wife of J. R. R Godfrey, Barrister-at-Law, of a daughter.

On Jan. 22, at 12 Palatine Square, Burnley, the wife of H. J. Ernest Holmes, Solicitor, of a son.

On Jan. 24, at Donbank, Aberdeen, N.B., the wife of A. J. W. Storie, Solicitor Supreme Courts of Scotland, of a daughter.

On Jan. 26, at 10 Woburn Square, London, W.C., Maude (*née* Bretherton), the wife of John Bamford Slack, Solicitor, of a daughter.

## MARRIAGES.

On Jan. 14, at St. Paul's Church, Lindale-in-Cartmel, Ernest Newton, youngest son of the late Colonel Deakin, M.P., J.P., of Werrington Park, Devon, and Moseley Park, Cheshire, to Laura Elizabeth, daughter of Joseph Deakin, of Eller How, Grange-over-the-Sands, Barrister-at-Law.

On Jan. 15, at St. Matthew's Church, West Kensington Park, Rev. George Crowle, vicar of Corringham, only surviving son of Charles Uppleby, Q.C., J.P., D.L., of Barrow Hall, Lincolnshire, to Margaret Augusta, daughter of the late Lieut.-Colonel Charles Brown Constable, 18th B. N. I., J.P., D.L., of Wallace Craigie, Forfarshire, and 1 Lansdown Place, Cheltenham.

On Jan. 15, at the Parish Church, Hampstead, James Cross Phillips, of 10 Christchurch Road, Hampstead, and 17 Coleman Street, E.C., Solicitor, to Anna, second daughter of the late James Hepburn, of Camden Town and Hampstead.

On Jan. 21, at the Parish Church, West Bergholt, near Colchester, Anthony Nichol Bowman, Solicitor, Carlisle, younger son of the late John Bowman, of Newtown, Irthington, Cumberland, to Laura Phœbe, second daughter of William Wilberforce Daniell, of West Bergholt.

On Jan. 21 at St. Marylebone Church, Rev. Edward Arthur Bagot, only son of the late Rev. Edward Bagot, M.A., LL.D., and D.C.L., of Kildoon, county Kildare, Ireland, to Harriet Lilian, youngest daughter of the late Francis Dennis Massey-Dawson, of Ballinacourty, Ireland, and Barrister-at-Law of the Inner Temple.

On Jan. 24 (by license), at Gedney, Lincolnshire, Thomas Hawkesley Capes, Solicitor, Manchester, to Annie, eldest daughter of the late Thomas Foster, The Manor House, Moulton, Lincolnshire.

On Jan. 24, at the Church of St. Andrew's, Holborn, Benjamin Whitehead, B.A., Barrister-at-Law, only son of Mr. B. Whitehead, Holborn, to Annette Constance, daughter of Mr. Robert Ingpen, of 95 Chancery Lane.

## DEATHS.

On Jan. 16, at 88 Crofton Road, Camberwell, Thomas Edmund Winn, many years Chief Clerk to the late Sir Richard Paul Amphlett, Lord Justice, aged 74 years.

On Jan. 21, at 12 Sevington Street, W., Richard Henry Cole, of the Inner Temple, Barrister-at-Law, aged 40.

On Jan. 22, at his residence, Abercromby Square, Liverpool, Thomas Stamford Raffles, Police Magistrate of Liverpool.

On Jan. 23, at Thorn Bank, Marple, Cheshire, Francis Williams Johnson, Solicitor, Coroner for the Stockport and Hyde Magisterial Divisions of the County of Chester, aged 59 years.

On Jan. 23, at Florence, Catherine Mary Woodroffe, of Oaklea, St. Leonards-on-Sea, widow of Charles Henry Wilts Woodroffe, of Lincoln's Inn, Barrister-at-Law, aged 42 years.

On Jan. 23, at New Southgate, N., Sarah Kezia, widow of the late George Horsey, Barrister-at-Law, aged 69.

On Jan. 25, at his residence, 106 Queen's Gate, S.W., Captain Henry Gillett Gridley, late one of Her Majesty's Body Guard, a Deputy-Lieutenant of the Tower of London, and Barrister-at-Law, aged 70 years.

On Jan. 27, at Folkestone, Edgar Hyde, M.A., of the Inner Temple, Barrister-at-Law, formerly Fellow of O.C.C., Oxford, aged 61.

On Jan. 28, at the residence of her niece, 337 Brixton Road, Isabella, fifth daughter of the late John Gould, Solicitor, Brompton, Kent, in her 87th year, and late of 14 Cornfield Terrace, Eastbourne.

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# The Law Journal.

*SATURDAY, FEBRUARY 7, 1891.*


## 'OBITER DICTA.'

THE whole question whether a Roman Catholic might in 1872 become Lord Chancellor or not will be found exhaustively treated in the reply of the Attorney-General (Sir John, now Lord, Coleridge) to Sir Colman O'Loghlen in the House of Commons (in the May of that year) to the question whether, 'according to the existing law, any religious qualification was necessary for the offices of Lord Chancellor or Lord Lieutenant of Ireland; and, in particular, whether a Roman Catholic or a Jew, or either of them, was eligible to hold either or both of such offices.' It is there pointed out that the saving contained in the Statute Law Revision Act, 1863, which repealed the Test Act, prevents it having the effect of throwing the office open, and that the saving of 30 & 31 Vict. c. 62, which abolished the declaration against transubstantiation, might possibly have a similar operation. The Attorney-General gave it as his opinion, however, 'though a right hon. friend differed from him, and he (the Attorney-General) was quite ready to receive correction with the greatest possible humility,' that the effect of the Promissory Oaths Act, 1871 (34 & 35 Vict. c. 48), which abolished the Test Act Amendment Acts of Geo. I. and Geo. II., 1 Geo. I., s. 2, c. 13, and Geo. II. c. 26, without any saving, was to abolish the restriction against Roman Catholics, and to throw open the office of Lord Chancellor. Since 1872 the law does not appear to have been altered, and we have little doubt that a Roman Catholic may become Lord Chancellor without the assistance of Mr. Gladstone's bill, though not by virtue of the Act of 1863, but by virtue of the Act of 1871. It would, however, be in the highest degree dangerous for a Roman Catholic Lord Chancellor to be appointed without special enabling legislation, as otherwise all his judicial acts might come to be called in question as being *coram non judice*. As to a Jew, or an atheist, there is no doubt whatever, Jews having become enabled in 1867, and atheists by Mr. Bradlaugh's Act of 1888.

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IN *Knowles* v. *Duncan* the plaintiff recovered 10,000*l.* by the verdict of a jury in the absence of the defendant, who was the proprietor of the *Matrimonial News*, for breach of promise of marriage, the plaintiff being a young lady about nineteen and the defendant being aged about seventy. On motion for a new trial on the ground that the damages were excessive, the Court of Appeal has, by consent, reduced the damages to 6,500*l.*, but if that amount, with costs, be not paid within a month, the original verdict is to stand. As a precedent, therefore, the case is valuable as being the first on record in which a Court has reduced the damages in a breach of promise action on the ground of excess. From the time of William III. downwards, when in *Harrison* v. *Cage*, Carth. 467, a jury found for the plaintiff for 400*l.*, the Courts have steadily set themselves against granting new trials on the ground of excess of damages in breach of promise cases. But, inasmuch as the largest sum ever known to have been recovered by the verdict of the jury (without any compromise, such as in *Finney* v. *Garmoyle*, where 10,000*l.* was recovered by consent) was 3,500*l.*, in *Wood* v. *Hurd*, 2 B. N. C. 166, we are not surprised that the course of leaving everything to a jury should at last have received some check. But we doubt whether complete justice will ever be done until, by the reintroduction and passing of Lord Herschell's or some similar bill, the law of this country in these matters has been more assimilated to that prevailing in European countries generally, where the damages are limited to actual pecuniary loss. See Hansard, vol. ccxlv. pp. 1867–1887, where a full account is given of the resolution of Lord (then Mr.) Herschell, which was carried in the House of Commons by 106 to 45 in 1879.

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IN reporting the case of *Regina* v. *Alderson*, in which the trial of a person accused of crime was ordered to be held under 19 & 20 Vict. c. 16 at the Central Criminal Court, although the offence was committed out of the jurisdiction of that Court, the *Times* reporter, probably by

a printer's error, is made to speak of the Act in question as *Palmer's* Act. Surely the Act ought to have been described as *The Palmer* Act, it having been passed (see *Regina* v. *Palmer*, 5 E. & B. 1024) in order to amend the law by which apprehended indictments of the murderer Palmer had been removed from Stafford into the Queen's Bench on the ground that a fair trial could not be had in Staffordshire. The true *Palmer's Act* (more properly called *Hinde Palmer's Act*) is 32 & 33 Vict. c. 46, which abolished the priority of specialty over simple contract debts in the administration of the estate of a deceased person, and was so called from having been introduced into Parliament by the late Mr. Hinde Palmer. Amongst Acts besides the Palmer Act known by the names of persons whose conduct gave rise to them are the Thellusson Act, the repealed Coventry Act (22 & 23 Car. 2, c. 1), and the Victor Townley Act (27 & 28 Vict. c. 29), which was passed in consequence of the escape from justice of the murderer Townley, in order to require more strict proof of the condition of prisoners alleged to be insane. The Acts named after the persons more honourably connected with them by passing them through Parliament are far more numerous—*e.g.* there is Pollock's Act, Denman's Act, Campbell's Act, the Recorder's Act (introduced by the late Mr. Russell Gurney), Sir Morton Peto's Act, Mr. Finlay's Act (for while the author is still living some prefix is usual), and a host of others. But what a distinction between the two kinds of nomenclature!

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THE case of *Budd* (*appellant*) v. *Lucas* (*respondent*) affords yet another instance of the beneficial operation of the Merchandise Marks Act, 1887, in weeding out trade irregularities. The respondent was the senior partner of a firm of brewers. The appellant, one of their customers, wrote to them in November, 1889, complaining that, in consequence of rumours he had heard, he had measured one of their barrels—a 'barrel' containing in the trade thirty-six gallons—and found it full two gallons short measure. Notwithstanding this, a barrel was delivered to him in January, 1890, which again contained short measure, and thereupon proceedings were taken against the respondent under the Merchandise Marks Act, 1887. With the beer the carman left an invoice, in which the cask in question was called a barrel. Was this an application of a false trade description to the cask within section 2, subsection 1 (*d*) of the Act? If so, the respondent was guilty of an offence against the Act, unless he could prove that he acted without intent to defraud. Much misapprehension appears still to exist as to the effect of the Act with respect to the responsibility of an employer for the act of his servants. *Chisholm* v. *Doulton*, 58 Law J. Rep. M. C. 133, which was cited, is not in point, as it turned solely on the words of 16 & 17 Vict. c. 128, a statute for abating the nuisance arising from the smoke of furnaces in the metropolis, while *Wood* v. *Burgess*, 59 Law J. Rep. M. C. 11, in which mineral water was supplied in bottles bearing the name of a rival manufacturer, was also decided upon the words 'acted innocently' in subsection 2 of section 2 of the Merchandise Marks Act. *Storey* v. *The Chilworth Gunpowder Company*, 59 Law J. Rep. M. C. 13, was upon subsection 1 of the section, but the question there was whether, when a false trade description had been intentionally applied to gunpowder equal in quality to powder of the respondents' own manufacture, which, owing to an accident, they were unable to supply, there was an intent to defraud within the meaning of the subsection, and it was held that there was. Little authority, however, is needed, since the words of the section, 'unless he proves that he acted without intent to defraud,' are scarcely capable of two meanings, and the Court (Mr. Baron Pollock and Mr. Justice Charles) had no difficulty in deciding that the subsection does not alter the old law that a master is not criminally liable for the act of his servant, except to the extent of shifting the onus of proof on to the master to show that he personally acted without intent to defraud. With this intimation, therefore, the case was remitted to the justices, who had indeed found in favour of the defendant upon the point, but had, in doing so, excluded evidence of previous short deliveries, which, it is obvious, was in the highest degree material; and it was further intimated that, if the defendant failed to show that he acted without intent to defraud, the invoice might constitute an application of a trade description to the casks of beer within the meaning of the Act. The wide terms of section 5 (*d*) of the Act leave but little room for doubt upon this point.

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THE question whether an action for damages will lie in respect of a personal injury accidentally caused to the plaintiff was fully considered by Mr. Justice Denman in the recent case of *Stanley* v. *Powell*, 60 Law J. Rep. Q. B. 52. The learned judge held that, unless the defendant had been guilty of negligence, such an action was not maintainable. It is somewhat curious that such an important point should not have been actually decided before. There are, however, several authorities bearing upon the question, all of which were dealt with by Mr. Justice Denman in the course of his judgment. The defendant, who was one of a shooting party, fired at a pheasant which rose, and accidentally shot the plaintiff, who was employed to carry the game killed, in the eye. The jury found that the defendant was guilty of no negligence in firing as he did, and the accident was in fact caused by a shot from the defendant's gun striking the bough of a tree, and glancing off in the direction where the plaintiff was standing. Under these circumstances Mr. Justice Denman held that the action was not maintainable, the defendant having fired without any intention of injuring the plaintiff, and the jury having negatived negligence.

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THE Bristol justices have declined to crack the nut presented to them, and the question whether the holder of a 'six-day' license is bound to close his premises on Good Friday and Christmas Day as well as on Sunday will remain an open one till after Good Friday next, at any rate, unless Sir Wilfrid Lawson should succeed in prevailing upon Parliament to interpose with a settlement. Meanwhile, let us see what the law is. By section 49 of the Licensing Act, 1872, 'the holder of a six-day license shall keep his premises closed during the whole of Sunday, and the provisions of this Act with respect to the closing of licensed premises during certain hours on Sunday shall apply to the premises in respect of which a six-day license is granted as if the whole of Sunday were mentioned in those provisions instead of certain hours only.' The provisions of the Licensing Acts as to closing were at first wholly

contained in section 24 of the Licensing Act, 1872, but that, with other sections, was repealed by section 33 of the Licensing Act, 1874, which Act, however, is by section 1 'to be construed as one Act' with the Act of 1872. We think, therefore, though with some little doubt, that section 3 of the Act of 1874 is to be read exactly as if it stood in lieu of section 24 of the Act of 1872 in the Act of 1872 itself. Then what does section 3 of the Act of 1874 say? After prescribing certain hours for closing on Sunday for all licensed premises, it enacts that 'such premises shall be closed on Christmas Day and Good Friday, and on the days preceding Christmas Day and Good Friday respectively, as if Christmas Day and Good Friday were respectively Sunday and the preceding days were respectively Saturday; but this provision shall not alter the hours during which such premises shall be closed on Sunday when Christmas Day immediately precedes or succeeds Sunday.' A horrible complication! But the spirit of the Act is clearly in favour of Christmas Day closing on the part of the six-day man. Is the letter in favour of it also? We think so, for it seems to us that in section 49 of the Act of 1872 Sunday means what it means in section 3 of the Act of 1874.

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A QUESTION of very great practical importance to the smaller shareholders in joint-stock companies was recently raised, but not decided, in an action by the Aylesbury Dairy Company, in which Mr. Justice Chitty ordered the name of the company to be struck out as plaintiffs. This question was simply whether, where a company has no articles of association except those prescribed by 'Table A,' it is within the power of the larger to disfranchise the smaller shareholders. By section 52 of the Companies Act, 1862, 'in default of regulations, every member of a company under that Act shall have one vote.' By Article 44 of 'Table A' 'every member shall have one vote for every share up to ten; he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.' By section 50 of the Act, any company may by special resolution alter all or any of the regulations contained in 'Table A,' where such table is applicable, or 'make new regulations to the exclusion of or in addition to all or any of the regulations of the company.' The Aylesbury Dairy Company passed a special resolution rescinding Article 44 of 'Table A,' and enacting in effect that no shareholder should have a vote unless possessed of a hundred shares. Was this resolution valid? On the whole we think not, but the question is an extremely difficult one, and quite untouched by direct authority. If, however, the law should be that such a resolution is valid, we think it ought to be altered in favour of giving each shareholder at least one vote. At the same time, the practice of dividing the capital into holdings of small nominal amount is greatly to be deprecated. We incline to think that the minimum value of a share should be 50*l*.

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THE Copyright Bill will now probably come on for second reading in the House of Lords next week, though we believe that the day has not yet been fixed. Like all bills which combine consolidation with amendment, it is necessary that it should deal with the substantially practical question, To what extent are existing copyrights to be affected? This question is attempted to be solved by clauses 6 and 7. By clause 6 it is proposed that, although all the existing enactments are to be repealed with respect to future copyrights, they are to continue in force with respect to existing copyrights. It is somewhat unfortunate that the existing Acts, which are a marvel of obscurity and confusion, should have to be kept up so long, and we think that, while existing rights should of course be fully preserved, the remedies for infringing them should be, as far as possible, the same as the remedies for infringing rights still to be created. A still more important provision is made by clause 7. In many cases the new term of copyright—for life of the author and thirty years afterwards—will probably last longer than the existing terms. It is proposed, following the precedent created by the Act of 1842, which lengthened the term of copyright previously existing, that any subsisting copyright 'shall endure for the term limited by the existing enactments, or for the term fixed by the Act, whichever shall be the longer;' but it is added, also following the precedent of the Act of 1842, that 'in all cases in which the copyright shall belong to a publisher or other person who shall have acquired it for other consideration than that of love and affection,' it 'shall not be extended, unless the original copyright owner if he be living, or his personal representatives if he be dead,' and the proprietor of the copyright shall, before the expiration of the existing term, 'agree to accept the benefit' of the new Act. This provision, which seems to be perfectly just, carries out one of the recommendations of the Royal Commission of 1878. It is, in fact, modelled upon section 4 of the Copyright Act, 1842, by which the pre-existing term of copyright was considerably extended—from twenty-eight years, roughly speaking, to its present term of forty-two years from publication, or seven years from the death of the author, whichever may be the longer period.

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THERE are two 'Rating of Machinery' bills this session, one backed by Mr. Knatchbull-Hugessen, Sir Bernhard Samuelson, Sir William Houldsworth, Mr. Winterbotham, Mr. Gerald Balfour, and Mr. Tomlinson, and the other by Mr. H. S. Wright, Mr. Oldroyd, Mr. T. H. Sidebottom, Mr. Herbert Gladstone, Mr. J. A. Bright, Mr. Mather, and Mr. Mowbray, the two bills thus having no less than thirteen backers between them. By the first bill the character of the machinery to be rated is first expressly defined as (1) 'water wheels, steam, gas, air, and electric engines, steam boilers, and all other fixed motive powers and the fixed appurtenances thereof,' and (2) 'shafts, wheels, drums, and other fixed power machinery which transmits the action of motive power to other machinery, fixed or loose,' and it is then proposed to be enacted that 'save as in the last section provided, no machinery, whether attached to the tenement or premises or not, shall be taken into consideration in estimating such ratable value.' By the second bill it is proposed that, in estimating value for rating purposes, 'any increased value arising from machinery which is machinery for any manufacturing process, and is only fixed to the hereditament for the purpose of steadying it, and which can be removed without injury to the hereditament or to itself (and does not require any special construction or adaptation of the hereditaments in which it is used)

shall be excluded.' Neither bill is to apply to the rating of waterworks, gasworks, or collieries. In point of phrasing, the first bill appears to us to be by far the best. Probably both bills will be referred to the same select committee.

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The decision in *In re Cane*; *Ruff* v. *Sivers*, 60 Law J. Rep. Chanc. 36, is but a corollary to the settled rule 'that when there is a gift to a person for life, if she so long remains unmarried, or for life until bankruptcy, followed by a gift over in the event of marriage or bankruptcy, the remainder is not contingent, but vested so as to take effect either upon the death or marriage or bankruptcy, as the case may be, of the tenant for life' ('Theobald on Wills,' 3rd ed. p. 379). The reason why the opinion of the Court was asked was that other contingencies were referred to besides marriage, and the gift over was in the event of the testator's widow making default in repairing or insuring his said property, or marrying again or cohabiting. The widow died without having committed any of the acts or defaults on which her interest was expressed to be determinable. Lord Justice (then Mr. Justice) Kay held that the fact that the gift over was to take effect on more than one event strengthened, instead of weakened, the inference that the property was to go over on the widow's death also. The above-mentioned rule should therefore run: 'That when there is a gift to a person for life, until some event or events happen, followed by a gift over on the happening of the event, or one or more of the events, the remainder is vested so as to take effect either upon the death of the tenant for life or the happening of the event or events.' It may be useful to practitioners to observe that, where a special case of this kind is stated, and a judgment has been obtained on it, the simpler course, which has the sanction of the Lord Justice, 'is to take a declaration in the terms of the answer, and to stay further proceedings in the action.'

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It has been suggested that our mode of publishing the advertisements for creditors under 22 & 23 Vict. c. 35, which we reprint from the *London Gazette*, is somewhat misleading, inasmuch as a hasty reader, seeing at the top of the page the words 'Law Journal Bankrupt List,' might be led to think that the persons whose names appeared below were insolvent. In order to remove the possibility of any such mistake, we propose in future to slightly alter the head-line of that part of our publication by substituting the words 'Gazette List' for 'Bankrupt List.'

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## 'LAW JOURNAL REPORTS' FOR FEBRUARY.

The February number of our reports constitutes a volume of 142 pages, containing thirty-seven reports of cases, of which nearly all were decided in the Michaelmas Sittings, some as recently as the end of December last. In the Chancery Division there are fifteen cases (pp. 49–104), in the Queen's Bench Division twelve cases (pp. 33–88), and in the Probate, Divorce, and Admiralty Division three cases (pp. 1–8). There are also seven Magistrates' cases (pp. 9–40).

In the Chancery Division *Baker & Sons* v. *Rawson Brothers* constituted an action, motion, and adjourned summons, the hearing of which occupied the Court of Appeal for about twenty days, and which involved complicated questions under the Patent Acts, 1883–88, and the Trade-Marks Act, 1875. *In re Maria Smith* decided that a testamentary paper executed by a widow and disposing of certain absolute property of the testatrix, but making no reference to a will executed before her husband's death in exercise of a power of appointment, did not constitute a republication of that will. *In re Sandbach and Edmondson* raised a question on a curious condition of sale involving the doctrine of *Burgess* v. *Wheat* (1 Eden, 177), by which a trustee became absolute owner. In *De Francesco* v. *Barnum* (No. 2) it was held that, though an infant's contract of apprenticeship is *primâ facie* binding on him, yet the contract will be void if it contains unreasonable terms which are not for the benefit of the infant. *Blyth* v. *Fladgate*, *Morgan* v. *Blyth*, and *Smith* v. *Blyth* are actions concerning the joint and several liability of solicitors for breaches of trust committed by a partner, the circumstances from which the relation of solicitor and client will be inferred, and the principles applicable to contributions made by the several persons liable in replacement of the trust fund. *In re Alabama, &c., Junction Railway Company* decides that the Court has power, under the Joint Stock Companies Arrangement Act, 1870, to sanction a scheme of arrangement between a company and its creditors, although such scheme will deprive dissentient first debenture-holders of part of their security. *In re Hemingway* was a case of will construction, in which the words 'without having' a child were construed in their literal sense, and not in the sense 'without having had,' applied in *Howgrave* v. *Cartier* (3 V. & B. 79). What constitutes a specially indorsed writ was the subject of *Hamilton* v. *Brogden*. *In re The New Chili Gold Mining Co.* was a case of irregular forfeiture of shares for non-payment of calls. *In re The Weymouth and Channel Islands Steam Packet Co.* laid down the principle of distribution of the surplus assets of a company in course of winding up among the different classes of shareholders. In the case of *In re Meeus's Application*, the Court declined to direct the comptroller to register part of a proposed trade-mark, and held that a disclaimer under section 74, subsection 2, of the Act of 1883 (re-enacted by the Act of 1888, section 16) must be made in the application for registration, and not subsequently. *In re Graham's Trusts* illustrates the effect of the repeal of the Chancery Funds Consolidated Rules, 1874. *Frames* v. *The Bulfontein Mining Company* decides that directors who were to be remunerated by a percentage of the profits were not entitled to that percentage on the excess over the share capital for which the business was sold to a new company. According to *In re Wilson*, a defendant to an originating summons under Order LV. cannot serve a notice on a third party under Order XVI. In *Curtis* v. *The Kesteven County Council* the land lying between the metalled part of a main road and the hedges is 'roadside waste' within the Local Government Act, 1888, s. 11, subs. 1, and does not vest in the County Council under section 11, subsection 6.

In the Queen's Bench Division, in *Plant* (*appellant*) v. *Potts* (*respondent*), the Court of Appeal decided that a revising barrister had no right to make an amendment in the list of voters altering the nature of the qualification. *Brown* v. *Tombs* decided in favour of the validity

of a claim signed by the clerk of the voter's agent. *The Mayor, &c., of Salford* v. *Lever* involved somewhat complicated questions arising out of secret commissions paid to an agent by a contractor, and the liabilities thence arising of the contractor and agent to the principal. In *Conybeare* v. *The London School Board* it was held that the plaintiff's imprisonment in Ireland under the Criminal Law and Procedure (Ireland) Act vacated his seat on the School Board. *The South Staffordshire Tramways Company* v. *The Sickness and Accident Assurance Association* involved the construction of a policy of assurance. *In re Trehearne* was a decision in bankruptcy in which a judgment creditor, who had obtained a garnishee order, gave place to the trustee in bankruptcy. In *Stanley* v. *Powell* an action was held not to be maintainable by a game carrier for injuries received from a shot fired without negligence by one of the shooting party. *Beckett* v. *The Tower Assets Company* was a case of a hiring agreement, which was held not to be a bill of sale requiring registration. In *Regina* v. *Soutter* it was held that a person was not qualified under the Metropolis Local Management Act, 1855, s. 6, for election to a vestry unless he occupied the premises in respect of which he was rated. In *Heckscher* v. *Crossley* it was held that a party moving in the Court of Appeal under Mr. Finlay's Act for a new trial after trial by a jury will not be ordered to give security for the costs of the motion. The Railway Commission in *The Liverpool Corn Trade Association* v. *The London and North-Western Railway Company* decided adversely to the railway company questions of undue preference and unequal rates. *Allden* v. *Buckley & Co.* was a case of a judgment improperly obtained against a firm after service of the writ on an alleged partner who denied the partnership.

In the Probate, Divorce, and Admiralty Division *The Vindomora* is a decision of the House of Lords that there is no absolute rule as to the conduct of vessels approaching each other in a fog. *The County of Durham* decided in what County Court an admiralty notice was properly instituted; and *The Umbilo* decided a question of limitation of liability.

In the Magistrates' Cases, in *The Durham County Council* v. *The Chester-le-Street Poor Law Union* premises occupied by an industrial school, certified and carried on under 29 & 30 Vict. c. 118, were held liable to poor rate. In *Regina* v. *Bowerman* the Court of Crown Cases Reserved affirmed a conviction for misdemeanour under the Larceny Act, 1861, s. 75. In *Regina* v. *Byrde and others* (*Justices*) *and the Pontypool Gas Company* (*ex parte Williams*) was involved a wrongful application by justices of the principle of *res judicata*. In *Charles* (*appellant*) v. *The Mortgagees of Plymouth Works* (*respondents*) questions were decided under the Employers and Workmen's Act, 1875, of the jurisdiction of justices and limitation of action. In *Ex parte Castioni* extradition was refused of Castioni who, during the political rising last year in the canton of Ticino, shot Rossi. *Mallinson* (*appellant*) v. *Carr* (*respondent*) decided that exposure for sale of diseased meat was not a necessary element for conviction under the Public Health Act, 1875, ss. 116, 117. *St. Martin's Vestry* (*appellants*) v. *Gordon* (*respondent*) defines 'refuse of trade' under the Metropolis Local Management Act, 1855, s. 128.

## AMERICAN RAILROAD SHARE CERTIFICATES.

CONSIDERING the years which have elapsed since American railroad share certificates first became familiar to English investors, it is singular that the consideration of the legal effect of these documents by English tribunals should have been so long delayed, the earliest reported cases, if we are not mistaken, dating from certain notorious frauds committed at a comparatively recent date. Upon one question, whether the issues depend on American or English law, there seems to have been no real difference of opinion, and the result is very precisely stated by Lord Herschell in the case of *The Colonial Bank* v. *Cady*, L. R. 15 Ap. Cas. 267: 'I agree,' he says, 'that the question what is necessary or effectual to transfer the shares in such a company, or to perfect the title to them, where there is or must be held to have been an intention to transfer them, must be answered by a reference to the law of the State of New York. But I think that the rights arising out of a transaction entered into by parties in this country, whether, for example, it operated to effect a binding sale or pledge as against the owner of the shares, must be determined by the law prevailing here. Nor has there been much doubt in arriving at the conclusion that the usual American share certificate is not in the proper sense of the term a negotiable instrument (see *The London and County Banking Company* v. *The London and River Plate Bank*, L. R. 20 Q. B. Div. 232). Indeed, notwithstanding the practice in the city of London to treat these documents as transferable by delivery, one has only to look at the normal form of certificate to see the difficulty of maintaining this view in a Court of law. In the case before the House of Lords, to the facts of which we shall presently refer, the certificate of the New York River and Hudson Bay Railroad Company certified that the testator, the registered owner, was entitled to so many shares transferable in person or by attorney on the surrender and cancellation of the certificate, and had on the back a printed form of transfer in blank and appointment of attorney, also in blank, to execute the surrender and cancellation. A document like this, which on the face of it is intended to pass by transfer and not by delivery, cannot either on principle or authority be held to be a negotiable instrument.

Another point suggested in argument has been that the Factors Acts apply to the case, but no judge has ever adopted this view, and there is direct authority, to which it is needless to refer, against it. The rights of an innocent holder for value to whom the certificate is delivered in fraud of the true owner must, therefore (except where he has also obtained registration in his own name), arise from estoppel only—that is, to quote again from the judgment of Lord Herschell in *The Colonial Bank* v. *Cady*—on the ground that the 'owner may have so acted as to be estopped from setting up a claim as against a person who has *bonâ fide* and for value taken the instruments by way of sale or pledge.' In the application of this principle, however, there is room for difference of opinion. In *The Colonial Bank* v. *Cady* the testator was the registered holder of the shares, and on his death his executors, desiring to have the shares transferred into their own names, sent the certificates to their brokers to forward them to America for that purpose, having previously signed the blank transfers as executors, leaving the names of the transferee and

attorney in blank. Thereupon Blakeway, one of the firm of brokers, fraudulently delivered the certificates to the Colonial Bank as security for advances. Under these circumstances, the shares still standing in the name of the testator, the executors claimed the certificates as against the bank. Mr. Justice Kekewich thought that the executors had by their signature represented that the brokers were at liberty to deal with the shares, and that they could not afterwards deny the authority so represented, and therefore decided in favour of the bank. On appeal his judgment was reversed by the Court of Appeal, and the reversal affirmed by the House of Lords, on the ground that the conduct of the executors, in delivering the transfers to the brokers, was consistent either with an intention to sell or pledge the shares or to have themselves registered as owners, and therefore did not estop them from setting up their title as against the bank, who—the document being open to these two constructions—ought to have inquired into the brokers' authority. The certificate, it will be seen, did not purport to be signed by the registered owner, but by his executors; and the importance of this distinction appears from the following passage in the judgment of Lord Watson. Had the transfers, he says, been executed by the testator and the certificates thereafter sent by him to the brokers 'for safe custody, I should not have hesitated to hold that Blakeway, though acting fraudulently, was, nevertheless, placed by his (the testator's) act in a position to give a title to an honest purchaser which his employer could not dispute.' And, again: 'Where the registered shareholder executes the transfer indorsed on his certificate, he can have only one intelligible purpose in view—that of passing on his right to a transferee. It is not so in the case of an executor, whose only title to the shares is by legal assignment to the interest of the defunct.' To the same effect Lord Herschell says: 'If, in the present case, the transfer had been signed by the registered owner and delivered by him to the brokers, I should have come to the conclusion that the bank had obtained a good title as against him, and that he was estopped by his act from asserting any right to them.' In the earlier case of *The Colonial Bank* v. *Hepworth*, 56 Law J. Rep. Chanc. 1059; L. R. 36 Chanc. Div. 36, as the final result of rather complicated dealings, share certificates of which the defendant was the registered owner, but which were unsigned by him, were fraudulently pledged by his broker with the plaintiffs, and Mr. Justice Chitty held that the defendant was not estopped from asserting his title. The distinct point was also considered whether the defendant, while unregistered owner (as he was at first) of certificates in blank, but signed by the last registered owner, was similarly estopped. Mr. Justice Chitty was able to decide, and did, in fact, decide the case, on the assumption that the defendant would have been estopped in that state of facts, but it is by no means clear that this was his own opinion; indeed, if we understand his judgment rightly, his opinion was the other way. The propositions laid down by Mr. Justice Chitty are as follows: 'The transferor who executes the transfer in blank confers on the holders of the documents for the time being an authority to fill in the name of the transferee, and each successive holder for the time being, when the documents pass through several hands, passes on this authority. The holders must, of course, be *bonâ fide* holders for value without notice;' and in another passage: 'Each prior holder confers upon the *bonâ fide* holder for value of the certificates for the time being an authority to fill in the name of the transferee, and is estopped from denying such authority; and to this extent and in this manner, but not further, is estopped from denying the title of such holder for the time being. By the delivery, an inchoate legal title passes; but a title by unregistered transfer is not equivalent to what has been termed "the legal estate" in the shares or to the complete dominion over them.' In *The Colonial Bank* v. *Cady*, before the Court of Appeal (57 Law J. Rep. Chanc. 826, 841), Lord Justice Lindley expressed his approval of the latter proposition, understanding by '*bonâ fide* holder,' 'the person entitled to the certificate,' and his lordship went on to add that if, in the case before the Court of Appeal (*The Colonial Bank* v. *Cady*), the documents had even been in order—that is, as we understand it, signed by the testator himself—he should have 'felt extreme difficulty, if not impossibility, in upholding the title of the bank.' This difficulty does not appear to have presented itself to Lords Watson and Herschell, and this must be remembered in connection with what the Lord Justice says in criticising Mr. Justice Chitty's language. The practical results to which we are led by a consideration of these authorities are: first, that the registered owner who leaves the share certificates unsigned by him with his agent, without authority to pledge or sell, is in no way estopped from asserting his legal title against an innocent holder for value to whom they are fraudulently delivered by the agent (*The Colonial Bank* v. *Hepworth*); secondly, that in the like case, if the certificates have been signed by the registered owner, and in that state left for safe custody with his agent, he probably is so estopped (*per* Lords Watson and Herschell in *The Colonial Bank* v. *Cady*), but that executors who sign for the mere purpose of obtaining their own registration are not so estopped (*The Colonial Bank* v. *Cady*); thirdly, that it seems an open question whether the doctrine applies to the case of an unregistered owner of certificates with the transferee and attorney in blank, but signed by the last registered owner, except to this extent, that the innocent holder may fill in his own name as transferee, and get himself registered as owner, and so obtain priority (see *The Colonial Bank* v. *Hepworth*).

Of course, in any case the person relying on the estoppel must be a holder for value without notice, and if the recent decision of the Court of Appeal in *Simmons* v. *The London Joint-Stock Bank*, which has been previously discussed in these pages, is good law, bankers who take deposits of American railroad share certificates from stockbrokers making deposits of securities *en bloc*, may, on the special grounds taken in that case, fail to establish their claim as holders without notice of the true owner's right. This consideration, however, though of great practical importance, rests apparently on the character of the broker's business, and is really independent of the subject of this article.

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The Naturalisation Act.—During the past month twenty-four certificates of naturalisation were granted to aliens by the Home Secretary under the provisions of the Naturalisation Act, 1870. Of these aliens seven are described as coming from Germany, six from Russia, two each from France, Greece, and Russian Poland, and one each from Austria, Denmark, Italy, Switzerland, and Turkey.

# Correspondence.

## FRAUDS UPON RAILWAY COMPANIES.

Sir,—You have been a doughty champion for the railway companies in one of your leading articles this week, and have written in loud approval of their efforts to check and punish that contemptible scoundrel, the fraudulent passenger, who tries to swindle and cheat them in almost every train that runs.

But, if you please, sir, now 'Audi alteram partem;' permit me to speak on behalf of the public.

Is the fraud and the cheating always to be found only on one side? What mean these breaches of contract and trespasses perpetrated almost as often by railway directors in their overcrowded carriages? If we do not defend the poor man who robs the millionaire of 5*l.*, can we admire the millionaire who robs the poor man of five farthings? Yet here are a body of educated, wealthy gentlemen, who would scorn, each in his own person, to be guilty of anything like questionable honesty—combining and caballing in boards and committee-rooms to enrich themselves and their shareholders by downright cheating and fraud—taking moneys which they have not earned, by breaking contracts which forbid them the right to earn these moneys at all.

The exhibition of this commercial immorality by such respectable and respected men is disgraceful and injurious to the State, which looks for and rewards honesty. 'Defendit numerus junctæque umbone phalanges.' Is that the excuse? The hound will not dare to attack alone in his skulking cowardice the animal which he hunts to death when joined by others in the pack. Have directors come to this, that each has only the courage to do with his board that which he will not dare to do alone?

Yes, sir; and the evil does not end there. The passenger who is cheated and driven out of his overcrowded carriage by the broken contract of the directors is immediately pounced upon as guilty of fraud when compelled by them to travel in a carriage of superior class which is not overcrowded. So here the company make a double dishonest gain: first, by receiving moneys for overcrowded seats, which moneys have not been earned; then by receiving the fines paid to them by the passenger whom they have dragged into the police court for fraud. You, sir, as a lawyer know that there is a remedy for this if the public will only enforce it.

They are not compelled to wait for the next train, but they may go to their destination as best they can and make the company pay. In *The Great Northern Railway Company* v. *Hawcroft*, 21 Law J. Rep. 178, it was laid down by Mr. Justice Patteson: 'A railway company are not excused from carrying passengers according to their contract upon the ground that there is no room for them in the train; but, in order to avail themselves of this answer, they should make their contract conditional upon there being room.'

'Many a man is made fraudulent because he believes that by overcrowding the companies make dishonest gains, and he cheats out of a sort of revenge' ('Railway Tyranny'—a letter to the President of the Board of Trade).

The Lord Chief Justice Coleridge gives the true solution in *The London and Brighton Railway Company* v. *Watson*, 48 Law J. Rep. C. P. 316: 'That companies are often and seriously defrauded I do not doubt, and I am sure that Parliament would not refuse them well-considered and fair powers of prevention or redress. But the interest of companies is not the only interest to be considered, and companies must not protect themselves by bye-laws unfair and unreasonable against the consequences of their own inadequate, careless, and inconvenient system of working.'

William I. Jenkins, M.A.,
Author of 'Railway Tyranny,' &c.

# Unreported Cases.

## NISI PRIUS.

### POWER OF MARRIED WOMAN TO BIND HER SEPARATE ESTATE.

On January 31, before Mr. Justice Day, without a jury, the case of *Braunstein* v. *Lewis* was heard. This action raised a difficult and important question as to the meaning of 'separate estate' in the Married Women's Property Act (45 & 46 Vict. c. 75), s. 1, subs. 2, 4, and the power of married women to bind the same by their contracts. The plaintiff is a solicitor, and he sued Mrs. Lewis to recover a sum of 400*l.*, made up of certain disbursements and legal costs incurred by him in course of professional services he had rendered to her and her late husband. The husband, who had originally been a co-defendant, had died since action brought. The plaintiff based his claim upon a certain covenant in a deed of mortgage dated August 9, 1887, under which Mrs. Lewis purported to charge certain specific separate estate to secure the said debt.—Mr. Crump, Q.C. (with whom was Mr. Bankes) submitted that, upon the authority of *Whitaker* v. *Kershaw*, 60 Law J. Rep. Chanc. 9; L. R. 45 Chanc. Div. 327, upon the question as to the capacity of a married woman to contract under the Married Women's Property Act (45 & 46 Vict. c. 75), s. 1, it did not matter whether her separate estate was 'free separate estate' or 'separate estate without power of anticipation,' and that, therefore, as it was here admitted that Mrs. Lewis had at the time when she contracted separate estate without power of anticipation, the plaintiff was entitled to judgment.—Mr. Justice Day intimated that from that case *primâ facie* that appeared to be so, and called upon the defendant's counsel to answer it.—Mr. Lumley Smith, Q.C., pointed out that the Court in that case had never decided the present question—viz. the question of contract—and had distinctly pointed out that there the action was neither one of tort nor contract, and stated that 'the power to contract is distinct from the liability to be sued, for the section says that she shall be liable to be sued in contract or in tort, or otherwise. We cannot disregard the words "or otherwise."' That, said the learned counsel, distinguished that case entirely from the present one, and did not overrule *Leak* v. *Driffield*, 59 Law J. Rep. Q. B. 89; L. R. 24 Q. B. Div. 98; *Palliser* v. *Gurney*, 56 Law J. Rep. Q. B. 546; L. R. 19 Q. B. Div. 519; *Beckett* v. *Tasker*, L. R. 19 Q. B. Div. 7; *Harrison* v. *Harrison*, 58 Law J. Rep. P. D. & A. 28; L. R. 13 Prob. Div. 180; and other cases upon this section of the Married Women's Property Act, which had decided that a married woman cannot bind herself by her contract unless at the time of such a contract she has 'free separate estate.'—Mr. Crump, Q.C., in reply, argued that a married women, since the recent legislation affecting her rights and position in reference to property, had the capacity to contract if she possessed separate estate at the time, whether restricted against power of anticipation or not, and that judgment could be signed against her in

respect of such contract; but that in cases where there was no power of anticipation in regard to her separate estate, execution could not issue against such estate, as the judgment would be in the form of *Scott* v. *Morley*, and such judgment would be effectual only against any estate which the woman might subsequently acquire. That this was so was, he submitted, clear under section 1, subsection 4, of the Act of 1882 (*ubi sup.*), which enacts that 'every contract entered into by a married woman with respect to and to bind her separate property shall bind not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may hereafter acquire.' In this case, the defendant's husband being dead, she became a *feme sole* and possessed of 'after-acquired property,' and it was submitted that the plaintiff was now entitled to enforce the original contract against this property. In the alternative, it was said that, at the time of making the contract in question, the defendant was, in fact, possessed of certain sums of money paid to her by her trustees as income from investments comprising her marriage settlement fund. But these, after hearing the evidence in point, the learned judge held were not separate estate free from the restriction against anticipation.—Mr. Justice Day in giving judgment for the defendant observed that the case raised a question of very great importance and some difficulty, and although he, by attention to the able arguments of counsel on both sides and the exhaustive discussion on all the cases in point, had been able to arrive at a decision which was satisfactory to himself, yet he had grave doubt as to whether that decision would ultimately be upheld. The question depending as it did upon the construction of certain Acts of Parliament made it extremely difficult to decide the case in favour of the defendant with absolute certainty. Prior to recent legislation affecting the relations, rights, and position of married women with reference to property, there was no doubt whatever that at law a married woman could not make a binding contract. In short, she possessed 'no contractual capacity.' In equity, however, subject to certain restrictions and limitations, married women were permitted to bind their separate estate, but only where such estate was theirs absolutely and not 'without power of anticipation.' In dealing with the question of separate estate, it would be convenient, he said, to use the expression 'free separate estate' when the former and 'non-free separate estate' when the latter class was meant. By the Married Women's Property Acts, now consolidated in the Act of 1882 (*ubi sup.*), powers were given to married women to contract both in law and equity. It had been held in many cases that this statutory right is not absolute. The right was given, in words difficult of construction, in section 1, subsection 2. The words seemed *primâ facie* to limit her power to contract only 'in respect of and to the extent of her separate property,' but some considerable doubt was thrown upon that by subsection 4 (see above). Apart from this section, under which she seemed to derive power to bind all subsequently acquired 'separate property,' it would seem clear that she could only bind separate property which she was possessed of or entitled to at the date of the contract. But for the purposes of this judgment it was not necessary for him to endeavour to reconcile these apparent discrepancies, as the question of after-acquired property in his opinion did not affect this case at all. Looking at all the cases carefully, he had no doubt whatever that a married woman's contractual capacity was confined and limited to her possessing separate estate at the date of her contract, and upon that arose the crucial question as to what was meant in the Act by 'separate estate.' Mr. Crump contended for the plaintiff that it meant any separate estate, whether 'free' or 'not free,' and argued the point with great ingenuity and cited many cases; but the learned judge could not agree with him or follow his argument that 'separate estate,' whether 'free' or not, gives a married woman the capacity of contracting. Such a right was never recognised prior to the Acts, even in equity. And it could not be said that the intention of the Legislature ever meant to go so far as that. It was much more consistent to suppose that the intention was to follow what equity allowed—viz. contractual capacity only over separate estate where there was no restriction as to anticipation, and which was absolutely under the married woman's control. The Legislature could never have intended—as would be the case if Mr. Crump were right—to revolutionise the rules of conveyancing and deprive persons of the benefit of settling capital on persons beyond their power of anticipation. Looking at the mortgage-deed itself, it was quite clear that the defendant never intended to bind or charge any other description of property but that which was beyond her power of anticipation. That was, that she never intended to bind or charge her 'free separate estate,' even if she possessed any. For this particular property—viz. 10,000*l.*—which she took under a will, was, by the direction of the testator, to be beyond her power of anticipation; and even if it had not been so left her marriage settlement trusts would have affected it in the same way. Therefore, from any view of the case, it was clear that Mrs. Lewis only charged her 'non-free separate estate.' But it was said that she had, in fact, at the time of the contract, or might have had, certain moneys in her pocket which would be 'free separate estate.' Well, he confessed he could not follow anything so minute. But, even supposing she had had any such 'free separate estate,' as he had pointed out already, it would make no difference, as she only contracted in respect of her 'non-free separate estate.' For these reasons the defendant, in his opinion, had no capacity at the time in question to make this contract, and was therefore entitled to judgment.—Execution stayed for a week.

## THE CUSTOM OF KNIGHTING JUDGES.

Mr. G. F. Russell Barker writes to the editor of the *Daily Graphic*:—

It may interest some of your readers to know that there is a precedent for Mr. Justice Wright's refusal of knighthood. John Heath, who succeeded Sir William Blackstone in the Court of Common Pleas, in July, 1780, declined to accept the 'honour' in question, and declared that he would die 'plain John Heath.' To this resolution he firmly adhered, and after sitting on the bench for nearly thirty-six years, died unknighted, but not unhonoured, on January 16, 1816. Sir Samuel Romilly records, in the diary of his Parliamentary life, the strenuous efforts which Piggott and he made when appointed Attorney and Solicitor-General in the Ministry of All the Talents to avoid the self-same 'honour.' 'Never,' writes Romilly under the entry for February 12, 1806, 'was any City trader who carried up a loyal address to His Majesty more anxious to obtain than we were to escape this honour. We applied to Lord Dartmouth, the Lord-in-Waiting, to Lord Grenville, Lord Spencer, and everybody on whom we thought it might depend to deprecate the ceremony which awaited us. But the king was inflexible.' Romilly then goes on to state that 'for the last twenty years of his reign, it has pleased His Majesty to knight all attorneys and solicitors-general and judges on their appointment, though for the first five and twenty years he had never seen the necessity or propriety of it,' and feelingly adds, 'how every man who arrives at these situations must submit to the humiliation of having inflicted on him that which is called, but is considered neither by himself nor any other person, an honour.' Romilly also records that Spencer Perceval, 'the last Attorney-General,' was per-

mitted to decline knighthood, 'because he was an earl's son.' The sons of peers seem to have been always successful in claiming exemption. The present Mr. Justice Denman is not a knight, nor was the late Lord Justice Thesiger. There is a story, for the truth of which I will not vouch, that a few years ago a newly-appointed judge remonstrated with the Prime Minister for the time being against the ordeal of knighthood through which his brethren had to pass. The Prime Minister is said to have delicately explained that it enhanced the value of the distinction in the eyes of all mayors, aldermen, and sheriffs. Whereupon the judge pointed out that the effect would be still greater if the Prime Ministers were knighted on their accession to office. This suggestion still remains to be carried out.

## THE LONDON COUNTY COUNCIL.

The usual weekly meeting of the Council of the Administrative County of London was held on Tuesday, February 2, at the County Hall, Spring Gardens, Sir John Lubbock, M.P., the chairman, presiding.

### THE SOLICITOR TO THE COUNCIL.

The report of the general purposes committee as to the office of solicitor, a summary of which has already appeared at page 91, was next considered.

The Deputy-Chairman (Mr. Haggis), in moving a resolution assigning certain duties to the Parliamentary agent, and that the solicitor's department should render assistance and perform certain work, explained that on all matters of Parliamentary work and procedure the solicitor was in the habit of consulting the Parliamentary agent, and the Parliamentary agent reported to the solicitor, and the solicitor to the committees and the council. Before committees of Parliament the solicitor and the Parliamentary agent attended and generally there was a considerable amount of communication of work in regard to this branch of the solicitor's department. The committee felt that, although this was usual in connection with all railway and other companies having to do with Parliamentary work, yet the business of the council was so large not only in regard to the promotion of its own bills, but in regard to opposition to bills affecting the community, that it would be desirable that they should have a more direct representative and direct conduct of this particular department of the work, and they therefore came to the conclusion, if it could be arranged, that they should have their Parliamentary agent directly responsible to the council, and that he should attend their committees, that he should carry out the requests of the committees and of the council, and report directly to the council.

Mr. C. Harrison seconded the motion, and pointed out that this was not the creation of an office, but only a commuted payment to the Parliamentary agent.

Mr. Hunter moved, as an amendment, that the report be referred back, with an instruction that the committee should see whether the solicitor should not be responsible for all the legal work of the council.

Mr. Campbell, in seconding the amendment, hoped the council would have the good sense to leave things as they were, as by the new arrangement he did not believe they would save a penny.

After some discussion it was suggested to amend the resolution by introducing words limiting the continuance of the arrangement to next autumn; and this having been accepted the amendment was withdrawn, and the recommendation of the committee agreed to.

On the recommendation that the office of solicitor to the council be filled up, and that the salary attached to the office be 1,500*l.* per annum,

Mr. Beachcroft moved: 'That, until it is seen whether the system proposed in the report in reference to the Parliamentary work of the council can be settled on a permanent basis, the filling up of the office of solicitor to the council be deferred; that, in the meantime, the solicitor's department be worked substantially, as it has heretofore been nominally, as two separate branches—viz. (1) the general law branch; and (2) the conveyancing branch; Mr. Blaxland, the present chief assistant of the general law branch, being made provisionally responsible not only for the duties in the general law branch, but also for the entire staff in that branch and its conduct, and in addition performing such duties other than those relating to the Parliamentary business and the conveyancing branch as the late solicitor was accustomed to perform, being styled and officiating as "acting solicitor" and Mr. Jackson continuing in charge as heretofore of the conveyancing branch and being responsible for the staff therein and its conduct, retaining his present style of "assistant solicitor."'

Mr. Saunders seconded the amendment.

After discussion the council divided, and there voted—

| | |
|---|---|
| For the amendment . . . . . | 55 |
| Against . . . . . | 34 |
| Majority . . . . . | —21 |

The amendment was accordingly agreed to, and it was referred to the general purposes committee to consider and report what remuneration should be paid to Mr. Jackson and Mr. Blaxland for their increased responsibility in consequence of the office of solicitor to the council being vacant.

## SHROPSHIRE LAW SOCIETY.

The annual meeting of this society was held in the society's rooms, Talbot Chambers, Shrewsbury, on Wednesday, January 28. The members present included Mr. T. M. How (president), Mr. E. Hodges (vice-president), Messrs. I. Knowles, E. C. Peele, W. C. C. Peele, H. W. Hughes, G. H. Morgan, F. Nevett, Robert Marston, W. M. How, J. H. Sprott, W. C. Tyrrell, G. M. Salt, H. J. Osborne (hon. treasurer), and R. T. Hughes (hon. secretary).

The committees' reports, which were unanimously adopted, showed the satisfactory position of the society. There is a substantial balance in the treasurer's hands, and the number of members is steadily increasing, ten new members having joined the society during the year. The library committee have thoroughly reorganised the library, and issued a complete catalogue of all the text-books and reports. A number of new books have been added, and the regulations for lending books revised to meet the convenience of members residing out of Shrewsbury.

The President delivered an interesting address, referring to some of the principal Acts of Parliament passed since the last annual meeting, and to recent decisions on important questions. He also referred to the death of Mr. James Loxdale, an honorary member of the society, whose handsome gift of text-books and reports had considerably increased the value of the library.

Mr. Robert Marston read a valuable paper on the subject of 'Mortgages,' and it was resolved that the president's address and Mr. Marston's paper should be printed and circulated among the members.

The president and vice-president, honorary treasurer, and secretary were re-elected for the ensuing year, and Mr. G. H. Morgan was elected on the committee.

The usual vote of thanks to the officers and to the president for his conduct in the chair closed the proceedings.

## SUCCESSFUL CANDIDATES.

The following candidates (whose names are in alphabetical order) were successful at the Final and Intermediate Examinations of the Incorporated Law Society held on January 13, 14, and 15, 1891:—

### Final Examination, January 13 and 14.

Adams, George Charles
Ainley, Herbert
Aitken, Robert
Aldous, Thomas Henry
Andrews, Frank Reginald
Ashby-Darby, Gerald Sorton
Barham, Cornelius Herbert
Barthorp, Henry Arthur, B.A.
Bartlett, William Abraham Wilberforce
Bellingham, Hugh
Bemrose, Arthur Cade
Bennett, William George
Bowling, Harry Clifford
Bowman, John Hungerford
Bracher, George Howes
Briggs, Basil Shaw
Brindley, Benjamin William
Brutton, Septimus
Buller, Alban Gardner
Burt, William Eaton
Butterworth, George Frederick
Butterworth, Robert Harry Smethurst
Cardale, William Henry
Carter, George Coplestone
Chiles, Thomas Henry
Clarkson, Henry William
Collin, John, B.A.
Colton, Michael Herbert
Comerford, James
Cook, Harry William
Cooke, David Frederick
Cookson, John
Coote, George
Cowley, Edward Rowland
Cross, Henry Wingfield
Cullingham, James Barry
Davies, Edward Gaskell, B.A.
Davies, William Sinclair
Davis, Alfred Sidney Newnham, B.A., LL.B.
Davis, Thomas Buffen
Dommett, William, B.A.
Edge, Sydney Vernon
Ellis, Cuthbert Frederick
Emanuel, Frederick Graham
Fawsett, William Claude
Franklin, William Vaughan
Gane, William Lawe
Galt, Algernon William Bruce
Garrett, Newson Littlewood, B.A.
Geoghegan, Joseph
Gilbert, Erasmus James Tenby
Gill, Benjamin Kemp
Gillson, Frank, B.A.
Goodair, Thomas
Gray, John Nevill
Green, Arthur
Griffith-Williams, Alfred Mortimer
Griffiths, William
Grunebaum, Martin
Hankinson, Kyrle Chatfield, B.A.
Hattersley, Albert Edward
Hawes, Charles Edward
Haworth, Richard Nimrod
Henderson, Arthur
Hiley, Ernest Varvill
Hill, William Thomas
Hitchings, Robert Lewis
Hodge, Egerton Francis, B.A., LL.B.
Honey, Henry Knollys
Hopwood, Frederick Flowers
Horsfall, William Heincken
Hughes, Thomas
Hutton, Harold Clarke
Jackson, Donald Frederick
Jackson, John George
Jeffery, William Frederick
Jeremy, John Edward
Jones, Frederick Llewellyn, B.A.
Jones, Thomas Estyn
Jones, William Morris
Keeble, Edward Moss
Keeling, Arthur Trowbridge
Kemble, Arthur Twiss
Kent, Henry Edwin Hunter, B.A.
King, Leonard Burrows
Leigh, Norman
Liveing, William Robert Francis
Lloyd, Francis Horatio
Locock, Henry Thornton, B.A.
Love, Robert Lachlan
Lovegrove, William Frederic
Ludford, Thomas Richard
Lumb, Mellor
Marriott, Douglas, B.A.
Mattley, Robert Dawson
Maynard, Temple William
Messer, Allan Ernest, B.A.
Miller, Harry Risch
Mills, Frederick Hellewell
Mitchell, Sidney Alfred
Murray, Francis
Nash, Arthur Peel
North, John William Allen
Openshaw, Joseph Thomas
Pacy, Gabriel Reay
Page, Maberly Charles, B.A.
Pain, Walter
Parmiter, Arthur de Clifton
Peel, Walter
Phillimore, George Ernest
Phillips, Frederick Charles
Phillips, Herbert Gwynne
Pinniger, Charles Witherington
Pritchard, Harry Goring
Randall, Francis John
Richardson, Arnold
Roe, Robert Ernest Burton
Rooke, Charles Keith Jago
Rudge, Howard Nouaille
Saunders, Percival George
Shea, Sidney
Smith, Frank Feusdale
Smith, Henry Thomas
Smith, Josiah
Smith, Thomas Molison
Spaull, William Sidney
Standring, Thomas
Stanley, Guy Wentworth
Stordy, George
Stringer, George Relph Herbert
Stubbs, Charles John
Terry, George Tytler
Thomas, Robert
Thomas, William Henry
Thomasset, Victor
Timbrell, Albert Edward
Treharne, Gwelym Thomas
Tyrwhitt, Beauchamp Edward
Wade, Richard
Walford, William
Walters, John Stewart, B.A.
Walthall, Thomas William
Watkins, Edwin Grover
Webster, James Hewitt
Welfare, James Henry
Wells, George Charles
Welman, Edward John
Whitehouse, Ernest Amphlett
Wilkinson, Herbert
Willett, Thomas Henry
Willmot, Francis Edgar
Woodbridge, Reginald George
Woodhead, William
Wright, James Hall
Wright, John
Wyatt, Frederick Bullen

### Intermediate Examination, January 15.

Allen, Herbert Elliston
Atkinson, Thomas Lawrence
Auld, John Harrison
Austin, William
Baird, Robert George, B.A.
Barnes, Henry Pearcey Lewis
Bell, Herbert Alfred
Bennett, Herbert William
Borradaile, George Leycester
Breese, David
Bryant, John
Bryne, Rupert Henry
Carter, Alfred Walter
Chambers, Percy Holland
Clark, Henry Arthur, B.A.
Clarke, Arthur Blasdale
Collins, Edward William
Cooper, Francis John, B.A.
Covey, Arthur
Cowley, Oswald Beach
Cox, Lewis Latham, B.A.
Crowther, John Edward
Curtis, Frederick James, B.A.
Dammann, John Frederick Karl, B.A.
Davies, Joseph Pughe
Dawes, James Arthur, B.A.
Dickson, Campbell Cameron Forster
Draper, Ernest George
Eastwood, James Arthur
Ellis, Thomas
Evans, Ernest Septimus
Fache, Edward Charles
Fall, George Frederic
Fall, William Thomson
Fisher, William
Foyster, Bernard Brereton
Freer, John Thomas
Gait, John Clarke
Gilmer, John Horace
Gough, Harold
Green, Henry
Hargreaves, Richard Horner
Hart, Augustus Edwin
Hawkes, Robert Collins
Hayward, Percy Christopher Gallimore
Helmer, Frederick
Herford, Henry John Robberds, B.A.
Holbeche, Thomas
Holliday, Samuel Rowland, M.A.
Howard, Percy
Howell, William Gough
Hyde, Louis
Jarvis, Matthew Jervoise
Jeram, Frank Ernest
Johnson, John Richard Ockleshaw
Jones, James Stephens Tudor Cynfab
Knocker, Reginald Edward
Le Breton, Bertram
Leman, George Curtis, B.A.
Levi, Alfred David
Little, Thomas Holme
Maddocks, Henry
Mander, Charles Henry Waterland, B.A., LL.B.
Marks, Harold Bernard
Marsden, George Allen
Marsh, Norman Nevile, B.A.
Mason, Charles Eagleton Stuart
Mather, Edward
Matthews, William Edwin
Meakin, Wilfrid Johnson
Morgan, Lloyd Spear, B.A.

Moseley, Richard Evan
Newell, Charles Edward
Nind, Ronald Pitt
Osborn, Henry Walter
Owles, Thomas Frederick Beaumont
Page, John Edward
Parry, Thomas Parry Jones
Patchett, John Dixon
Paynter, Henry Ernest
Perkins, Herbert William
Platts, Matthew William
Pollock, Alexander, B.A.
Ramsden, Frederic Herbert
Reed, Walter
Rhodes, Henry Hirst
Robertson, William James
Rowlands, James David John
Rushforth, Francis M'Neil
Russell, Frank Ffrench Bromehead
Salt, Ernest Albert
Sharp, John Brudenell
Simpson, Harry Derwent
Speke, William George
Starkie, Frank
Stephens, Henry William
Stokes, Thomas Adrian Owen
Tatham, William Verity
Taylor, Arthur
Thesiger, the Hon. Percy Mansfield
Todhunter, William John
Toller, Montagu Henry
Walker, Henry Mansfield
Walton, Herbert Edward
Webber, Arthur
Welch, Arthur Frederick Budd
Wethered, Vernon
White, George Stanley
Wickes, George Boyd
Wilson, Edward Lorimer
Wilson, Edward Swain
Winch, George Bluett, B.A.
Witherington, Stephen
Wolfenden, Robert
Wragg, Edmund Arthur Windridge
Yeld, Francis Edward
Young, William, M.A.

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, BOWEN, L.J., and FRY, L.J.

THURSDAY, JANUARY 29.

*Bishton* v. *Hill (libel)* (application of defendant for judgment or new trial on appeal from verdict and judgment at trial before Cave, J., at Stafford).—Settled.

FRIDAY, JANUARY 30.

*Knowles* v. *Duncan* (application of defendant for new trial on appeal from verdict and judgment at trial before Huddleston, B., and special jury at Lewes).—Damages reduced by consent.

*Greaves* v. *Sykes* (application of defendant for judgment or new trial on appeal from verdict and judgment at trial before Lawrance, J., at Birmingham).—Adjourned.

*Bradney* v. *Sanger* (application of defendant for judgment or new trial on appeal from verdict and judgment at trial before Lawrance, J., with special jury, at Birmingham).—Dismissed.

SATURDAY, JANUARY 31.

No sitting.

MONDAY, FEBRUARY 2.

*Regina* v. *Assessment Committee of St. Mary Abbot's, Kensington* (Q. B. *Crown Side*) (appeal of defendants from order of Pollock, B., and Charles, J., dated January 13, for *mandamus* to hear agent of ratepayer on objections to valuation list).—Dismissed.

*Sarell* v. *Duke of Westminster* (appeal of plaintiff from order of Wills, J., and Wright, J., dated January 21, affirming reversal of master's order for liberty to issue commission to Constantinople).—Dismissed.

*Farnham* v. *Peel* (appeal of defendant from findings of judge and judgment of Lawrance, J., thereon, dated August 13, at trial without a jury at Birmingham).—Dismissed.

TUESDAY, FEBRUARY 3.

*Lawder* v. *Goucher* (appeal of defendant from judgment of Lawrance, J., for Kekewich, J., dated August 11, at trial without a jury at Shrewsbury).—Part heard.

WEDNESDAY, FEBRUARY 4.

*Lawder* v. *Goucher*.—Adjourned.

*Hammond* v. *Waterton* (appeal of defendant from judgment of Williams, J., at trial without a jury at Carlisle).—Dismissed.

## APPEAL COURT II.

Before LINDLEY, L.J., LOPES, L.J., and KAY, L.J.

THURSDAY, JANUARY 29.

*Mills* v. *Dunham* (appeal of defendant from order of Chitty, J., dated December 5, restraining solicitation of orders from customers of plaintiff within certain radius; heard January 28).—Dismissed.

*Elve* v. *Boyton* (appeal of plaintiff from judgment of North, J., dated November 26).—Dismissed.

*Speight* v. *Gosnay* (application of defendant for judgment or new trial on application from Charles, J.).—Application granted.

FRIDAY, JANUARY 30.

*In re Jordan, deceased. Serjeantson* v. *Stokes* (appeal of plaintiffs from judgment of Kekewich, J., dated December 16, 1889).—*Cur. adv. vult.*

SATURDAY, JANUARY 31.

*In re Jordan, deceased. Serjeantson* v. *Stokes*; heard January 30.—Dismissed.

*Vine* v. *Raleigh* (appeal of defendants Alexander and wife from order of Chitty, J., dated November 15, declaring validity of trust for improvement and maintenance).—Varied.

MONDAY, FEBRUARY 2.

*Stuart* v. *Bell* (application of defendant for judgment or new trial on appeal from verdict and judgment at trial before Wills, J., with a special jury at Leeds).—*Cur. adv. vult.*

*Brown & Co.* v. *Shropshire Iron Company (Lim.)* (application of defendants for judgment or new trial on appeal from verdict and judgment at trial before Charles, J., at Leeds).—Appeal dismissed on agreed terms.

TUESDAY, FEBRUARY 3.

*Heckscher* v. *Crosley & Burn and another* (application of plaintiff for new trial on appeal from judgment of nonsuit at trial before Denman, J., with special jury in Middlesex).—Dismissed.

*Pickett* v. *Lyon* (application of plaintiff for judgment or new trial on appeal from verdict and judgment at trial before Huddleston, B., with special jury at Lewes).—Dismissed.

*Union Bank of London (Lim.)* v. *Sweeting* (application of defendant in person for judgment or new trial on appeal from verdict and judgment on counter-claim at trial before Denman, J., and a jury in Middlesex).—Dismissed.

*Watkins* v. *Meek* (application of defendant for judgment or new trial on appeal from verdict and judgment at trial before Denman, J., and a special jury in Middlesex).—Dismissed.

WEDNESDAY, FEBRUARY 4.

*Allcock and others* v. *Hall and others* (application of defendant for new trial on appeal from part of verdict and findings at trial before Hawkins, J., with a special jury, at Nottingham; heard February 3).—Allowed.

*In re Taylor, Stileman & Underwood, Solicitors, ex parte A. M. L. Payne-Collier* (appeal of A. M. L. Payne-Collier from refusal of Stirling, J., dated November 28, to direct payment in subject to taxation or production of documents).—Allowed.

*Harris* v. *Gordon. Harris* v. *Grindley* (application of defendants Grindley & Co. for new trial on appeal from verdict and judgment at trial before Charles, J., with a jury, in Middlesex).—Part heard.

## ORDERS OF TRANSFER.

Tuesday, January 27, 1891.

Whereas, from the present state of the business before Mr. Justice Chitty, Mr. Justice North, Mr. Justice Stirling, Mr. Justice Kekewich, and Mr. Justice Romer respectively, it is expedient that a portion of the causes assigned to Mr. Justice Chitty, Mr. Justice North, Mr. Justice Stirling, and Mr. Justice Kekewich should for the purpose only of hearing or of trial be transferred to Mr. Justice Romer; now I, the Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, do hereby order that the several causes and matters set forth in the schedules hereto be accordingly transferred from the said Mr. Justice Chitty, Mr. Justice North, Mr. Justice Stirling, and Mr. Justice Kekewich to Mr. Justice Romer, for the purpose only of hearing or of trial, and be marked in the Cause-books accordingly. And this order is to be drawn up by the registrar and set up in the several offices of the Chancery Division of the High Court of Justice.

### First Schedule.

*From* Mr. Justice Chitty.

Fourth City Mutual, &c. Building Society v. Wood—1890 F. 247
Smith v. Bowler—1890 S. 1,557
Phillips v. Jones—1888 P. 1,017
Wigan v. Hoppe—1890 W. 1.152
Lockyer v. Powell—1890 L. 930
Davies v. Plain—1889 D. 104
Singleton v. Mitchell—1890 S. 706
Oppenheimer v. Quinn—1889 O. 1.773
Redfarn v. Prime
Redfarn v. Prime—1889 R. 1,088
Armstrong & Co. (Lim.) v. Pitkin—1890 S. 1,385
King v. Harry—1890 K. 310
Charsley v. Harris—1890 C. 1,649
In re Price
In re Edwards
In re Price
Price v. Pontypool Gas and Water Co.—1889 P. 2,125
Turner v. Elliott—1890 T. 884
Hill v. Bischofswerder—1890 H. 308
Crossley Brothers v. Andrews & Co. (Lim.)—1890 C. 2,047
Andrews & Co. (Lim.) v. Crossley Brothers—1890 A. 168
Colman v. Colman—1890 C. 1,905
Jones v. Beard—1890 J. 514
Hartley v. Dearden—1889 H. 4,471

### Second Schedule.

*From* Mr. Justice North.

Sladen v. Shemwell—1889 S. 784
Garner v. Coad—1889 G. 1,888
Russell v. Sudeley—1887 R 1,617
Beecham v. Turton—1890 B. 481
Parrott v. Burnett—1890 P. 132
Kenrick v. Danube Collieries, &c. Co.—1890 K. 226
Bullock v. Jones—1889 B. 4,457
Grosvenor v. White—1890 G. 1,292
Knowles v. Scott—1889 K. 921
Barker v. Furlong—1889 B. 5,156
United Friendly Societies, &c. Society v. Hobbs—1890 U. 76
In re Walker
Walker v. Walker—1890 W. 498
Sykes v. Wigfield—1889 S. 2,561
Woolner v. Miskin—1890 W. 796
In re Grazebrook
Coxwell v. Paine—1889 G. 1,249
Tarbutt v. Holland—1890 T. 732
Faulders Brewery Co. (Lim.) v. Bownass—1890 F. 56
In re Giles
Real and Personal Advance, &c. Co. v. Giles—1890 G. 251
New Land, &c. Co. v. Lewisham Board of Works—1890 N. 133
In re Walker
Turley v. Walker—1889 W. 3,462
Hardwick v. Morton—1889 H. 4,309
Zuccato v. Young—1890 Z. 74
Wilkinson v. Griffith Bros. &c. Co.—1890 W. 803
Moore v. North-Western Bank (Lim.)—1889 M. 2,194
In re Aspinall
Hudson v. Warburton
Collinson v. Hudson—1887 A. 1,697
Mackenzie v. Newton—1890 M. 1,054
Cole v. Cole—1889 C. 3,711
Llewellyn v. Simpson—1889 L. 2.012
Mineral Residues Syndicate v. Levant Mine Adventures—1889 M. 2,863
Potter v. Glover—1890 P. 499

### Third Schedule.

*From* Mr. Justice Stirling.

Armstrong v. Ouray Gold Mining Co. (Lim.)—1889 A. 139
Sebright v. Fitzgerald—1889 S. 4,107
Gledhill v. Maude—1890 G. 366
In re Parry
Hunt v. Parry
Parry v. Pierce
Hunt v. Parry—1889 H. 2,167; 1889 P. 278
Crump v. Minter—1890 C. 87
Laing v. Walker—1889 L. 3,118
Canning v. Stone—1890 C. 412
Fuller v. Duncan—1890 F. 357
New Asbestos Co. (Lim.) v. Duncan—1890 N. 317
Hyde v. New Asbestos Co. (Lim.)—1890 H. 553
Masters, &c. of the Skinners' Company, London v. Leadenhall Market Cold Storage Co. (Lim.)—1889 S. 4,695
Colchester Brewery Co. (Lim.) v. Harwood—1889 C. 2,014
In re Cooper
Greaves v. Cooper—1890 C. 4,138
Pannell v. Pitman—1889 P. 2,872
Simmons v. Henderson—1890 S. 1,568
Faulkner v. Stevens—1890 F. 688
Staffordshire Joint-Stock Bank (Lim.) v. Partridge—1890 S. 1,147
In re Owen
Owen v. Allman—1889 O. 829
Whately v. Rippon—1889 W. 3,803
Rippon v. Brushfield—1890 R. 341
Binnington v. Hill—1889 B. 4,219
Ramsbotham v. Fielden—1890 R. 334
Turney v. Turney—1889 T. 1.149
Pedder v. Pedder—1890 P. 827
Stephenson v. Ovington—1890 S. 373
Davies v. Gibson—1888 D. 1,225
Cross v. Mein—1890 C. 1,309
Gavin v. Hughes—1889 G. 2,171
Robertson v. Hughes—1890 R. 295
Steinwald v. Van Raalte—1889 S. 3,067

### Fourth Schedule.

*From* Mr. Justice Kekewich.

Freeman v. Cheesman
Cheesman v. Freeman—1890 F. 170
Millen v. Gatfield—1889 M. 2,520
In re Jose Fuente and Trade-mark No. 67,419, ex parte Pinto
In re Same and Trade-mark No. 65,548, ex parte Pinto
In re same and Trade-mark No. 67,418, ex parte Pinto
Ricketts v. Ricketts—1889 R. 32
Wyatt v. Earl Cadogan—1890 W. 324
Pullin v. Reffell—1890 P. 581
Cronbach v. Uranium Mines (Lim.)—1889 C. 3,812
Carter v. Silber—1889 C. 2,044
Cronbach v. Uranium Mines (Lim.)—1889 C. 3813
In re Mountain
Beckett v. Mountain—1890 M. 544
Wertheimer v. Cohen—1889 W. 2,774
Holtz v. Couper—1890 H. 448
Perceval v. Burnett—1889 P. 2,504
Dixon v. Garnish—1888 D. 1,016
Fleetwood Estate Co. (Lim.) v. Drummond & Sons—1889 F. 1,554
Bower v. Tomkinson—1890 B. 905
Steel v. Evans—1890 S. 4,005
Gardiner v. Frith—1889 G. 2,472

Halsbury, C.

N.B.—The parties concerned in the above actions must be ready for trial on and after Monday, February 2.

N. Ward, Sen. Regr.

## HONOURS AND APPOINTMENTS.

Sir Charles Alfred Cookson, K.C.M.G., C.B., has been appointed Her Majesty's Consul General for the City and Port of Alexandria. Sir Charles Cookson, who thus takes over a portion of the duties hitherto discharged by Sir Evelyn Baring, K.C.B., was called in 1867, and is a brother of Mr. Montague Crackanthorpe, Q.C.

Mr. Thomas Rolls Warrington, M.A., has been appointed Counsel to the Attorney-General in Charity Matters, in succession to Mr. Farwell, recently created one of Her Majesty's counsel. Mr. Warrington was called in 1875.

Mr. Arthur Beetham has been elected Treasurer of the Honourable Society of Gray's Inn for the ensuing year, in succession to Mr. James Shiel, whose term of office will expire in April next.

Home Cure for Deafness.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. De Vere & Co., Publishers, 22 Warwick Lane, London, E.C.—Advt.

## CALENDAR OF THE COUNTY COURTS.

### FROM FEBRUARY 9 TO FEBRUARY 14.

| No. of Circuit | His Honour | February 9 | February 10 | February 11 | February 12 | February 13 | February 14 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Pfoulkes | — | Birkenhead | — | Warrington | Leigh | — |
| 8 | Judge Haywood | — | Manchester | Manchester | Salford | Salford | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 16 | Judge Turner | Middlesbrough | York | — | Helmsley | Knaresbro' | Ripon |
| 19 | Judge Barber | — | Alfreton | Belper | Bakewell | New Mills | — |
| 26 | Judge Jordan | Burslem | Longton | Hanley | Hanley | Tunstall | Market Drayton |
| 47 | Judge Powell | — | Lambeth | Greenwich | Lambeth | Lambeth | — |
| 54 | Judge Metcalfe | Weston-supr-Mare | Wells | Axbridge | — | — | — |
| 55 | Judge Machonochie | Shaftesbury | Wincanton | Crewkerne | Yeovil | Salisbury | — |
| 58 | Judge Edge | East Stonehouse | East Stonehouse | East Stonehouse | East Stonehouse | East Stonehouse | Tavistock |

## LAW STUDENTS SOCIETIES.

DEBATING.—The ordinary weekly meeting of this society was held at the Law Institution, Chancery Lane, on Tuesday, February 3; Mr. Cuthbert Curtis in the chair. The subject for discussion, 'That the case of *Taylor* v. *Russell*, L. R. 1891, 1 Ch. p. 8, was wrongly decided,' was opened by Mr. E. W. Munton, in the absence of Mr. W. E. Elmslie; Mr. W. L. Plaskitt and Mr. F. H. Jones opposed. The debate having been declared open, the following gentlemen spoke: In the affirmative, Mr. T. Douglas; in the negative, Messrs. W. Thorpe, H. E. Aston, and A. W. Watson. Mr. C. Harcourt replied for Mr. Munton. On the motion being put to the meeting, it was lost by a majority of eight.

GRAY'S INN.—A meeting of the Gray's Inn Moot Society took place on Wednesday, January 28, at which the following question, arising upon the decision in *The Plymouth Trades Union Case*, was discussed: 'A. is an employer of labour, who has in his employ (1) members of a trades union, who are under contract to give notice before leaving his employment; (2) members of a trades union who are under no such contract; (3) non-union men. A. refuses to dismiss the non-union men; B., C., and D., officials of the union, thereupon call upon all union men to leave the employment without notice. Have B., C., and D. been guilty of any, and what, wrongful act or acts?' Mr. Sinclair-Cox (with Mr. Burton) argued for the plaintiff—that B., C., and D. were both civilly and criminally liable, both in the case of the contract and the non-contract men.—Mr. Robertson and Mr. Tudor appeared for the defendant, and contended that no liability had been incurred.—In the result, after a careful review of the authorities, the President decided that the plaintiff had both a civil and criminal remedy in the case of the contract men, but that the defendants had been guilty of no wrongful acts so far as concerned the non-contract men.—A vote of thanks to the president terminated the proceedings.

LIVERPOOL.—The next meeting of this association will be held at the Law Library, on Monday, February 9, and will be the occasion of a joint debate with the Leeds Law Students' Society. Subject for discussion: 'Do secretaries of trades unions commit an offence within section 7 of 38 & 39 Vict. c. 86, who threaten an employer that, if he does not discharge non-union men in his employ, unionists in his employ shall cease work for him, and who proceed to carry that threat into operation by calling out the unionists?'

MESSRS. LONGMANS & Co. will publish Vol. II., Part 2, of Mr. Henry Dunning Macleod's 'Theory of Credit,' completing the work, next week.

## NOTICES FOR THE WEEK.

### ROTA OF REGISTRARS.

MONDAY, February 9. — Court of Appeal No. 2: Mr. Carrington. Mr. Justice Chitty: Mr. Pugh. Mr. Justice North: Mr. Ward. Mr. Justice Stirling: Mr. Jackson. Mr. Justice Kekewich: Mr. Godfrey. Mr. Justice Romer: Mr. Rolt.

Tuesday, February 10.—Court of Appeal No. 2: Mr. Lavie. Mr. Justice Chitty: Mr. Beal. Mr. Justice North: Mr. Pemberton. Mr. Justice Stirling: Mr. Clowes. Mr. Justice Kekewich: Mr. Leach. Mr. Justice Romer: Mr. Farmer.

Wednesday, February 11.—Court of Appeal No. 2: Mr. Carrington. Mr. Justice Chitty: Mr. Pugh. Mr. Justice North: Mr. Ward. Mr. Justice Stirling: Mr. Jackson. Mr. Justice Kekewich: Mr. Godfrey. Mr. Justice Romer: Mr. Rolt.

Thursday, February 12.—Court of Appeal No. 2: Mr. Lavie. Mr. Justice Chitty: Mr. Beal. Mr. Justice North: Mr. Pemberton. Mr. Justice Stirling: Mr. Clowes. Mr. Justice Kekewich: Mr. Leach. Mr. Justice Romer: Mr. Farmer.

Friday, February 13.—Court of Appeal No. 2: Mr. Carrington. Mr. Justice Chitty: Mr. Pugh. Mr. Justice North: Mr. Ward. Mr. Justice Stirling: Mr. Jackson. Mr. Justice Kekewich: Mr. Godfrey. Mr. Justice Romer: Mr. Rolt.

Saturday, February 14.—Court of Appeal No. 2: Mr. Lavie. Mr. Justice Chitty: Mr. Beal. Mr. Justice North: Mr. Pemberton. Mr. Justice Stirling: Mr. Clowes. Mr. Justice Kekewich: Mr. Leach. Mr. Justice Romer: Mr. Farmer.

## OBITUARY.

MR. THOMAS LEFROY, Q.C., late County Court judge of Down, and second son of the Lord Chief Justice of Ireland, who preceded Mr. Whiteside, died on January 29, at the residence of his son Major Lefroy, Haddington Terrace, Kingstown. He was born on December 31, 1806, and was educated at Trinity College, Dublin. In 1831 he was called to the bar, and had considerable practice. In 1859 he was appointed chairman of the Quarter Sessions, co. Kildare, and in 1876 County Court judge of Armagh, from which he was transferred to Down in 1880. He continued to discharge his judicial duties until very recently, when he was attacked with illness and resigned. He was always held in the highest respect both personally and as a judge. He was a member of the General Synod, and took an active interest in all matters relating to the Church.

SIR EDWARD GROGAN died at his residence, Blantyre, Dundrum, recently. Some time ago he accidentally fell from a bedroom window to the pavement, a distance of about

twenty feet, and sustained injuries from which he never recovered. Sir Edward was born in 1802, and was consequently in the eighty-ninth year of his age. He was educated at Winchester, and subsequently matriculated at Trinity College, Dublin, afterwards proceeding to the degree of M.A. He was called to the bar in 1840, but the bent of his mind led him into the field of politics. He contested the City of Dublin in the Conservative interest, his opponent being Mr. Gregory, whom he defeated. He and Mr. Vance, the other representative of the city, the two Conservative members for the county of Dublin, and the two representatives of the university constituted what was then called 'The Dublin Six,' which formed the watchword of Dublin Conservatives for many years afterwards. Sir Edward married, in 1867, Catherine Charlotte, eldest daughter of Sir Beresford Burton Macmahon, by whom he had several children. The eldest, Mr. Edward Ion Grogan, succeeds to the title.

The death is announced, at his residence at Hampstead, of Mr. Charles Gatliff, in his eighty-first year. Mr. Gatliff, a solicitor by profession, was the first to call the attention of the country, in the year 1841, to the necessity for the improvement of the dwellings of the artisan class, a subject which has since so largely occupied public attention. The result of Mr. Gatliff's labours was that on September 15, 1841, an association for improving the dwellings of the industrial classes was formed. This association obtained a royal charter of incorporation during the administration of Sir Robert Peel in the year 1845. The first block of improved dwellings was opened by the association in the year 1847 in the old Pancras Road, and was visited by the Prince Consort, who took deep interest in the movement. A medal was awarded to this association at the Great Exhibition of 1851, and since that date five other medals have been awarded to this association for their models of improved dwellings for the poor erected in all parts of the metropolis. Mr. Gatliff was secretary to the above-mentioned association from the time of its formation in 1841 till the year 1888.

## BOOKS RECEIVED FOR REVIEW.

Gibson and Weldon's Students' Bankruptcy. Second Edition. London: 'Law Notes' Office.

Goddard on Easements. Fourth Edition. London: Stevens & Sons (Lim.). 1891.

Guide to the Preparation of Bills of Costs. (Pridmore.) Ninth Edition. By C. W. Scott. London: Waterlow & Sons (Lim.).

Lockwood's Builders' and Contractors' Price-book. 1891.

Registration of Title *v.* Registration of Assurances. By H. Brougham Leech, LL.D. London: Wm. Ridgway. 1891.

Solicitor's Clerk (The). By Charles Jones. London: Effingham Wilson & Co.

Tutor and Pupils: Talks about Twelve Law Maxims. By W. Senior, Solicitor. London: 'Law Notes' Office.

The Queen has been pleased to approve that the Hon. Sir Charles Parker Butt, President of the Probate, Divorce, and Admiralty Division of the High Court of Justice, be sworn a member of Her Majesty's Most Honourable Privy Council. Her Majesty has also been pleased to confer the honour of knighthood upon Mr. Justice Jeune.

Tithe Rent-Charge Commission.—The *Gazette* of February 3 contains the names of the commissioners appointed to inquire into the question of Tithe Rent-Charge in England and Wales. They are: Lord Basing, Mr. G. Cubitt, M.P., Mr. H. H. Fowler, M.P., Sir H. Hussey Vivian, M.P., Mr. F. Meadows White, Q.C., Mr. W. J. Beadel, and Mr. C. N. Dalton.

Decimal Coinage.—Mr. Leng, M.P., recently forwarded to the Chancellor of the Exchequer a memorial from the Dundee Chamber of Commerce, and numerous merchants, manufacturers, and others of that town, in favour of a decimal system of coinage, weights, and measures. Mr. Goschen, in acknowledging the memorial, says: 'I must own frankly for myself that, though I am sensible that powerful arguments can be put forward in support of the decimal system, I cannot undertake to recommend its adoption to the country.'

Imprisonment for Debt.—At a general meeting of the Incorporated Law Society on January 30, the president, Mr. R. Cunliffe, occupying the chair, Mr. F. K. Munton moved a resolution to the effect that, having regard to the strongly-expressed opinion at the annual provincial meeting held at Nottingham in October—that it would be expedient to procure legislative rules to guide the judges as to the sufficiency of evidence on which imprisonment for debt should be ordered—the council should appoint a small committee to consider the matter and report upon it. In the discussion which took place a general opinion was expressed that it was desirable that the law should be altered so that the debtor might be compelled to prove want of means, instead of its being necessary for the creditor to prove that he was possessed thereof, as was at present the case. The resolution was carried unanimously in an amended form, so as to permit of the committee considering the matter.

Worcester and Worcestershire Incorporated Law Society.—The annual general meeting of this society was held at the Law Library, Pierpoint Street, Worcester, on Friday, the 30th ult.; present: Mr. A. W. Knott (president), in the chair, Mr. R. Canning Hill (vice-president), Messrs. E. A. Davis (hon. treasurer), G. W. Bentley, T. Southall, W. P. Hughes, J. Martin, J. Stallard, jun., S. B. Garrard, R. A. Essex, A. E. Lord, and F. Ronald Jeffery (hon. secretary). The report of the committee and the treasurer's accounts for the past year were received and adopted. Mr. R. Canning Hill was unanimously elected president, and Mr. William Chance Quarrell vice-president for the ensuing year. Mr. E. Amphlett Davis was re-elected hon. treasurer, and Mr. F. Ronald Jeffery was re-elected hon. secretary for the ensuing year. The following gentlemen—viz. Messrs. G. W. Bentley, F. Corbett, T. G. Hyde, A. W. Knott, and T. Southall—were elected members of the committee, in addition to the officers of the society; and votes of thanks were accorded to the retiring officers for their services during the past year.

## BIRTHS.

On Feb. 1, at King's Heath, near Birmingham, the wife of Joseph Howlett, Solicitor, of a son.

## MARRIAGES.

On Jan. 28, at St. Stephen's, Tonbridge, Alfred Carpenter, Commander, R.N., D.S.O., to Æthelreda, daughter of his Honor Homersham Cox, Judge of the County Courts for Kent.

On Feb. 4, at St. James' Church, Spanish Place, Manchester Square, Douglas Lyon Holms, eldest son of Mr. John Holms, of 16 Cornwall Gardens, Queen's Gate, to Eileen Mary, eldest surviving daughter of Sir Charles Russell, Q.C., M.P.

## DEATHS.

On Jan. 22, Catherine, only surviving daughter of the late James Allen Jackson, of Hull, Solicitor, aged 44.

On Jan. 28, at Highclere, Torquay, Charles Collett, late H.E.I.C.S., Madras, and formerly a Judge of the High Court of Madras, aged 64.

On Jan. 29, at Steyning, Sussex, Nathaniel White, of Oak Lawn, Castelnau, Barnes, and of 28 Budge Row, E.C., Solicitor, aged 51.

On Feb. 1, at his residence, Melton Hall, near Woodbridge, John Richard Wood, Solicitor, of Woodbridge, and 8 Finsbury Circus, London, aged 67.

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# The Law Journal.

*SATURDAY, FEBRUARY* 14, 1891.


## 'OBITER DICTA.'

NOTWITHSTANDING the support of Mr. Labouchere, Mr. Lowther has failed to convince the House of Commons that the convict Hargan ought to receive a free pardon from Her Majesty, and withdrew his motion without going to a division. The facts were simply that Hargan, having killed two men in order, as was alleged, to save his own life, had been tried for murder, and, being convicted of manslaughter, sentenced by Mr. Justice Charles to twenty years' penal servitude. Her Majesty having, on the recommendation of Mr. Secretary Matthews, been graciously pleased to mitigate this sentence (with the general approval of all acquainted with the facts), Mr. Lowther now sought to have a free pardon substituted for the mitigated sentence of twelve months' imprisonment with hard labour. We are not surprised at the result. Perhaps it would have been more satisfactory if the original commutation had been to imprisonment without hard labour, but there must be an end to Parliamentary interference with the executive, and we think that that end had come when the original commutation had been once procured. Perhaps, however, the institution of a regular Court of revision of sentences, which would be a very different Court from the Court of Criminal Appeal which has been so frequently proposed, might be to the advantage of the community. Before such a Court of revision all the facts would be admitted, and the only question would be whether the sentence went too far, and, if so, to what extent it ought to be reduced.

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THE '*bonâ fide* traveller' branch of licensing law has recently given rise to a new and curious question in *Oldham* v. *Sheasby*, which was decided by the High Court upon a case stated by the justices of Macclesfield. It appeared that a certain number of persons had travelled from Ashton-under-Lyme to Macclesfield, a distance of twenty miles, on Sunday. Arrived at Macclesfield, they put up and dined at a public-house in the town. After dinner they walked about and entered and were supplied with liquor at the Railway Hotel, which was distant 'only 525 yards' from the public-house where they were staying. Were they, *quâ* the Railway Hotel, *bonâ fide* travellers or not? This question depends upon the construction to be given to section 10 of the Licensing Act, 1874, and section 25 of the Licensing Act, 1872. By section 10 of the Act of 1874, 'nothing in the Acts of 1872 or 1874' shall preclude 'a licensed person from selling liquor' at any time to *bonâ fide* travellers or to persons lodging in his house, while by section 25 of the Act of 1872 any person found on licensed premises during closing hours is liable to a penalty, 'unless he satisfies the Court' that he is (*inter alios*) a *bonâ fide* traveller. It is also enacted by section 25 of the Act of 1872 (with which the Act of 1874 is to be read as one) that 'a person shall not be deemed to be a *bonâ fide* traveller unless the place where he lodged during the preceding night is at least three miles distant from the place where he demands to be supplied with liquor, such distance to be calculated by the nearest public thoroughfare.' Now it must be observed upon the last provision that it does not follow, because a man is not a *bonâ fide* traveller unless he has travelled three miles, that if he has travelled three miles he is therefore a *bonâ fide* traveller. Thus much the laws alike of logic and common sense require. But when once the necessary *status* of *bonâ fides* is established, there is nothing in the Act to prevent the *bonâ fide* one from achieving his honest purpose of drinking to travel—as contradistinguished from the sorry purpose of travelling to drink—at as many sets of licensed premises as to himself may seem fit. Therefore the Macclesfield justices who convicted the Ashton men of being on licensed premises during closing hours, took a wrong view of the law. And so the Court decided, and quashed the conviction.

The Duke of Norfolk, in a letter of protest against the refusal of the House of Commons to give a second reading to Mr. Gladstone's Religious Disabilities Removal Bill, conveys the impression that the exclusion of Roman Catholics from the offices of Lord Chancellor and Lord Lieutenant of Ireland, which that bill is intended to throw open to Roman Catholics, forms the sole remaining disability of Roman Catholics. 'If we have never thought it necessary,' writes the duke, 'to seriously press for the removal of the disabilities which Mr. Gladstone's bill was intended to take away, it is because we looked upon them rather as interesting remainders of the sufferings of the past than as enactments intentionally retained by our fellow-countrymen as an affront to our religion and a slur upon our loyalty.' It may be useful, however, at this juncture, to point out that the Roman Catholic Relief Act of 1829, while it contained enabling enactments of the most sweeping character in relation to franchises and offices, contained also enactments of a very restrictive, and not to say oppressive, character in relation to Jesuits and monks, and that these enactments are not only not repealed, but from having been travelled over without repeal in the Statute Law Revision Act of last session, will shortly be printed in the second edition of the Revised Statutes now in progress. The enactments in question (10 Geo. IV. c. 7, ss. 28-37) are long and elaborate. Nuns are excluded from their operation, but banishment of Jesuits and monks from the United Kingdom for life still hangs over the heads of these reverend fathers (see ss. 29, 34), it having been the avowed object of the Legislature (see s. 28) to 'make provision for the gradual suppression and final prohibition' of 'Jesuits and members of other religious orders, communities, or societies of the Church of Rome, bound by religious or monastic vows' in the United Kingdom.

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Boldness and brevity were surely never more strikingly combined than they are in Mr. Haldane's Women's Disabilities Removal Bill, which is also backed by Sir Edward Grey and Mr. Howorth. It consists of four sections and about ten lines; it dispenses with a preamble, which, if there were one, could only be in some such form as this: 'Whereas society has hitherto, both in this realm and abroad, been constituted on a radically wrong basis, and it is desirable to establish it on a sound basis, be it enacted,' &c. Women suffrage is accepted, within the limits now assigned to men, by many persons on all sides of politics. Probably few will be found to object to the presence of ladies on boards of guardians and school boards. But some of the most zealous advocates of women's rights will have their breath taken away by the proposal in section 3: 'No person shall be disqualified from being elected or appointed to or from filling or holding any office or position merely by reason that such person is a woman, or being a woman is under coverture.' We should soon have women members of Parliament, judges, jurymen, even deans and bishops, foreign secretaries, and prime ministers. The Lady Bishop of Barchester and Mr. Proudie might soon be the ecclesiastical order of the day. The application of an Act of Parliament like this would afford an excellent arena for the conflict of Erastian and Anglican or Catholic theories of the Church. Yet the promoters of this bill are much too serious people to be suspected of a joke, and one at least of them is a Scotchman. Mr. Haldane has achieved considerable distinction in philosophy as well as in law, but his study of Schopenhauer has apparently led him to diametrically opposite views to those of that philosopher, who was a confirmed misogynist.

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We referred two weeks ago to the dishonourable way in which persons travel in classes higher than those for which they have bought their tickets from the railway companies. Last week an indignant champion of the public took up the gauntlet by denouncing in our columns the way in which railway companies cheat the public by obliging them to travel in overcrowded carriages. We do not understand our correspondent to express approval of the fraudulent passenger, but to his mind the way in which the companies treat their passengers is an extenuating circumstance to be considered in judging of the passenger's fraud. There is, at all events, this difference between the case of the cheating passenger and the overcrowding company—namely, that the former is a fraud deliberately practised, while the company, at all events in many cases, can have no means of knowing beforehand that the train is going to be crowded. Further, if a person finds that he cannot get into a third class, for which he has taken his ticket, the company do not object to his going second, or, if necessary, first. Persons often avail themselves of this privilege on excursion days, even when the third classes might prove on examination not to be absolutely full. In the list of bye-laws and regulations appended to Browne and Theobald's 'Law of Railways' (2nd edition), p. 832, there is one bearing on this subject—viz. 'Any person travelling without the special permission of some duly authorised servant of the company in a carriage or by a train of a superior class to that for which his ticket was issued is hereby,' &c. The obvious implication from this bye-law would be that, a passenger using a superior class with the permission of an authorised servant of the company would not be required to pay the extra fare or be prosecuted. By bye-law 13, on the same page, provision is made for punishing a person who persists in entering a carriage already full when any person inside objects. True, it may be observed that we cannot tell on the spur of the moment whether the particular company on whose line we are travelling have adopted these bye-laws, but they show us at least the line which railway companies are most likely to adopt in this matter.

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The Tithes Bill, as amended in committee, has now been printed. One of the most important amendments is that of clause 4, which the Attorney-General accepted under a protest that it was unnecessary. By this clause, 'if any person in any action or matter under this Act shall be dissatisfied with the determination or direction of the judge of the County Court in point of law or equity, or upon the admission or rejection of any evidence, the party aggrieved by the judgment, direction, decision, or order of the judge may appeal from the same to the High Court, in such manner and subject to such conditions as may be for the time being provided by the Rules of the Supreme Court regulating the procedure on appeals from inferior Courts to the High Court.' This clause is obviously modelled on section 120 of the County Courts Act, 1888, but whereas that section gives an appeal by

leave only in actions of contract or tort in certain cases, the new clause in the Tithes Bill gives the appeal without any such restriction. Though it is not easy to see how an action of contract or tort can arise under the bill, which is mainly taken up with the appointment of a receiver by the County Court, the clause may possibly be found useful in time to come. Whether, now that it has been inserted, it would not be well to make the decision of the High Court final, may, perhaps, be doubted. Without such a restriction, there will be an appeal from the High Court by leave to the Court of Appeal, and a further appeal without any leave from the Court of Appeal to the House of Lords. It may be pointed out that there is no limit in respect of amount to the right, under section 126 of the County Courts Act, 1888, to remove any action or matter commenced in the County Court 'under the provisions of this Act,' 'by *certiorari* or otherwise' into the High Court. It is doubtful whether a matter under the Tithes Bill would come under this enactment, and it might, perhaps, be well to substitute for the new appeal clause a provision that it should.

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The Archbishop of Canterbury, in reply to an interpellation by the Bishop of Truro, has recently stated in Convocation that the present doubtful state of the law against betting made it very difficult to propose amendments. No doubt the statutes down from Henry VIII.'s still unrepealed 'bill for maintaining artillery and debarring of unlawful games' (33 Hen. VIII. c. 9), whereby it is illegal for (*inter alios*) fishermen, watermen, labourers, and servants to play at (*inter alia*) cards, dice, or logating 'out of Christmas,' down to 37 Vict. c. 18, whereby advertising tipsters are subject to severe penalties—form a mass of frequently incomprehensible matter. A consolidation statute, at least, is therefore very much wanted. But wanted far more, as we have more than once pointed out, is an amending statute to do away with the bad judge-made law of *Read* v. *Anderson*, 53 Law J. Rep. Q. B. 532, whereby certain harpies styling themselves 'turf commission agents' have become elevated to the dignity of a recognised profession. Instead of talking about this matter in Convocation, could not the bishops (who are peers of Parliament) see their way to introducing a bill to reduce to their proper legal position a set of agents whose sole business it is to make contracts not enforceable by law?

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Lord Monkswell's Copyright Bill, to which we have more than once called attention, contains not a few departures from the recommendations of the Royal Commission of 1878, although it is, of course, mainly based upon the reports of that commission. Amongst these departures (almost all of which are set forth in the memorandum prefixed to the bill) is the reproduction by clause 25 of the requirements of the existing law (see Copyright Act of 1842, 5 & 6 Vict. c. 45, ss. 6–10), by which publishers of all books (including new editions of books) are bound to deliver free copies to certain libraries at Oxford, Cambridge, Edinburgh, and Dublin. There is no doubt that this requirement is a heavy tax on literary production, especially in cases where a book has costly plates and the number of copies printed is small. The commissioners, therefore, recommended that the law should be altered, that the libraries should acquire by purchase such books as they felt disposed to pay for (the British Museum alone to retain the right of gratis supply), and to do without the others as best they could. Lord Monkswell, however, has not followed this recommendation. 'From communications which have been received from the librarians,' so it is stated in the memorandum prefixed to the bill, 'it appears that they are most anxious to retain their present privilege, that the libraries could not be properly supplied if it were abolished, and that the cases in which it can cause any real hardship are very few.' Is this proposal, which, if carried out, will continue the present slight increase of the normal cost of production of books, and, therefore, of their selling price, in the real interest of the public? We think it is, on the ground that, unless a copy of every book find its way to the libraries, there may be a risk of some books not becoming obtainable at all.

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If the argument on behalf of the purchaser in the case of *In re Sandbach & Edmondson*, 60 Law J. Rep. Chanc. 60, had prevailed, we should have had to add to our notions of a misleading condition any condition which requires the purchaser to assume a given fact, and does not point out the legal consequences involved in the particular case. The vendor's title in this case was derived from a trustee who—assuming his *cestui que trust* to have died intestate and without heirs before 1870—became beneficially entitled to the property (subject to a prior life-interest) according to the old law (*Burgess* v. *Wheate*, 1 Eden, 177; see, too, *Gallard* v. *Hawkins*, 53 Law J. Rep. Chanc. 835). That law, it will be remembered, in the case where a *cestui que trust* dies on or after August 14, 1884, is altered by the Intestates Act, 1884, s. 4, whereby in such a case the property now escheats to the Crown. The trustee had himself died in 1870, whence the importance of that year. By the conditions the title was to commence with the settlement, made in 1840, constituting the trusteeship, the parties to which were named; and the condition in dispute required the purchaser to assume the death of the *cestui que trust* intestate and without an heir before the year 1870. It was not suggested that the vendor knew that the assumption was false, nor even that the facts assumed were not true, and the property had been enjoyed in accordance with the title since 1876, when the tenant-for-life had died. The argument was that, looking to the importance of the legal consequences involved, the condition was really a trap for the purchaser. The Court of Appeal, affirming Vice-Chancellor Bristowe, held that the condition was binding, the Lord Chancellor observing that 'an opposite view would establish the principle that, apart from intentional misleading, and apart from any knowledge by the vendor that the facts required to be assumed were not true, a condition requiring assumptions as to the title could only be supported where the specific objection to the title was pointed out,' for which, he added, he knew of no authority.

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It seems very doubtful whether Mr. Justice Kekewich's decision in *The Whitwood Chemical Company* v. *Hardman* (February 7) can be supported. The defendant was a skilled manager of the plaintiffs' works, and by his agreement with them he was to serve as manager

till 1895, and 'give the whole of his time to the company's business.' But there was no express provision that he should not enter into any other business or occupation. A rival company was being started in the neighbourhood, and the defendant was shown to be in negotiation for becoming a director thereof and a shareholder therein. He was willing to cancel his agreement with the plaintiffs, but contended that he was entitled to spend his leisure time as he liked, including, of course, the performance of his duties as a director in the proposed new company. Mr. Justice Kekewich thought otherwise, and granted an interlocutory injunction restraining him from giving less than the whole of his time to the plaintiffs' business. The decision is avowedly based on the line of authority of which *Lumley* v. *Wagner*, 21 Law J. Rep. Chanc. 898; 1 De G. M. & G. 604, is a conspicuous feature, but it seems to go far beyond that case. In the first place, a chemical manufacturer's manager is not such a *rara avis* as a cantatrice. Another distinction between the two cases is that there was an express agreement of Mademoiselle Wagner not 'to use her talents at any other theatre, nor in any concert or reunion, public or private,' without the plaintiff's consent. The proper remedy against Hardman, if there is any, would seem to be an action for damages. To grant an injunction seems to be going dangerously near what Lord Justice Fry said was turning a contract of service into a contract of servitude.

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In the case of *In re Griffith; Eggar* v. *Griffith* (noted at p. 27) the Court had to determine the curious question whether a solicitor, who refuses to make any charge for professional services rendered to a client, can be compelled to deliver a bill of costs. The solicitors in question had conducted certain proceedings in the Divorce Court on behalf of some clients. The solicitors alleged that the clients had verbally agreed to pay them 1,000*l.* for their services, and the clients actually paid them 500*l.* on account of expenses. Upon the termination of the proceedings, some two years after that payment, the solicitors applied for the balance, whereupon the clients asked for a bill of costs, denying that they had ever agreed to pay 1,000*l.* The solicitors not only refused to deliver a bill of costs, but paid the 500*l.* they had already received into the clients' bank, and wrote a letter refusing to make any charge whatever for their services. The clients then applied at chambers for an order under section 37 of 6 & 7 Vict. c. 73, compelling the solicitors to deliver a bill of costs; but both the master and the judge refused to make an order, and the Court held that they were perfectly right in so doing. They were of opinion that, as no charge of misconduct was made against the solicitors, the application could not be founded upon the inherent jurisdiction of the Court over its officers, but could only be based upon section 37 of 6 & 7 Vict. c. 73, and that that section had no application unless there were a 'party chargeable.' After the solicitors' letter renouncing all claim for costs the Court considered that the clients ceased to be 'chargeable,' and that there was, therefore, no jurisdiction to make the order. It would seem to be impossible to doubt the correctness of the conclusion at which the Court arrived. There can be no power to compel a man to make a charge for work done if he does not desire to do so, and there is certainly no reason for placing solicitors upon a different footing in this respect from other persons.

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The attention of the legal profession should be drawn to the declaration of Mr. Justice Kekewich in *Thomson* v. *Macdonald & Co.* (1891, 8 P. O. R. p. 9), that in actions for the infringements of patents he will, in future, disallow the costs of the objection that the plaintiff is not 'the true and first inventor,' if that objection is employed merely as an alternative way of denying novelty. The distinction between the two pleas is obvious, and was insisted upon by Hindmarch nearly half a century ago. Mr. Justice Kekewich has done well in taking such stringent measures to save it from obliteration.

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The decision of Mr. Justice Chitty in *In the Matter of Meeus' Application* (60 Law J. Rep. Chanc. 96; 1891, 8 P. O. R. p. 25) is well worthy of notice. The material facts were as follow: 'Louis Meeus,' a firm carrying on the business of distillers and exporters of 'Geneva' at Antwerp, applied to register a trade-mark alleged to have been used as such prior to August 13, 1875. The proposed mark consisted of a key ornamented with ears of corn, across which was the signature 'Louis Meeus' written in current hand. In a circle outside the key were the words 'Geneva Key Brand' and the name 'Louis Meeus' printed in special but not extraordinary type. There was also the word 'Antwerp' in the circle beneath the key. The application was opposed by Messrs. Blankenheym & Nolet, 'Geneva' distillers at Rotterdam, on various grounds that are, for our present purpose, immaterial. The evidence of the applicants failed to prove user of the proposed mark *as a whole* prior to August 13, 1875; and Mr. Justice Chitty, affirming the decision of the comptroller, held that the application must, therefore, be dismissed. Two important points are settled by his lordship's judgment. In the first place, the converse of the rule laid down by the Court of Appeal in *In re Palmer's Trade-marks*, L. R. 24 Chanc. Div. 504, is judicially determined to hold good; and an applicant for the registration of an 'old mark' must henceforth be prepared to prove the user before the statutory date of the proposed mark, substantially in the form in which he claims to register it. In the second place, *Orr-Ewing* v. *The Registrar of Trade-marks*, L. R. 4 App. Cas. 479, 48 Law. J. Rep. Chanc. 707, has at length been 'explained.' The passage in which Mr. Justice Chitty deals with the case is too long to quote. Put shortly, his lordship's construction of the decision of the House of Lords is, that the committee of experts appointed to aid in the formation of the first register of trade-marks were not a tribunal of commerce, and that the general orders appointing them did not constitute a statutory barrier to the registrar of trade-marks even entertaining an application apparently inconsistent with the resolutions at which they arrived. We trust that *Orr-Ewing* v. *The Registrar of Trade-marks* will not again be cited as an authority against the 'Braided Fixed Stars' case.

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'General' Booth does not like lawyers, unless, indeed, they are sitting on the 'penitents' bench.' At a recent meeting the 'General' seems to have delivered

his soul of some strong feeling and his mouth of some hard sayings about the legal profession. But he would be a bold man who asserted that lawyers as a body were opponents of religion. On the other hand, their intellectual training and the habit acquired in practice of careful analysis undoubtedly make lawyers very unlikely converts to Salvation Army tenets, and therefore very unwelcome critics of the latest plan for reforming 'the submerged tenth.'

## INNKEEPERS AND GUESTS.

What constitutes the relationship between innkeeper and guest? The reported cases which throw light on this point are so few in number as to give some value to the decision of the Court of Appeal last week in *Medawar* v. *The Grand Hotel Company*, in which this question was discussed. *York* v. *Grindstone*, 1 Salk. 388; 2 Ld. Raym. 388, *sub nom. Yorke* v. *Greenhaugh*, was a replevin of a horse, which the plaintiff, a traveller, had left at the defendant's inn, and which the defendant had detained for its keep. In this case Chief Justice Holt doubted whether the plaintiff was a guest, because he never went into the inn himself, but only left his horse there, which the innkeeper was not obliged to receive, and, if he did, did so as a livery stable keeper. Three other judges, however, held that the plaintiff was a guest by leaving his horse as much as if he had stayed himself, 'because the horse must be fed, by which the innkeeper has gain; otherwise, if he had left a trunk or a dead thing.' In *Bennett* v. *Mellor*, 5 T. R. 273, in 1793, an action for the value of goods stolen from an inn, the plaintiff's servant had taken the goods in question to market, and not being able to dispose of them went with them to the defendant's inn, and asked the defendant's wife if he could leave the goods there until the next market-day. She refused, and the plaintiff's servant then sat down in the inn and had some liquor, putting the goods on the floor behind him. When he got up, after sitting there a little while, the goods were missing. A verdict was, on these facts, found for the plaintiff, and, in reporting the case upon a motion for a new trial, Mr. Justice Buller observed that he was of opinion that, if the defendant's wife had accepted the charge of the goods upon the special request made to her, he should have considered her as a special bailee, and not answerable, having been guilty of no actual negligence; but, that not being the case, he considered it to be the common case of goods brought into an inn by a guest and stolen from thence, in which case the innkeeper was liable to make good the loss in accordance with *Calye's Case*, 1 Sm. L. C. 8th edit. p. 140. This view was confirmed by the Court of King's Bench. In *Farnworth* v. *Packwood*, 1 Stark. 249; and *Burgess* v. *Clements*, 1 Stark. 251, where private rooms had been taken in an inn by travellers for the exposure and sale of goods, and it was held that a guest who takes exclusive possession of a room for such a purpose, and not *animo hospitandi*, discharges a landlord from his common law liability. In *Jones* v. *Tyler*, 3 Law J. Rep. K. B. 166; 1 A. & E. 522, an innkeeper was asked on a fair-day by a traveller driving a gig whether he had room for the horse, and he thereupon put the horse into his stable, received the traveller with some goods into the inn, and placed the gig in the street, whence it was stolen, and it was held that, as he had the benefit of the guest and provided provender for the horse, he was liable. In *Strauss* v. *The County Hotel and Wine Company*, 53 Law J. Rep. Q. B. 25, the plaintiff arrived at the defendants' hotel with the intention of spending the night there, and delivered his luggage to one of the hotel porters, but after reading a telegram decided not to spend the night there, and went into the coffee-room to order refreshments. Being unable to obtain what he required, he went to the station refreshment-room, which was under the same management as the hotel, and connected with it by a covered passage. Shortly afterwards he went out, telling the porter to lock up his luggage until the time for his train to start, and it was locked up in a room near the refreshment-room, but on his arrival on the platform a part of it was missing. In an action against the proprietors of the hotel, the plaintiff was nonsuited upon the ground that there was no evidence that he ever became a guest of the defendants at their inn, and upon argument the nonsuit was upheld, Lord Chief Justice Coleridge saying that he could find no ground for saying that the defendant was in any sense a guest within the defendants' inn at the time when his luggage was lost. In *Medawar* v. *The Grand Hotel Company*, the case recently before the Court of Appeal, the plaintiff went to the defendants' hotel early in the morning, having with him a portmanteau, hat-box, and dressing-bag. He was told that the hotel was full, but that there was a room engaged by persons who had not arrived which he could use for washing and dressing, and he was shown up, and his luggage was taken to this room. He there opened his dressing-bag and took out a stand containing, amongst other things, a jewellery case, and having washed and dressed went down to breakfast, leaving the door of the room unlocked and the stand on the dressing-table. After breakfasting, he paid for his breakfast, went out, and did not return till late at night. On asking for his room he was told that he had none, and it appeared that the persons who had engaged the room had arrived, and that on their arrival one of the defendants' servants had removed the plaintiff's luggage into the corridor, leaving the stand, as it was, out of the dressing-bag. On the luggage being brought to a room which had been found for him, the plaintiff found that some of the jewellery was missing, and brought an action against the hotel company to recover its value. The action was tried before Mr. Justice Smith, without a jury, who held that, whatever the plaintiff's position was during the short period of time during which he was dressing and having breakfast, he was not a guest after he left in the morning, and on that ground and on the ground that the plaintiff had not shown any negligence on the part of the defendants which would make them liable as bailees, gave judgment in their favour. This judgment has now been reversed by the Court of Appeal. The Court were much pressed with the argument that the use of the room by the plaintiff for the purpose of dressing was under the terms of a special contract, but refused to entertain this proposition. In their opinion the proper inference from the facts, construed by the aid of ordinary knowledge of the world, was that the room was given to the plaintiff, subject to the notice that if the expected guests arrived he must quit it, and that he remained a guest until their arrival, and that the innkeeper continued to be the guardian of the guest's property until it was duly delivered to him. This being so, the Court held that the hotel company must, in order to escape liability on

their part to the extent of the 30*l.*, to which it is limited by 26 & 27 Vict. c. 41, show that the goods were lost by the plaintiff's negligence in leaving them open to view in an unlocked room, and that as they failed to prove this, since it was equally likely that the theft took place after the goods were, by the negligence of their own servants, placed in the corridor, the plaintiff was entitled to judgment for 30*l.*: *Cashill* v. *Wright*, 6 E. & B. 891, in 1856; *Morgan* v. *Raney*, 30 Law J. Rep. Exch. 131; *Oppenheim* v. *The White Lion Hotel Company*, 40 Law J. Rep. C. P. 231. As, however, the claim of the plaintiff exceeded 30*l.*, the Court held that, as to the excess, the onus was by 26 & 27 Vict. c. 41, placed upon the plaintiff to prove, in order to entitle him to recover, that the loss occurred by the defendants' negligence, and as it was equally likely that the goods were stolen in the room in consequence of his own negligence, as in the corridor in consequence of the defendants' negligence, he had failed to discharge the burden of proof, and was not entitled to recover more than 30*l.* A more thoroughly illustrative case of the law upon this point it would have been difficult to devise.

## THE NEGOTIATION FEE UNDER THE SOLICITORS' REMUNERATION ORDER.

A POINT of great importance to the profession was decided by the Court of Appeal in the recent case of *In re Macgowan*, *Macgowan* v. *Macgowan*, 60 Law J. Rep. Chanc. 6; L. R. 1891, 1 Chanc. Div. 105, the short question being whether a solicitor who negotiates a sale by private contract, subject to the approval of the Court, which is afterwards obtained, is entitled to the scale fee for negotiating the sale, in addition, of course, to the costs of obtaining the sanction of the Court to the conditional contract. The taxing-master disallowed the fee, considering that the solicitors were only entitled to be paid according to schedule 2. Lord Justice (then Mr. Justice) Kay affirmed the taxing-master, but his decision was overruled by the Court of Appeal. The facts may be shortly stated. An action was brought in the Chancery Division for the administration of the estate of a testatrix, which comprised a mortgage for 6,000*l.* The solicitors of the trustees negotiated a sale of the property comprised in the mortgage, and it was not disputed that they conditionally arranged the price, terms, and prepared and procured the signature of a contract conditional on the sanction of the Court being given to it. In the course of the negotiation, but solely for the purpose of obtaining evidence to induce the Court to sanction the sale, they obtained the opinions of two valuers to whom they paid fees of 3*l.* 13*s.* 6*d.* and 1*l.* 1*s.* The contract was ultimately approved by the Court without any alteration. The solicitors charged the sums paid to the valuers in their bill of costs, as well as the negotiation fee. It will be remembered that schedule 1, part 1, to the General Order made under the Solicitors' Remuneration Act, 1881, allows a scale fee to the 'vendor's solicitor for negotiating a sale of property by private contract,' while rule 11 says: 'The scale for negotiating shall apply to cases where the solicitor of a vendor or purchaser arranges the sale or purchase, and the price and terms and conditions thereof, and no commission is paid by the client to an auctioneer or estate or other agent.' The Court of Appeal, consisting of Lords Justices Lindley, Bowen, and Fry, on these facts held that the solicitors were entitled to the negotiation fee. The argument on the other side was twofold—first, that the Court and not the solicitors had really arranged the terms, inasmuch as they were of no binding force till approved by the Court; and secondly, that the employment of the valuers by the solicitors on behalf of the vendors brought the case within the prohibitive words of rule 11. The second argument on which the taxing-master's ruling was chiefly founded, but which does not appear to have much influenced Lord Justice Kay in the Court below, was readily disposed of in the Court of Appeal by the consideration that the valuers were really employed by the solicitors as expert witnesses for the purpose of obtaining the sanction of the Court, and therefore no question arose of any commission being paid on behalf of the client for the purpose of the negotiation for which the fee was claimed. The first argument is entitled to more consideration, as it formed the ground of Lord Justice Kay's decision in the Court below, which may be gathered from the following passage in his judgment: 'It seems to me,' Mr. Justice Kay said, 'that the word "arrange" in this clause of rule 11, which only applies to negotiation, means that there must be complete negotiation resulting in a binding contract, and that the solicitor is not entitled to the fee unless he carries out the negotiation himself, without paying anything to anybody else up to the time when there is a binding contract.' The additional expense to which the learned judge is here alluding was, as appears from the rest of his judgment, the expense incurred in obtaining the sanction of the Court, including the fees which had been paid to the valuers. This construction would, as Lord Justice Bowen points out, exclude from the operation of the rule a vast amount of business which, his lordship goes on to say, 'it must have been intended to cover.' It may be added that it seems to involve a remarkable interpretation of the word 'negotiating,' if we are to look at the language of part 1 of schedule 1, or of the word 'arrange,' if we are to look at rule 11; and we think there can be no possible question as to the correctness of the decision of the Court of Appeal. The following passage in Lord Justice Bowen's judgment will serve to show the construction of rule 11 which found favour with the Court: 'In cases where the sale is ultimately effected, the solicitor arranges the sale if he brings the negotiation to a close, which leaves his principal free to accept or not, and if, as a fact, his principal afterwards does accept. Negotiation, I should have thought, in the ordinary meaning of the English language, is that which passes between parties or their agents in the course of or incident to the making of the contract; and if the negotiation is brought to such a close as leaves the principal at liberty to say, "I accept the offer," then the agent has done all that a negotiating agent can do, and within the meaning of the rule he has arranged the sale, the sale afterwards being effected.' What consequence would have followed if the terms arranged by the solicitors had been modified by the Court so as to result in a new contract is not stated by any of the learned judges; but we conceive that it is not open to doubt, and that in this case the solicitors, not bringing themselves within the terms of rule 11, would, according to *Parker* v. *Blenkhorn*, 50 Law J. Rep. Q. B. 209; L. R. 14 App. Cas. 1, have made out their bill for the negotiation business under the old system as altered by schedule 2.

# Reviews.

## THE COMPANIES (WINDING-UP) PRACTICE.

*The Companies (Winding-up) Act and Rules*, 1890, *and Part IV. (Winding-up) of the Companies Act*, 1862. With Forms, Scales of Costs, Fees, and Percentages, Directors' Liability Act, 1890, Lord Chancellor's Orders, Board of Trade Orders and Forms, and Notes thereon. By M. MUIR MACKENZIE, of Lincoln's Inn, Barrister-at-Law, and C. J. STEWARD, of the Inner Temple, Barrister-at-Law, Official Receiver under the Companies (Winding-up) Act, 1890. London: Shaw & Sons. 1890.

THIS work, the authors tell us in their preface, does not aim at being more than a practical guide to the new practice in the winding up of joint-stock companies, introduced by the Companies (Winding-up) Act, 1890. It accordingly comprises that part of the Companies Act, 1862 (Part IV.), which deals with winding-up, and the new Act of 1890, together with all the new orders, &c. The notes, which have been introduced, 'do not attempt to deal with any general questions of joint-stock company law, but are confined to points of practice, and particularly to the points in which the law and practice in bankruptcy has been and will be introduced into the winding up of insolvent companies.' Within the limits so defined, the work is executed in a satisfactory manner, and will be a useful handbook to those who are concerned with the winding up of joint-stock companies. At p. 113 are considered the provisions of section 10 of the new Act, which extend section 165 of the Act of 1862, which is now repealed. The new law includes any person who has taken part in the formation or promotion of a company, and we have here enumerated, by way of example, 'promoters, solicitors, prospectus-makers, vendor-syndicates, brokers, and valuers.' Section 165 of 1862 was held to be a procedure enactment which created no new liability; but attention is drawn to the fact that new liability has been created by the Directors' Liability Act, 1890. The application may also now be made by the official receiver, and this must be read in conjunction with sections 7 and 8 of the Act, which provide for the submission of a statement of affairs to the official receiver, and give him a principal part in the conduct of the public examination.

## THE GROWTH OF CRIMINAL LAW.

*Lectures on the Growth of Criminal Law in Ancient Communities.* By RICHARD R. CHERRY, LL.D., Barrister-at-Law, Reid Professor of Constitutional and Criminal Law in the University of Dublin. London and New York: Macmillan & Co. 1890.

THE aim of the author of this interesting little volume has been to compare the early ideas of several nations as to the crimes and their punishment, or, as he elsewhere expresses it, to trace historically the manner in which criminal or penal law developed itself among ancient societies. He has accordingly selected various legal systems as far as possible apart from each other, his object being to show that identity of usage did not arise from one nation adopting the laws or institutions of another, but from the inherent principles of human nature. The subject is generally considered in Lecture I.; Lecture II. then deals with ancient Irish law, which is of special value in such a study as the present; Lecture III. is devoted to the law of Semitic races; Lecture IV. to Roman penal law; Lecture V. to early English penal law. The last lecture is devoted to Early English Criminal Law, and takes as its text, 'The distinguishing feature of Modern English Criminal Law is the fact that the Sovereign is in all cases the prosecuting party.' The Queen, as Mr. Cherry puts it, prosecutes every petty larceny, and at the same time, by her delegate the judge of assize, tries the offender. Theoretically, she is judge in her own cause, a position which is repugnant to every principle of jurisprudence. The consequences that flow from this are well traced out in the course of the lecture. Thus the general rule of law, the policy of which has been questioned, is that there is no prescription in criminal matters. This results from the maxim 'Nullum tempus occurrit regi,' and there are several other instances given where the law is governed by the same principle. The lectures are interesting and instructive.

## THE BISHOP OF LINCOLN'S CASE.

*The Bishop of Lincoln's Case* A Report of the Proceedings in the Court of the Archbishop of Canterbury. With Appendix. By E. S. ROSCOE, Barrister-at-Law. London: W. Clowes & Sons. 1891.

THIS book contains a report of the whole proceedings of the now historical case of *Read* v. *The Bishop of Lincoln*. Anyone desiring to study the case at leisure can now do so. The book is well bound and is printed on strong paper, so as to be essentially a library edition. The pages are 202 in number and the price is 10s.

## THE STUDENTS' PROBATE, DIVORCE, AND ADMIRALTY.

*Gibson and Weldon's Students' Probate, Divorce, and Admiralty.* Intended as an Explanatory Treatise on the Law and Practice in Probate, Divorce, and Admiralty Matters. Prepared specially for the use of Students; and more particularly for the use of Students for the Final (Pass) and Honours Examinations of the Law Society. Second Edition. By the Authors. London: The 'Law Notes' Publishing Offices. 1891.

THE second edition of this useful work appears after an interval of some three years, and bears the impress throughout of careful execution. Here and there, however, we must confess that we should have been glad of references to more recent authorities. Thus, on p. 13, on the subject of 'Incorporation of Documents,' allusion might very well have been made to several important cases in which the law as to incorporation has been considered—*e.g. Singleton* v. *Tomlinson*, to mention one case out of many. Under the head of 'Due Influence' the authors might have introduced with advantage the case of *Wingrove* v. *Wingrove*. Generally speaking, however, the work is well brought down to date, and will be found of solid service to the student.

# Correspondence.

## THE NEW COMPANIES (WINDING-UP) ACT.

Sir,—The enclosed copy of a letter received from the Board of Trade on an important matter relating to the new procedure under the Companies (Winding-up) Act, 1890, will be of considerable interest to both branches of the legal profession. Alfred Emden.

5 New Court, Lincoln's Inn:
Feb. 11.

Board of Trade, Whitehall Gardens:
February 10, 1891.

Sir,—Referring to your letter of the 29th ultimo, addressed to the President of the Board of Trade, I am directed by the Board of Trade to inform you that while their solicitor will commonly act for the official receiver in proceedings under the Companies Acts involving questions of public policy or the investigation of conduct, it is not intended in the ordinary administration of a company's estate to establish any exclusive system in the employment of professional agents, but to leave such employment in each case to the discretion of the official receiver, subject to the control of the Board of Trade. Such discretion would be exercised only with reference to the interests of the shareholders and creditors of the company.

I am, Sir, your obedient Servant,
(Signed) Henry E. Calcraft.

Alfred Emden, Esq.,
5 New Court, Lincoln's Inn, W.C.

## THE SALARY OF THE LORD CHANCELLOR.

Sir,—Your issue of January 17 has been sent to me, in which you impugn my statement made in our town council with reference to some high-handed action of Lord Chancellor Halsbury, whom I described as 'the highest-paid functionary in England,' at 20,000*l.* per annum.

May I trust to your allowing me to substantiate this statement from Parliamentary papers just issued, which give the salaries as under?—

| | £ |
|---|---|
| Lord Chancellor . . . . | 10,000 |
| Speaker of House of Lords . . | 4,000 |
| President of the Supreme Court . | 6,000 |
| Making a total . . . | 20,000 |

the amount I named. James Wicks,
Alderman of Colchester.

Dereham Place, Colchester:
Feb. 11.

# Unreported Cases.

## NISI PRIUS.

### ACTION OF DETINUE AGAINST AN INFANT.

On January 31, before Mr. Justice Wright, the case of *Burton* v. *Levey, an infant, &c.*, was further considered. This case was tried before his lordship and a common jury on December 15 last year, when the jury found a verdict for the plaintiff, damages 70*l.*—The plaintiff is a harness maker carrying on business in Oxford Street, and was, in April, 1890, in possession of two diamond rings of the above value which he wished to dispose of. The defendant had his horses at livery at the stables of the plaintiff's father, and upon seeing the rings he told the plaintiff that he thought his mother, Mrs. Levey, would buy them; and he said he would show them to her. He added that if his mother took them he would bring back the price—viz. 70*l.*, on the following day. Accordingly, the plaintiff intrusted the rings to Mr. Montague Levey, but no money was forthcoming, nor were the rings returned to the plaintiff. Thereupon the plaintiff wrote to Mrs. Levey on April 22, asking for his rings or their price. To this the defendant replied that he had purchased the rings, saying that the plaintiff would have to wait for his, the defendant's, convenience to be paid for them. Upon this a correspondence took place between the plaintiff's solicitor and that of the defendant, which resulted in the present action, the writ being issued on April 28, 1890. The defendant entered an appearance by his mother, Catherine Levey, widow, as guardian *ad litem*, on May 6, 1890. The defendant, by his pleadings, denied the detinue of the plaintiff's property in the rings; alleged a purchase of the chattels for 75*l.*, to be paid for on July 4, 1891; accord and satisfaction by the exchange of a lady's dressing-bag; and infancy. At the trial the plaintiff gave evidence in support of his case, and the defendant was not called as a witness, and the plaintiff got an admission from the defendant that he had the rings in his possession. The jury found the verdict as above, assessing the value of the rings at 70*l.*—Mr. M'Call now called his lordship's attention to *Regina* v. *M'Donald*, L. R. 15 Q. B. Div. 323, where an infant over fourteen years of age converted to his own use goods which had been delivered to him by the owner under an agreement for the hire of the same; and it was held that he was rightly convicted of larceny as a bailee of the goods under 24 & 25 Vict. c. 96, s. 3; and relied on the expressions used by Mr. Justice Cave and Mr. Justice Wills.—Mr. Leresche argued that an infant could not contract, and his lordship said he must not treat this as a question of contract, but of bailment. It seemed to him that this was very like larceny; it was a very strong conversion, and like obtaining goods by false pretences. — Mr. Leresche cited *Manly* v. *Scott*, 1 Sid. 109, 1659; *Johnson* v. *Pye*, 1 Keb. 905; *Grove* v. *Neville*, 1 Keb. 778; *Green* v. *Greenbank*, 2 Mar. 485; *Jennings* v. *Rundall*, 8 Times Rep. 335; and *Mills* v. *Graham*, 1 B. & P., N. R. 140.—Mr. Justice Wright referred to 'Leake on Contracts' (1878 edit. p. 546): 'But an infant will not be permitted to take advantage of this privilege to effect a fraud, and, upon avoidance of a contract, he will be compelled, upon equitable grounds, to make restitution of the benefits obtained under it.' See *Ex parte The Unity Banking Association, in re King*, 27 Law J. Rep. Bank. 33; 3 D. & J. 63; and *Nelson* v. *Stocker*, 28 Law J. Rep. Chanc. 760; 4 D. & J. 458.) His lordship then gave judgment for the plaintiff for 70*l.*, no execution to issue if the rings were returned within seven days.—Mr. M'Call prayed for a judgment in detinue, and his lordship said: Very well; take it in that form if you wish; but you run considerable risk in so doing.—Mr. R. A. M'Call and Mr. Guiry appeared for the plaintiff; Mr. Leresche for the defendant.

## CONSISTORY COURT OF LONDON.

### THE RECONCILIATION SENTENCE AND SERVICE IN ST. PAUL'S.

A sitting of the Consistory Court of London was held on February 7, in St. Paul's Cathedral before Dr. Tristram, Q.C., Chancellor of the Diocese of London. The Chancellor of London said: As I stated on the last sitting of the Court, on November 4, the Bishop of London referred the question raised as to the legality of the sentence of recon-

ciliation pronounced in this case for my consideration as judge of this Court, which his lordship is enabled to do by the practice of the Court. I have considered it, and I will now proceed to deliver my opinion thereon. A suicide was committed in this cathedral on Sunday, September 28 last. The act was done openly during the morning service, and in the very midst of the congregation. The person who committed the act was stated in the evidence given at the coroner's inquest held on his body to have been at the time under the influence of suicidal mania, but not to have been otherwise insane, and was found by the verdict of the jury to have committed the act when of unsound mind. There have been several instances of the committal of acts of self-homicide in our cathedrals and churches, but this is the first recorded instance since the Reformation of such an act having been done during divine service and in the face of the congregation. The occurrence naturally excited painful feelings amongst those present, and attracted considerable attention. There was a notion abroad that some public notice was required by ecclesiastical law or practice to be taken of the occurrence. It was supposed, and even openly stated in some quarters, that the act in question made the reconsecration of the cathedral necessary. The late dean and the canons of St. Paul's very properly referred the matter to the Bishop of London, directing his lordship's attention to the suggestion that a sentence of reconciliation might be necessary, but leaving it to his lordship to determine what course, under the special circumstances of the case, should be adopted. Search was thereupon made by the bishop's secretary for precedents on the subject. There were several instances found of a sentence of reconciliation having, prior to the Reformation, been pronounced after a homicide by violence in a cathedral or church, notably the reconciliation of Canterbury Cathedral after the murder of Archbishop Becket, and of Westminster Abbey on two occasions, of Norwich and Chichester Cathedrals, and several others. Precedents of sentences of reconciliation subsequent to the Reformation were found principally in the records of the Protestant Church of Ireland, by which it appeared that such sentences had been frequently pronounced where a death by violence had been brought about in a church in Ireland. In England it was found that there had been a diversity of practice in this matter. In the diocese of Chichester the present Bishop of Chichester has on one or more occasions in the case of a suicide in a church felt it his duty to pronounce a sentence of reconciliation, accompanied with a penitential service. In the diocese of London about the year 1830, a man having committed suicide in the Church of St. Mary, Aldermanbury, in the City, the church was closed for service on the Sunday following. In the diocese of Rochester, about twenty years ago, a man having hung himself from a beam in a church, there was in consequence thereof a special service held in the church described as in the nature of a reconciliation. Some years ago, a verger having committed suicide in Norwich Cathedral, Dr. Goulburn, the then dean, and the Canons of Norwich gave the matter their most mature and careful consideration, and caused search and inquiries to be made on the subject, and in the result came to the conclusion that the occurrence ought not to be passed by unnoticed, and decided upon holding a special religious service, the same in form as that which was ordered by the Bishop of London on the present occasion. Instances were reported of two or more suicides having taken place in or within the precincts of St. Paul's, but on inquiry at the bishop's registry I ascertained that in the cases referred to no death had actually taken place within the cathedral. There have been, no doubt, cases of suicides in a church which have been passed over without notice. Upon the conclusion of the search and inquiry for precedents a case was submitted to me on October 11 to advise the bishop as chancellor upon the question raised as to reconsecration, and generally on the facts as stated. I advised his lordship on October 13 that the reconsecration of the cathedral was unnecessary, on the ground that the consecration of a cathedral or church is a judicial sentence pronounced by the bishop of the diocese in a special Court held by him for that purpose by which the building 'is set apart for ever from prophane and common uses and dedicated to the service of Almighty God for the performance of Divine worship according to the rites of the Church of England;' and that it was not in the power of an individual by committing a wrongful act within the building to reverse that sentence, so that, notwithstanding the suicide, the sentence of the consecration of the cathedral remained unimpaired. But I further advised, on the authority of Bishop Gibson and Dr. Burn (see 1 Gibson's Codex, 190; 1 Burn's 'Ecclesiastical Law,' by Phillimore, 335), that, under the circumstances, the bishop might properly pronounce a sentence of reconciliation in a Court to be held in the cathedral for that purpose, and that it might be legitimately accompanied, if his lordship so directed, with an appropriate religious service. The question whether or not a sentence of reconciliation shall be pronounced after such an occurrence is one for the bishop in his discretion to determine as well as the question whether or not it shall be accompanied with a religious service. His lordship having determined to adopt the course I had pointed out as conformable with law, communicated his decision to the Dean and Canons of St. Paul's. The reconciliation sentence was pronounced, accompanied with a penitential service in this cathedral. It attracted public attention and led to a correspondence and to inquiries and strictures in the public press as to the meaning and the legality and the utility of the procedure. As this is the first occasion in modern times, at least, in which this question has been the subject of public discussion I carefully perused the letters and articles in the public press relating to it, so as to enable me to form a judgment of the force of the objections raised. The main objections were that the procedure is not authorised by any law or practice in force since the Reformation; that the ceremony was a revival of a pre-Reformation practice; and that the petition presented by the dean and canons praying for a sentence of reconciliation and the sentence were in their terms antiquated and unsuited to the times. I will consider these objections in order. First, as to whether the sentence is authorised by law or practice. There is no law or canon of a date subsequent to the Reformation authorising a bishop to pronounce this sentence. A bishop of the Anglican Church had undoubted jurisdiction prior to the Reformation to pronounce it where a church had been polluted by the shedding of blood as well as in other cases of pollution. It was pronounced in an episcopal Court held for the occasion. Prior to the Reformation the bishop's ordinary Court was his Consistorial Court, presided over by his chancellor, and he was also entitled to hold what for convenience I will call three extraordinary Courts for special purposes on special occasions—namely, visitation Courts, Courts for the consecration of churches and churchyards, and Courts for pronouncing a sentence of reconciliation (1 Gibson's Codex, p. 189). The Consistory Courts, Visitation Courts, and Courts for the consecration of churches and churchyards have been held continuously since the Reformation, not by virtue of any particular statute or canon, but as being part of the ecclesiastical system established in this country prior to the Reformation, and which was continued by the Reformed Church as part of its ecclesiastical system, and so recognised in the civil Courts, and incidentally by the statutes and canons of 1603. Courts for the purpose of pronouncing a sentence of reconciliation have probably

been rarely held since the Reformation, and then only on exceptional occasions. That they have been held is established beyond doubt by the instances mentioned by Bishop Gibson in his Codex (Bishop of London from 1723–1749), not as isolated cases, but by way of example only, and after reference to a case in which Archbishop Abbott insisted upon a reconsecration instead of a reconciliation, because the church after pollution had been pulled down and rebuilt, he adds: 'Instances of this and the foregoing kind do sometimes happen, and I was willing that those who may be concerned in them should have at least a general aim of the proper and regular mode of proceeding from the practice of former times in cases of the like nature' (1 Gibson, 190). Dr. Burn, in his great work on ecclesiastical law, published 1770, cites the cases referred to by Gibson as authorities in point. Thus two of the leading writers on ecclesiastical law and practice during the last century give their weight and authority in favour of a bishop's right to pronounce a sentence of reconciliation in the case of the pollution of a church. No doubt the three cases referred to by Bishop Gibson are instances of a lesser pollution of a church as distinguished from pollution by blood-shedding. But the admission of the bishop's right to hold such a Court and to pronounce such a sentence in any case of pollution necessarily involves the admission of his right to decide what cases of pollution are proper subjects for a sentence of reconciliation. Moreover, the Irish precedents since the Reformation are directly in favour of the bishop's right to pronounce the sentence in the case of blood-shedding. The objection as to its inutility raises the following legal considerations: The act in question was a clear contempt of a sentence of the bishop's Court. It is a rule of every Court, civil as well as ecclesiastical, that where its sentence has been treated with contempt the fact may properly be brought to its notice with a view of punishing the offender. When the offender is alive he is liable to be articled in the Consistorial Court of the diocese for contempt. When he is dead, as in the case of a suicide, his death terminates the jurisdiction of the Consistory Court to inquire into the contempt, the right to prosecute dying with him; and unless the bishop has authority to take notice of it in a Reconciliation Court he is powerless in the matter. On this ground, as a matter of ecclesiastical order, the right to hold such a Court is not without utility. The question, moreover, as appears to me, is one into which religious sentiment rather than legal considerations enter; and is, therefore, left appropriately for the bishop's sole determination. The Bishop of London desires me to state that, in his opinion, it is desirable that there should be a uniform practice observed in this diocese, and that when such an occurrence takes place hereafter it should be reported to the bishop by the minister or churchwardens with the facts, in order that he may inquire and decide whether or not it is a case in which there should be a reconciliation sentence accompanied with a penitential service. To meet the objections taken to the terms of the petition and sentence, his lordship requested me to prepare a form of a petition and sentence, which are now under consideration, and which will be deposited in the registry to serve as precedents in future cases.

## CITY OF LONDON COURT.

MISREPRESENTATION AS TO DRAINS.

In the City of London Court, on January 29, before Mr. Commissioner Kerr and a jury, the case or *Addison & Linklater* v. *Bebb* was heard. The action was brought by the plaintiffs, the landlords of the house, 44 Radipole Road, Fulham, to recover from the defendant, Mr. George Bebb, draper, 134 Lancaster Road, Notting Hill, the sum of 9*l.* 10*s.*, a quarter's rent, alleged to be due. The defendant denied that the rent was payable, and set up a counter-claim for 9*l.* 11*s.* 6*d.* for damages. It appeared from the evidence that the defendant in March, 1889, came from Manchester with his wife and family and took the house in Radipole Road of the plaintiffs on a three years' agreement at a rent of 36*l.*, rising to 40*l.* Before taking possession the defendant said he inquired of the plaintiffs' house agents whether the drains were in a perfectly sanitary condition, as his children had been suffering from fever in consequence of the bad drainage of the house they then occupied. He said he was assured that the drains were as good as any in London, but after he had been in the house some little time sewer gas commenced to escape in several places, the drain pipes were blocked, and rats made their appearance in various parts of the house. The sanitary inspector was called in, who, upon an examination, found that the drains were old and broken and more than one dead rat was discovered under the flooring. The defendant added that he had to send his children into the country because the smells arising in every part of the house were so very bad, and they had been ill with bad throats and sickness generally before they went. At last, when only eighteen months of the three years had expired, they left the house, a course which had put them to extreme inconvenience as well as expense. In answer to the defendant's case, Mr. Reginald Brown called evidence denying that any representation was ever made that the drains were as good as any in London. It was shown that the plaintiff had done all the repairs defendant asked for when taking the house, and it was asserted that the drains were all right when the defendant went into possession.—Mr. Brown contended that a tenant could recover no damages in respect of an unfurnished house. There was no implied warranty that it should be fit for habitation.—Mr. Commissioner Kerr said a tenant might recover damages for being induced to take premises which turned out to be uninhabitable by falsehood or misrepresentation.—The jury found that the tenant took the house by reason of misrepresentations. They found for the defendant on the claim, and awarded him damages on the counterclaim, but Mr. Commissioner Kerr said he thought the defendant could not recover the expenses for removing his furniture. If there was any authority for it he would allow it. The defendant was allowed the cost of the proceedings.

## COUNTY COURTS.

INTERNATIONAL COPYRIGHT—MUSICAL COMPOSITION—BERNE CONVENTION, 1886—RETROSPECTIVE OPERATION—VESTED RIGHTS.

The action of *Moul and Mayeur* v. *Grœnings* was heard before his honour Judge Martineau, Q.C., on October 3, when judgment was reserved. Judgment was delivered on December 30. His Honour said: The plaintiffs claim damages for the infringement of the plaintiff Mayeur's sole right of performance of a musical composition called 'Caprice Polka,' and an injunction to restrain future infringements. The action is a test action to determine a question under the International Copyright Act, 1886. The plaintiff Mayeur is a French composer. Moul, the co-plaintiff, is a representative in this country of a society of foreign composers, amongst whom is included the plaintiff Mayeur, and the defendant Grœnings is the bandmaster of the pier band at Brighton. Shortly stated, the material facts appear to me to be as follows: Mayeur is a French subject. The 'Caprice Polka' is an original work composed by Mayeur, and first

produced by him at Paris about November, 1877. I am not quite certain, but I gather that it was in the first instance published as a piece of military band music, the date of the French registration of this arrangement being November 5, 1877, and that subsequently the polka was published as a clarionet solo, the date of the French registration being December 2, 1879. I may add that the French copy of the clarionet arrangement bears on the face of it, 'Touts droits d'exécution et de production réservés.' The copyright and sole right of performance, so far as France is concerned, were, and still are, the property of Mayeur. The International Copyright Act, under which, in November, 1877, and December, 1879, Mayeur might have obtained copyright and sole right of performance in England was 7 & 8 Vict. c. 12, and the Order in Council made thereunder and dated January 18, 1852. Mayeur took no steps to acquire the copyright or sole right of performance in England pursuant to that Act, and consequently, so far as England was concerned, the polka, both as regards the copyright and the right of performance, became public property, or, adopting the expression of the French language, fell into the public domain. For some years prior to December 6, 1887, every person in England was at liberty to print, publish, and perform the 'Caprice Polka' in England, just as he would have been at liberty to print, publish, and perform any English composition, the copyright or sole right of performance of which had expired by effluxion of time. In March, 1887, an English publisher named Lafleur printed and published the 'Caprice Polka' in England. The music was arranged for a military band, there being different parts for the different instruments, and also a part for the conductor. As published by Lafleur it was identical with the composition published by Mayeur in 1877. There was, however, no notice on the English copy that any rights of reproduction or performance were reserved. I may observe that any such notice, if it had been placed on the English copy, would, in my opinion, have been nugatory, as neither Mayeur, the composer, nor Lafleur had either copyright or sole right of performance in England. The defendant purchased a copy of the work published by Lafleur prior to December 6, 1887, and performed the piece of music by his band on the Brighton Pier. He also performed the polka on the pier subsequently to December 6, 1887. The precise sum which he paid for the copy was small—only a few shillings—but he bought it to perform it with his band, and the polka was, therefore, prior to December 6, 1887, part of his stock-in-trade and *répertoire*. He bought it to utilise and so made a profit by it. The plaintiff Mayeur contends that he became entitled under the International Copyright Act, 1886, the Order in Council thereunder, and the Berne Convention, 1886, to the copyright and sole right of performance in England of the 'Caprice Polka,' just as if the Act, convention, and order had been in force at the date of production by him in November, 1877. The defendant, however, contends that section 6 of the Act is not retrospective in its operation, and that the plaintiff Mayeur, not having acquired copyright and sole right of performance in England under the Act in force in 1877, lost it for ever. As regards this point, I am of opinion the Act, the convention, and the order are reasonably clear. The Legislature has, by section 6 of the Act of 1886, given to Frenchmen having copyright and sole right of performance in their own country—called the country of origin—copyright and sole right of performance in England, the only qualification of the right being the provision at the end of section 6 protecting rights and interests acquired by production in England prior to December 6, 1887. Does the defendant come within that proviso? To do so he must establish: (1) A lawful production in England prior to that date; (2) a right or interest arising from or in connection with such production subsisting on December 6; and (3) that such right or interest was valuable at that date. Unless the defendant can show that these conditions are complied with, I think Mayeur's claim to copyright and sole right of performance must prevail. First, did a person produce the polka in this country before December 6, 1887? In my opinion, looking at the meaning of 'produced' in the interpretation clause of the Act of 1886, the polka was so produced. It was 'produced' by Lafleur when he published in March, 1887. It was lawfully produced by both Lafleur and the defendant, for there was no copyright or exclusive right of performance. The retrospective operation of the statute did not obliterate the fact of production or render it unlawful *ab initio*. Secondly, did the defendant acquire either a right or interest arising out of or in connection with such production, and was such right or interest subsisting on December 6? In my opinion he did acquire such a right or interest, not only arising out of or in connection with the production by Lafleur, but also the production by himself. Lafleur lawfully sold and he lawfully bought the copy. He had a right to utilise and perform from the copy, and he had an interest in making his purchase profitable, and, in my opinion, that was subsisting on December 6. If the defendant was not at liberty to perform the polka which was part of his stock-in-trade and *répertoire*, the copy purchased was valueless. It was lawfully purchased with that object without any limitation of the right to perform for ever. As to the third condition, I entertain considerable doubt as to the intention of the Legislature in using the word 'valuable.' I think it meant to negative rights or interests of so small a value that they would come within the principle 'De minimis non curat lex.' If that is so, the question is one of fact and of degree. It does not appear that the polka was highly popular and attracted customers to the pier; but still it was part of the defendant's *répertoire*, and was no doubt to him of some value. I think I ought to put a liberal construction on the word 'valuable' in favour of persons having vested rights or interests on December 6, 1887; and, if there is any doubt as to the value, it should be solved in their favour. I have come to the conclusion that the defendant's right and interest was a valuable one. In my opinion, therefore, the defendant is protected, and the plaintiffs are not entitled to recover.—Judgment for defendant, with costs according to scale C, his Honour certifying that the action involved a novel and difficult question of law of general and public interest.—J. P. Mann (Mann & Taylor) for the plaintiffs; M. Watson Thomas (Thomas & Hicol, London and Brighton) for the defendant.

## SPECIAL GENERAL MEETING OF THE INCORPORATED LAW SOCIETY.

A SPECIAL general meeting of the Incorporated Law Society was held on January 30; Robert Cunliffe, Esq., president, in the chair:—

The President called upon Mr. Ford to move the resolution of which he had given notice, but it was found he was not present.

The President then stated that the secretary had received a letter from Mr. Ford to the effect that he feared he would not be able to attend, and asking him to get a member to move his resolution. This, however, would not be in order, as, under bye-law 17B, it was essential that Mr. Ford should authorise, in writing, a particular member to move his resolution. With the consent of the meeting the matter was postponed until Mr. Munton's resolution had been disposed of, in order to give Mr. Ford an opportunity of attending.

Mr. F. K. Munton moved: 'That, having regard to the

strongly expressed opinion at the annual provincial meeting at Nottingham (when dissenting from the principle of abolishing imprisonment for debt), that it would be expedient to procure legislative rules to guide the judges as to the sufficiency of evidence on which the imprisonment for debt should be ordered, the council should now appoint a small committee to consider the matter, and report upon it.'

Mr. W. J. M'Lellan, of Rochester, seconded the resolution.

Some amendments were suggested, and eventually the resolution was adopted in the following form: 'That, having regard to the strongly expressed opinion at the annual provincial meeting at Nottingham (when dissenting from the principle of abolishing imprisonment for debt), it would be expedient to procure legislative rules to guide the judges as to the sufficiency of evidence on which imprisonment for debt should be ordered, the council should now appoint a small committee to consider the matter, and also the question whether the onus of proving want of means should be cast on the debtor, and report to the council thereon.'

Mr. Ford not having attended the meeting, the President stated that his intended motion would be passed over. The President further stated that a joint committee of the bar committee and of the society had at present under consideration all matters affecting Chancery practice, including the subject-matter of the resolution referred to in Mr. Ford's intended motion.

A vote of thanks to the chairman terminated the proceedings.

## THE PROTECTION OF BRITISH TRADE-MARKS IN JAPAN.

The following correspondence has taken place between the British and Foreign Patents and Trade-marks Society and the Foreign Office:—

The British and Foreign Patents and Trade-marks Society,
61 and 62 Chancery Lane, London, W.C.:
January 21, 1891.

To the Most Noble the Marquis of Salisbury,
Foreign Office.

My Lord,—I venture to call your attention to a matter of the greatest importance to many commercial firms in this country trading with Japan.

On December 18, 1888, regulations were passed in that country respecting the registration of trade-marks. The regulations came into operation on July 1, 1889, and are of a most liberal and exhaustive nature. Unfortunately, however, upon inquiry being made at the Japanese Embassy and Consulate, we are informed that British subjects cannot avail themselves of this excellent system of trade-mark registration, which is so much needed for the protection of the interests of many persons in this country.

As far back as 1878, Sir Henry Parkes wrote to your lordship from Yedo, a letter in answer to your lordship's circular, calling for a report of the laws and regulations in force in that country relating to trade-marks, that steps were being taken to enact regulations at no distant date; and he added: 'I believe that they are greatly needed in the interests of foreigners, as all kinds of foreign trade-marks are forged by Japanese.'

It appears, therefore, a matter of great hardship to the subjects of this country that so enlightened a nation as the Japanese, in introducing so ample a system for the registration of trade-marks for their own subjects, did not admit other nations to the advantages derived therefrom. I cannot but think it would be of the greatest importance, if your lordship should see your way to make a communication to the Japanese Government upon the subject of permitting British subjects to register trade-marks in Japan, under the system now in force for native subjects.

I have the honour to remain, my Lord,
Your Lordship's obedient Servant,
(For the British and Foreign Patents and Trade Marks Society),
A. C. Bickley, General Manager.

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Foreign Office: January 30, 1891.

Sir,—In reply to your letter of the 21st inst., I am directed by the Marquis of Salisbury to transmit to you, for the information of the British and Foreign Patents and Trade Marks Society, a copy of the despatch from Her Majesty's minister at Tokio, respecting the remedies open to British subjects on the infringement of their trade-marks in Japan.

I am at the same time to inform you that the question will not be lost sight of in any future negotiation for treaty revision, and that a copy of your letter will be sent to Her Majesty's minister, in case that he should think that any separate representations, apart from the question of treaty revision, are likely to be of use.

I am, Sir,
Your most obedient humble Servant,
The Secretary, T. H. Sanderson.
British and Foreign Patents and
Trade Marks Society.

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Copy.—Treaty No. 3.
Tokio: February 7, 1890.

My lord,—Your lordship's despatch, marked Treaty No. 9, of October 24, 1889, calls for information on the following points:—

1. What remedies are open to British subjects when their trade-marks are infringed in Japan
   (*a*) By British subjects;
   (*b*) By foreigners other than Japanese;
   (*c*) By Japanese subjects?
2. How far the existing state of affairs as regards trade-marks would be altered if the proposed treaty with Japan, now in the course of negotiation, should come into operation?

The remedies open to British subjects whose trade-marks are infringed by British subjects in Japan are, in view of the existence of extra-territoriality, the same as those open to them elsewhere wherever the offending parties are amenable to English law.

British subjects are protected against the infringement of their trade-marks in Japan by the subjects or citizens of such Powers as have joined the international convention for the protection of industrial property in so far as the laws of those powers apply in extra-territorial countries. Against the infringement of their trade-marks in Japan by the subjects or citizens of other Powers British subjects have no remedy.

There are no remedies open to British subjects whose trade-marks are infringed in Japan by Japanese subjects.

Until a few years ago the Japanese Government did not hesitate, when cases of such infringement were brought to their notice by the diplomatic representative of the country concerned, to lend its assistance in putting a stop to the practices complained of. Of late years, however, it has declined to interfere on the ground that so long as extra-territoriality exists, and its own laws are not binding on foreigners in Japan, it cannot, in accordance with any express provision of law, compel its subjects to respect foreign trade-marks.

. . . . . .

I have, &c., (Signed) Hugh Fraser.
The Marquis of Salisbury, K.G., &c. &c.

## LAW AND PROFESSIONAL NOTES.

By T. F. UTTLEY, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### CONSTRUCTION OF THE WORDS 'LATE WITH

A SOMEWHAT singular case came lately before the Chancery Court of Lancashire in the case of *Reddaway* v. *Benham*, where the plaintiffs sought to restrain the defendant from the use of the words 'late with F. Reddaway & Co.' in a circular issued by the defendant which was calculated to mislead the mercantile world and do injury. The defendant at one time was in the service of the plaintiffs. On the one side it was urged that the object of the defendant was to mount on the shoulders of the plaintiffs, and that he would not have used the name of the plaintiffs if he had not wished to send it forth that he was a competitor in the market and could supply superior goods at a cheaper rate. If this kind of fraud were permitted, a copying clerk might make use of the reputation of a firm he had been with. It was alleged that great injury might be done to the plaintiffs in foreign countries where the natives were familiar with the name of Reddaway & Co., and knew what it meant, but might not be able to decipher the context on the circulars. For the defendant it was argued that there was no ground of action in this case. To establish such a ground it would be necessary to show that the defendant had attempted to pass off his goods as the goods of the plaintiffs. In the whole history of the law bearing on trade cases extending over three hundred years there was not one single case in which the cause of action did not rest on infringement of trade-mark or palming off goods as the goods of another party. It had been authoritatively laid down that no one had a right to put up his goods for sale as the goods of another trader; but that if any man had been in the employ of a firm of reputation, and set up business for himself, he had a right in any way he thought fit to inform the public that he had been in such employment, and in that way to appropriate to himself some of the benefit arising from the reputation of his former employers, but in so doing he must take especial care that it was done in such a way as not to mislead the public to the detriment of his former employers. The vice-chancellor, in giving judgment, said the cases read went to show that the only restrictions which could be laid on the defendant in his trade were that he must not foist his goods upon the public as those of another, and if he did so either by crafty words or crafty marking, then he fell within the law. A further restriction was that he must not in any manner cause the public to imagine that he was a successor to the business of the plaintiffs. A man who had been in the employment of a certain firm had a right to inform the public in any way he thought fit that he had been in such employment; but in doing so he must take care that it was not done so as to lead people to believe that he was carrying on the business in succession. There was nothing in this case that would cause anyone to assume that the defendant was carrying on the business of Reddaway & Co. Then came the larger question, Was the defendant right in using the words 'late with F. Reddaway & Co.' in the way he did? The vice-chancellor came to the conclusion that the words did not injure the plaintiffs, and that they would not mislead foreign customers in any way. The plaintiffs, therefore, had not made out their case; and if an injunction were granted, it would be placing a very great restriction upon the trade of the country and upon competition. He did not say he thought the defendant's circular was worded as accurately and as carefully as it would have been if he had submitted it to learned counsel to settle it for him, but it was fair to say there was in it no such either untrue statement of fact or infringement of the law, as he (the vice-chancellor) understood it, as to entitle the plaintiffs to the relief which they sought. The action was therefore dismissed.

### IS THE BANKRUPTCY ACT, 1890, RETROSPECTIVE?

The accountants, whether incorporated or chartered, who act as trustees under deeds of arrangement have taken acute alarm at the action of the Inspector-General in Bankruptcy, who, under section 25, subsection 2 (*b*) of the Bankruptcy Act, 1890, has asked for the accounts of the closed estates under the Deeds of Arrangement Act, 1887. Both bodies of accountants have taken counsel's opinion on the matter, and these gentlemen have intimated that in their opinion the trustees of estates which were closed prior to December, 1889, are not bound to comply with the requirements of the Board of Trade as at present set forth. The following is 'counsels' opinion' on a case stated by the solicitors to the Society of Accountants and Auditors, and which is of general interest: 'We do not think that section 25, subsection 2 (*b*) of the Bankruptcy Act, 1890, operates retrospectively on all deeds registered under "The Deeds of Arrangement Act, 1887." But, in our opinion, the accounts prescribed by the rules must be rendered under deeds, the trusts of which have not been fully carried out before January 1, 1891, and probably when any funds have been received or distributed since since March 31, 1890, being the commencement of the financial year for which the first report contemplated by section 25 is to be presented. Where the trusts of the deed have been fully carried out before March 31, 1890, the trustee should not, in our opinion, be compelled to render accounts. We are also of opinion that the fee on trustees' accounts purporting to be imposed by Table F, under the order of December 18, 1890, is not, as regards deeds registered before January 1, 1891, authorised by section 128 of the Bankruptcy Act, 1883. We further think that the inspector-general's circular, in so far as it requires a memorandum concerning the trust banking account, not warranted by the rules. We recommend any trustee under a deed the trusts of which were fully carried out before March 31, 1890, to notify to the inspector-general that as trustee of such deed he is advised not to comply with the requirements of the circular. It may be questioned whether section 25 or the rules apply to any deed registered before January 1, 1891, but our opinion is not in favour of this contention. Whether accounts should be rendered under deeds the trusts of which have been fully carried out before the commencement of the Bankruptcy Act, 1890, is not, in our opinion, free from doubt, and having regard to the importance of these questions, they will have to be determined. But we think that an authoritative construction of the section may probably be obtained if the Board of Trade do not accept the trustees' refusal to account as advised above. If the Board of Trade take no steps, a further refusal will raise such other questions as may be worthy of decision.'

### RAILWAY TRUSTS.

Efforts are still being continued in the United States to inaugurate a railway trust in order to overcome the present manifold inconveniences arising from the present railway situation, where, according to Mr. Charles F. Beach, jun., in the *Railway and Corporation Law Journal*, the policy and practices of the road themselves are the one dominant and essential cause of the trouble which now besets the railways in the West, and in a lesser degree throughout the country, Mr. Beach points out that the *furore* against 'trusts' seems to be declining. Some newspapers still cry out against them on the editorial page, but the public is not any longer greatly concerned, and the news columns contain almost daily announcements of the formation of new 'trusts' in commercial

enterprises without creating serious alarm. No new suits in the Courts are reported, and on the whole that particular spasm of the public may be believed to have spent itself. In the case of a railway trust, working a real benefit to the carriers and the shippers alike, the public and the politicians would hardly have much of a case in that greater court of conscience where, after all, these matters are ultimately adjudicated, in complaining that the railways, under the new alliance, pay to themselves in dividends the money which aforetime they spent in fighting and injuring each other. 'If it were thought safer, or for any reason better, we might have, instead of a trust pure and simple—which, it seems to me, is the best thing attainable—a corporation with a large capital stock in certificates to take the place and to perform the functions of a trust.' Concludes Mr. Beach, a little patience, only a little more than no knowledge of the law, some aptitude for dealing with conditions as they arise, some skill in managing men, and some capacity for detail, is all that is necessary to draft a trust deed, to work out the scheme in its several parts and to get it into shape for a practical test, if only the railway people will take it in hand.

### HOW TO APPLY FOR SHARES.

A curious story is going the round of the press to the effect that a speculative agent of the name of B. made application for some shares in an exploration company floated not long ago. The form required the applicant to give his name, address, and 'description.' Mr. B., it seems, took this instruction very seriously, and, being of a naturally suspicious disposition, and chary of seeking the advice of others, this is what the astonished directors found on his application form immediately following the space for name and address: 'Description—height, 5 ft. 4½ in.; weight, 9st. 11lb.; complexion fair, hair light; features small and sharp; thin beard, short, no moustaches; teeth sound, with one exception in front; marks, none in particular; married, second time; family, three children by first wife, no issue by second; age thirty-six; occupation, none at present, lately in Government service, expect position in P—— when railway opens. Any other particulars, please apply Rev. ——. P.S.—Forgot to say have been out here seventeen years, understand the native character, and cattle, as Rev. Mr. —— will bear out.' This very literal gentleman handed in a draft for full amount of shares applied for.

### ATHLETES IN THE LAW COURTS.

The recent trial of *Richardson* v. *Davis* will remind anecdote-mongers of the old story of the man who was being thrown from the gallery of the Theatre Royal, Dublin: 'Don't waste him,' cried a voice, 'kill a fiddler with him.' Only in the case tried before Mr. Justice Grantham the man was not thrown with the intent of hurting anybody. Plaintiff and his wife went one evening to a music-hall and seated themselves under a net spread across the auditorium; and into this net a gymnast walking on the wire dropped a man whom he was carrying in his arms. The falling body hit plaintiff on the nose. He was afterwards very ill and his eyesight was affected. The jury gave him 45*l.* damages. It was pleaded for the defence that the plaintiff had been repeatedly warned not to stand up, but that he had persisted in doing so, and had thus been himself a contributory to the accident which befell him. Such an argument obviously could not hold water. Ethically the mere dropping of the man into the net was an offence *contra bonos mores*. The stupid idea was to create an impression among the audience that the man had been accidentally dropped, and consequently to cause alarm. The net was safe enough, no doubt; but had it broken, and the dropped man been killed, would not the wire-walker have been liable to an indictment for manslaughter? It may be granted that to hit a man with a man is occasionally justifiable and even necessary. Turn over Flaxman's wonderful outline illustrations of Homer—he drew them in Rome and got but a guinea apiece for them—and you will find that the heroes of the 'Iliad' frequently assaulted each other with each other, although it must have required considerable gymnastic training for a valiant Greek to seize an equally valiant Trojan by one ankle, swing him round, and bang another Trojan with him. Then, again, does not Captain Marryat tell us in 'Peter Simple' how, when the hero and his friend O'Brien escaped from the French prison, they took refuge in the branches of a tree in the Forest of Ardennes, and, an inquisitive gendarme happening to be standing under the tree, O'Brien dropped upon him and killed him? But there was no necessity for the wire-walker to drop the man into the net. It was a piece of stupidly sensational tomfoolery which might have ended fatally. Thus writes Mr. George Augustus Sala, in the Manchester *Evening News*, in his usual witty style.

### EVERY MAN NOT HIS OWN LAWYER.

The maxim that he who conducts his own cause has a fool for his client has been forcibly illustrated by a recent incident. A Mr. Robert Hymer has given a sum of 50,000*l.* to Hull for a grammar school, and the foundation-stone was laid the other day. Mr. Hymer, it appears, came into all his wealth through his kinsman, the Rev. John Hymer, of Brandsburton, leaving him an annuity of 60*l.*, and bequeathing all the rest of his fortune, amounting to about 200,000*l.*, to Hull for a grammar school. Here it is that the strange features of the case illustrating the above maxim come. In order to avoid paying a lawyer's fee the Rev. J Hymer had drawn his own will and so worded it that it became void under the Statute of Mortmain. Of course, the will not being provable, an intestacy resulted, and Mr. R. Hymer stepped in as his next-of-kin. It is stated that the case was so clear that the corporation did not even make any attempt to claim the money.

## LAW STUDENTS SOCIETIES.

Debating. — The ordinary weekly meeting of this society was held at the Law Institution, Chancery Lane, on Tuesday, February 10; Mr. Thomas Douglas in the chair.—The subject for discussion: 'That trades unionism is highly detrimental to the prosperity of this country,' was opened by Mr. I. D. Crawford, in the absence of Mr. Bodilly.—Mr. C. Herbert Smith opposed.—The debate having been declared open, the following gentlemen spoke: In the affirmative, Messrs. Kinipple, Campbell-Johnston, and Willson; in the negative, Messrs. Archer, White, Mawdesley, Arnold, and Watson.—Mr. Crawford replied.—On the motion being put to the meeting, it was carried by a majority of five.—There were thirty-two members present.

Liverpool.—At a meeting of this association on Monday, February 9, Mr. F. Archer in the chair, who was supported by Messrs. Stewart and Hardy, barristers-at-law, a joint debate with the Leeds Law Students' Society was held on the following subject for discussion: 'Do secretaries of trades unions commit an offence within section 7 of 38 & 39 Vict. c. 86, who threaten an employer that if he does not discharge non-union men in his employ unionists in his employ shall cease work for him, and who proceed to carry that threat into operation by calling out the unionists?'—*Law Times*, January 17, 1891. Mr. W. Stead opened in the affirmative, which was also supported by Messrs. Pearson, Armstrong, and Bowling, who represented the Leeds Society.—Mr. E. Lloyd, LL.B., opened in the negative, which was also

supported by Messrs. Glover and Barnes, representing the Liverpool Society.—The question was decided in the negative by the unanimous judgment of the Court, and was delivered by Mr. Hardy.—The Leeds law students were afterwards entertained at dinner at the Royal Hotel, followed by a smoking concert, which was thoroughly enjoyed by all present.

## ADDITIONAL CAUSE LIST.

HIGH COURT OF JUSTICE.—QUEEN'S BENCH DIVISION.

*Hilary Sittings*, 1891.

### ADDENDA TO THE CROWN PAPER.

England—Regina *v.* Morgan
Middlesex (Brompton)—London General Omnibus Co. *v.* Aspinall & Co.
Surrey (Southwark)—Page *v.* Leach & Co.
Monmouthshire (Newport)—Jones *v.* Commissioners of Sewers for Levels of Caldicot, &c.
London—Pollock *v.* Glover (James, claimant)
Middlesex (Clerkenwell)—Newman *v.* Cave and another
Cardiganshire (Aberystwith)—Evans *v.* Daniel and another
Monmouthshire (Dolgelly)—Lloyd and others *v.* Williams and others
Dorsetshire—Pitt-Rivers *v.* Glasse
Surrey (Croydon)—Bourne & Co. *v.* Wall (Wall, claimant)
Leicestershire (Market Harborough)—Williamson *v.* King
Middlesex (Clerkenwell)—Hoare *v.* Niblett
Middlesex—Allchurch and another *v.* Hendon Union
Durham (Darlington)—In re Building Society's Acts (Broad's appeal)
Glamorganshire (Swansea)—Legg *v.* Oystermouth Local Board
Glamorganshire (Swansea)—Bryan *v.* Atlantic Patent Fuel Co.
Sussex (Brighton)—Moul and another *v.* Groenings
Cheshire (Macclesfield)—Cooney *v.* Globe Cotton, &c. Co.
Devonshire—Dames *v.* Bond
Northamptonshire—Inwood *v.* Potter
Metropolitan Police District—Moir *v.* Williams
London—Regina *v.* Vestry of Paddington
Lancashire (Preston)—Crown Corn, &c. Manure Co. *v.* Knight
Manchester—Caminada *v.* Hulton
Manchester—Same *v.* Same
Manchester—Same *v.* Same
Manchester—Same *v.* Same
Aberystwith—Regina *v.* G. Williams, Esq. and others, Justices, &c. (ex parte J. Williams)
Lancashire—Same *v.* Guthrie, Esq. Justices, &c. (ex parte Taylor)
Middlesex (Brompton)—Bird *v.* Fenton
Bedfordshire (Leighton Buzzard)—Green *v.* Gordon
Lancashire (Manchester)—Wilson and others *v.* Statham
Devonshire (Exeter)—Ashford *v.* Franklin
Aberdare—Gery *v.* Black Lion Brewery Co.
Lancashire—Accrington, &c. Tram Co. *v.* Campbell
Newport—Hale *v.* Rice
Sussex (Eastbourne)—Everett *v.* Paxton
Surrey (Croydon)—Fox *v.* Stevens
Glamorganshire—Regina *v.* Powell, Esq. and others, Licensing Justices, &c. (ex parte Roberts)
Montgomeryshire (Llanidloes)—Same *v.* Mayor, &c. of Llanidloes
London—Lange *v.* Barton
Cardiganshire (Lampeter)—Evans *v.* Jenkins
Middlesex (Bloomsbury)—Cusack and another *v.* London and North-Western Railway Co.
Dorsetshire—Regina *v.* Inhabitants of Tything of Longfleet, &c.
Lancashire—Same *v.* Mayor, &c. of Bootle-cum-Linacre
Monmouthshire—Same *v.* Colonel Byrde and others, Justices, &c. and Pontypool Gas Co.
London—Sipf *v.* Brown and Holt
Durham—Regina *v.* Justices for the County Durham (ex parte Maughan)
Lincolnshire (Parts of Lindsey) — Same *v.* Justices for the Parts of Lindsey (ex parte Evison)
London—Barlow *v.* Terrett
Devonshire—Regina *v.* Bowring, Esq. and others, Justices, &c. and Stentiford
Devonshire—Same *v.* Same
Carnarvonshire (Portmadoc)—Rowland *v.* New Welsh Slate Co.
Glamorganshire — Regina, Fowler, Esq. Stipendiary Magistrate for Swansea (ex parte Crabb)
Flintshire—Same *v.* Birch, Esq. and others, Justices, &c. (ex parte Gallard)
Chester (Birkenhead)—Bedford *v.* Holt (Holt, claimant)
Leicestershire (Leicester)—Coltman *v.* Davis, Moore & Co.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4d. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## OBITUARY.

WE record with much regret the death on February 3 of Mr. THOMAS HUGHES EARLE, at the age of fifty-seven years. Mr. Earle was educated at Eton College and King's College, Cambridge, of which society he was for many years a Fellow. He was called to the bar at Lincoln's Inn in November, 1858, and practised as a conveyancer and equity draftsman. He also held the office of clerk of the peace for Hampshire. He retired from practice in town two years ago, and resided until his death at Enham, near Andover, where he had a large landed estate. He was a man of great abilities, and of a most amiable and generous disposition. Had his health been better and his private fortune less he would probably have risen to a high position at the bar.

## NOTICES FOR THE WEEK.

### ROTA OF REGISTRARS.

MONDAY, February 16. — Court of Appeal No. 2: Mr. Pugh. Mr. Justice Chitty: Mr. Leach. Mr. Justice North: Mr. Clowes. Mr. Justice Stirling: Mr. Lavie. Mr. Justice Kekewich: Mr. Farmer. Mr. Justice Romer: Mr. Pemberton.

Tuesday, February 17.—Court of Appeal No. 2: Mr. Beal. Mr. Justice Chitty: Mr. Godfrey. Mr. Justice North: Mr. Jackson. Mr. Justice Stirling: Mr. Carrington. Mr. Justice Kekewich: Mr. Rolt. Mr. Justice Romer: Mr. Ward.

Wednesday, February 18.—Court of Appeal No. 2: Mr. Pugh. Mr. Justice Chitty: Mr. Leach. Mr. Justice North: Mr. Clowes. Mr. Justice Stirling: Mr. Lavie. Mr. Justice Kekewich: Mr. Farmer. Mr. Justice Romer: Mr. Pemberton.

Thursday, February 19.—Court of Appeal No. 2: Mr. Beal. Mr. Justice Chitty: Mr. Godfrey. Mr. Justice North: Mr. Jackson. Mr. Justice Stirling: Mr. Carrington. Mr. Justice Kekewich: Mr. Rolt. Mr. Justice Romer: Mr. Ward.

Friday, February 20.—Court of Appeal No. 2: Mr. Pugh. Mr. Justice Chitty: Mr. Leach. Mr. Justice North: Mr. Clowes. Mr. Justice Stirling: Mr. Lavie. Mr. Justice Kekewich: Mr. Farmer. Mr. Justice Romer: Mr. Pemberton.

Saturday, February 21.—Court of Appeal No. 2: Mr. Beal. Mr. Justice Chitty: Mr. Godfrey. Mr. Justice North: Mr. Jackson. Mr. Justice Stirling: Mr. Carrington. Mr. Justice Kekewich: Mr. Rolt. Mr. Justice Romer: Mr. Ward.

THE death is announced of Mr. Harry G. Rogers, the senior first-class clerk in Mr. Justice North's chambers. Mr. Rogers, who was in his seventy-eighth year, had held the posts of secretary and hon. secretary of the United Law Clerks' Society respectively for upwards of fifty years.

UNITED LAW SOCIETY. — The usual weekly meeting was held at the Inner Temple Lecture Hall; Mr. A. K. Common in the chair.—Mr. J. S. Green moved: 'That the decision of the majority of the Court of Appeal in *Dreyfus* v. *The Peruvian Guano Company*, L. R. 43 Chanc. Div. 316, is right.' The case is of a somewhat peculiar character, and involves difficult points.—Mr. W. F. Symonds supported the decision of Lord Justice Bowen. —The other speakers were: Messrs. J. R. Atkin, C. W. Williams, H. Walton, and J. L. V. S. Williams.—Mr. Green having replied, the motion was lost by three votes.—At the next meeting on Monday, the 18th inst., Mr. Bannerman will move: 'That cremation ought to be made compulsory by Act of Parliament.'

## CALENDAR OF THE COUNTY COURTS.

FROM FEBRUARY 16 TO FEBRUARY 21.

| No. of Circuit | His Honour | February 16 | February 17 | February 18 | February 19 | February 20 | February 21 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Runcorn | — | — | Birkenhead | — |
| 8 | Judge Heywood | — | Salford | Salford | Salford | Salford | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | Barnard Castle | Stockton-on-Tees | Darlington | Richmond | Guisborough | Northallerton |
| 19 | Judge Barber | | Derby | Burton | Wirksworth | — | — |
| 28 | Judge Jordan | Atherstone | Uttoxeter | — | — | — | — |
| 47 | Judge Powell | — | Lambeth | Woolwich | Lambeth | Greenwich | — |
| 54 | Judge Metcalfe | Bristol | Bristol | Bristol | Bristol | Bristol | — |
| 55 | Judge Machonochie | — | Dorchester | Bridport | Weymouth | Blandford | — |
| 58 | Judge Edge | Churston | Okehampton | — | — | — | — |

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, BOWEN, L.J., and FRY, L.J.

THURSDAY, FEBRUARY 5.

*Beckett and another* v. *Tower Assets Company* (*Lim.*) (appeal of plaintiffs from judgment of Cave, J., dated November 1, setting aside assessment of damages by jury after trial with special jury in Middlesex).—*Cur. adv. vult.*

*South Staffordshire Trams Company* v. *Sickness and Accident Assurance Association* (appeal of plaintiffs from judgment of Day, J., and Lawrance, J., dated October 29, on special case).—Allowed.

FRIDAY, FEBRUARY 6.

*Medawar* v. *Grand Hotel Company* (*Lim.*) (appeal of plaintiff from judgment of Smith, J., dated November 1, at trial without a jury at Liverpool).—Allowed.

*Lawder* v. *Goucher* (appeal of defendant from judgment of Lawrance, J., for Kekewich, J., dated August 11, at trial without a jury at Shrewsbury).—Order on terms agreed between parties.

SATURDAY, FEBRUARY 7.

*Overseers of Parish of Putney* v. *London and South-Western Railway Company* (appeal of defendants from judgment of Day, J., and Lawrance, J., dated October 23, on special case).—Dismissed.

MONDAY, FEBRUARY 9.

*Hartley* v. *Rickerby* (appeal of plaintiff from order of Wills, J., and Wright, J., dated January 22, affirming master's order, setting aside execution under writ of *fi. fa.*).—Dismissed.

*Hobbs* v. *Gaskell* (appeal of plaintiff from refusal of Wills, J., and Wright, J., dated January 22, to set aside master's certificate and judgment entered thereon).—Part heard.

Before the LORD CHANCELLOR, BOWEN, L.J., and FRY, L.J.

TUESDAY, FEBRUARY 10.

*In re Standard Manufacturing Company* (*Lim.*) *Lancaster Acts and Companies Acts* (*claim of debenture-holders*) (appeal of J. Lowe and others (debenture-holders) from order of Vice-Chancellor of the Lancaster Palatine Court, disallowing claim; *cur. adv. vult.* November 10).—Allowed.

Before the MASTER OF THE ROLLS, BOWEN, L.J., and FRY, L.J.

*Hobbs* v. *Gaskell*.—Allowed.

*Mayfield* v. *Sheppard* (application of plaintiff for judgment or new trial on appeal from findings and judgment at trial of issue in *Mayfield* v. *Moxon* before Charles, J., and a common jury in Middlesex). *Todd* v. *Sheppard* (application of plaintiffs for judgment or new trial on application from findings and judgment at trial of issue in *Todd* v. *Moxon* before Charles, J., and a common jury in Middlesex).—Dismissed.

*Burriss* v. *Davis & Co.* (*Lim.*) (application of defendants for new trial on appeal from verdict and judgment at trial before Stephen, J., with jury in Middlesex).—Dismissed.

WEDNESDAY, FEBRUARY 11.

*Dickins* v. *The Metropolitan Electric Supply Co.* (*Lim.*) (application of plaintiffs for new trial on appeal from judgment of nonsuit at trial before Stephen, J., with a special jury in Middlesex.—Granted.

*Schroder* v. *The Merchants' Marine Insurance Co.* (*Lim.*) (application of defendants from judgment or new trial on appeal from verdict, findings and judgment at trial before Denman, J., and special jury in Middlesex).—Part heard.

## APPEAL COURT II.

Before LINDLEY, L.J., LOPES, L.J., and KAY, L.J.

THURSDAY, FEBRUARY 5.

*Harris* v. *Gordon*. *Harris* v. *Grindley* (application of defendants Grindley & Co. for new trial on appeal from verdict and judgment at trial before Charles, J., with a jury in Middlesex).—New trial ordered.

*Dobbin* v. *Wickes* (application of defendant for new trial on appeal from verdict and judgment at trial before Wills, J., with a jury in Middlesex).—Application refused.

FRIDAY, FEBRUARY 6.

*Heath* v. *Stokes* (application of defendants for judgment or new trial on appeal from verdict and judgment at trial before Smith, J., with a special jury in Middlesex).—Part heard.

SATURDAY, FEBRUARY 7.

*Heath* v. *Stokes*.—Application refused.

MONDAY, FEBRUARY 9.

*Stewart* v. *Bessler* (appeal of defendants Bessler, Wachter & Co. from order of Kekewich, J., dated January 15, refusing to strike out claim against appellants under Order XXV., rule 4).—Stand over with liberty for plaintiffs to amend.

*Cox* v. *Bennett* (appeal of plaintiffs from order of Kekewich, J., dated December 1, disallowing items in trustees' accounts).—Dismissed.

*W. Driffield (petitioner)* v. *C. E. Driffield (respondent)* (*J. A. Clark and another, co-respondents*) (appeal of respondent C. E. Driffield from refusal of Butt, J., dated January 20, to direct cross-examination upon petition to vary settlements).—Dismissed.

*Green* v. *Archer* (appeal of defendant from order of Kekewich, J., dated January 23, for appointment of receiver).—Order varied.

TUESDAY, FEBRUARY 10.

*Cooke* v. *Smith* (appeal of plaintiff from order of Kekewich, J., dated January 20, for increase of security on obtaining discovery from defendants).—Dismissed.

*In re Contract, dated November* 6, 1890, *for Sale of Real Estate, made between Eugene Arbib and C. G. Class and another and Vendor and Purchaser Act* (appeal of C. G. Class and another from order of North, J., dated November 5). *In re Same Contract* (appeal of C. G. Class and another from order of North, J., dated November 24).—Dismissed.

*Williams* v. *Marshall* (appeal of plaintiff from judgment of Romer, J., dated November 21).—Allowed.

Before LINDLEY, L.J., and KAY, L.J.

WEDNESDAY, FEBRUARY 11.

*Simpson* v. *Pilling* (appeal of plaintiff from order of Kekewich, J., dated January 16, refusing to restrain dealing with share).—Order varied by consent.

*J. Powell* v. *W. J. Marsh* (appeal of plaintiff from order of Butt, J., dated January 20, 1891, for payment by plaintiff of costs of administrator pending action).—Dismissed.

*Kenrick* v. *Danube Collieries and Minerals Co. (Lim.)* (appeal of plaintiffs from order of North, J., dated February 2, refusing issue of commission for examination of plaintiff at George Town, Demerara).—Order varied by consent.

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PIG-IRON WARRANTS.—A bill has been introduced by Mr. Hingley, M.P., to restrain the making of contracts for the sale and purchase by means of warrants of pig-iron which is not at the time in existence. It declares that all contracts, agreements, and tokens of sale and purchase for the sale or transfer of any pig-iron to which any document of title shall be applicable shall be void unless the contract, &c., shall specify or incorporate a document of title specifying the name and address of the storekeeper or other person by whom the document was created, the number by which the document of title is distinguished at the time, the date on which the document was made, and the brand or quality of the pig iron. Every person, whether broker, principal, or agent, who wilfully inserts in the contract, agreement, or other token, or in the document of title any untrue statement in respect of any of these particulars is to be guilty of a misdemeanour and punished accordingly. By the expression 'document of title' is meant any dock warrant, storekeeper's warrant, maker's scrip, and any warrant or order for the immediate delivery of pig-iron, or authorising, either by indorsement or by delivery, the possessor of the document to transfer or receive delivery of the pig-iron. Should any person create or issue any instrument purporting to be a document of title when he has not at the time in his possession, or in that of some one on his behalf, the pig-iron to which it purports to relate, he is to be guilty of a misdemeanour and punished accordingly.

## BOOKS RECEIVED FOR REVIEW.

ANNUAL Digest, 1890 (The). By John Mews, Barrister-at-Law. London: Sweet & Maxwell (Lim.).

Law of Joint-Stock Companies (The). By J. W. Smith, Barrister-at-Law. Effingham, Wilson & Co.

Supplement to Lindley on Companies. By Sir Nathaniel Lindley, Knt., LL.D. London: Sweet & Maxwell (Lim.).

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INNER TEMPLE.—Mr. A. M. Channell, Q.C., of the South-Eastern Circuit, has been elected a Bencher of the Honourable Society of the Inner Temple, in succession to the late Sir Barnes Peacock.

WE are informed that the business of companies' registration agent, printer, and publisher, hitherto carried on by Mr. Richard Jordan at 120 Chancery Lane, London, will in future be carried on under the style of 'Jordan & Sons,' in consequence of the admission of two of Mr. Jordan's sons into the business.

IT is understood, though not officially announced, that Mr. W. J. Stewart, of the Northern Circuit, has been selected by the Home Secretary to fill the vacancy in the stipendiary magistracy of Liverpool caused by the death of Mr. T. S. Raffles. Mr. Stewart was for some time a member of the Liverpool City Council, and is on the council of the Liverpool University College.

SOLICITORS' BENEVOLENT ASSOCIATION.—The usual monthly meeting of the board of directors of this association was held at the Law Institution, Chancery Lane, London, on Wednesday, the 11th inst., Mr. Sidney Smith in the chair. The other directors present were Messrs. W. Beriah Brook, H. Morten Cotton, Samuel Harris (Leicester), J. H. Kays, Grinham Keen, Henry Roscoe, R. W. Tweedie, Frederic T. Woolbert, and J. T. Scott (secretary). A sum of 469*l.* was distributed in grants of relief, five new members were admitted to the association, and other general business was transacted.

THE FIRST OFFENDERS ACT.—A Cheshire magistrate, Mr. Charles Lister, of Arden Hall, Lymm, has recently written to several local journals drawing attention to the beneficial tendency of the First Offenders Act, in so far as it is put in operation by the Courts. But he expresses regret that, both in Lancashire and Cheshire, although more in the former county than in the latter, this useful measure has too generally been suffered to remain a dead letter. Quoting from the Judicial Statistics for 1890, he shows that in the preceding year, out of 10,108 persons proceeded against summarily in the rural, as distinct from the urban, portions of Cheshire, 8,751 were convicted and 1,357 were discharged; and he notes particularly that of the 8,751 nothing was previously known against these petty offenders, therefore it might be assumed that most of them were fair subjects for a merciful consideration. Mr. Lister writes: 'After many years' experience, I do not hesitate to say that a very large proportion of the occupants of our gaols are there through being unable to pay the fines and costs inflicted upon them; and the question necessarily arises, Ought this to be so? Is it desirable that our gaols should be, in the greater part, filled, and our criminal population permanently increased, by those whose offences have only been such as the magistrates consider may be expiated by a money payment, and because they have not the means of immediate payment?' Inasmuch also as the First Offenders Act expressly provides that magistrates may allow time for the payment of fines and costs, and may direct that the same shall be paid by instalments, it is urged that both justices and their clerks, especially in the counties of Lancashire and Cheshire, may, with great advantage to the community, more generally co-operate in giving effect to the humane and useful provisions of the Act in question.

## HONOURS AND APPOINTMENTS.

Mr. Walter Henry Foster, of Sheffield, has been appointed a Commissioner to administer Oaths. Mr. Foster was admitted in 1882.

Mr. Charles Bevan Jenkins (of the firm of R. & C. B. Jenkins), of Swansea, Morriston, and Swansea Valley, has been appointed a Commissioner for Oaths. Mr. Jenkins was admitted in 1884.

Mr. Richard Henry Spencer, of New Tredegar, has been appointed a Commissioner for Oaths. Mr. Spencer was admitted in 1884.

Mr. Frederick Gillett Peacock (of the firm of Rawnsley & Peacock), of Bradford, Farley, and Crosshills, has been appointed a Commissioner for Oaths. Mr. Peacock was admitted in 1882.

Mr. Stephen Lancelot Monckton, of Maidstone, has been appointed a Commissioner for Oaths. Mr. Monckton was admitted in 1884.

Mr. George Montague Butterworth (of the firm of Bradford, Davis & Butterworth), of Swindon, has been appointed a Commissioner for Oaths. Mr. Butterworth was admitted in 1884.

Mr. Francis Michael Greenep, of Woolwich, has been appointed a Commissioner for Oaths. Mr. Greenep was admitted in 1883.

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Personal Appeals by Natives of India to the Queen.—In consequence of natives of India having frequently come to this country to make personal appeals to Her Majesty against the decision of Indian tribunals, the Government of India has issued the following notification: 'Whereas much inconvenience has from time to time been caused by the poverty and distress of Indian litigants who have proceeded to England under the impression that their cases will receive the consideration of Her Majesty, the Queen-Empress, it is hereby notified for general information that appeals from the decision of the Indian Courts do not lie in England, except the ordinary appeals to the Privy Council, which are provided for in the Acts of the Governor-General in Council regulating civil procedure, and that no petitioners other than appellants to the Privy Council prosecuting their appeals according to the prescribed rules will obtain any hearing in England from Her Majesty. Petitioners who proceed to England merely waste their money and expose themselves to great inconvenience and hardships, with the risk of being unable ever to return to their native country.'

Supply of Water by Meter.—The London water companies are at present empowered by their private Acts to charge for a supply of water for domestic purposes according to the rateable value of the premises supplied. A bill introduced by Mr. Gainsford Bruce, M.P., proposes to give the water consumers of London the option of paying for water in proportion to the quantity used. With that view it enables any owner or occupier to require his company to supply water to his premises by meter for all purposes other than those of any trade, manufacture, or business. The Board of Trade is directed to make regulations respecting the provision, fixing, testing, and stamping of meters, and the fees to be paid in respect of them, and the inspection of meters, &c. The charge for the supply of water is not to exceed 1*s.* per 1,000 gallons where the quantity of water supplied in any quarter does not exceed 200,000 gallons. The maximum is 9*d.* per 1 000 gallons where the quantity is greater. The district intended to be covered by the bill is the administrative county of London and all other places within the limits of supply of any of the eight London water companies—the New River, the East London, the Southwark and Vauxhall, the West Middlesex, the Lambeth, the Chelsea, the Grand Junction, and the Kent.

Marks on Imported Goods.—The object of a bill introduced by Mr. Howard Vincent, is stated as being 'the further prevention of fraud by false marking.' A statute of 1887 prohibits the importation of goods of foreign manufacture bearing the name or trade-mark of any manufacturer or trader of the United Kingdom unless the name or mark be accompanied by a definite indication of the country in which the goods were made or produced. The bill proposes to prohibit altogether the importation into the United Kingdom of all goods which do not bear in a legible and conspicuous form a definite indication of the country in which they were made or produced. If any goods are brought into the country contrary to this prohibition, they are to be liable to forfeiture. However, goods may from time to time be specially exempted from the provisions of the bill by the published regulations of the Commissioners of Customs, on the ground that they are incapable of being thus marked. If any imported goods which do not bear a definite indication of the country in which they were made or produced, or from which they were imported, are exposed or offered for sale in the United Kingdom, it is required by the bill that a purchaser be made aware, either by means of express notice, or by a board, card, label, ticket, invoice, or other document, that the goods have been imported, and are not of home production.

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## BIRTHS.

On Jan. 5, at Tacoma, Washington, U.S., the wife of Robert Byerley Parkes, Barrister-at-Law, of a daughter.

On Jan. 20, at Wymeston, Sydney, the wife of John Hubert Plunkett Murray, Barrister-at-Law, of a son.

On Feb. 4, at Castlecarrock, Beckenham, the wife of Arthur J. Parker, Barrister-at-Law, of a son.

On Feb. 5, at Denbigh Street, S.W., the wife of Arthur Cardew, Barrister-at-Law, of a daughter.

On Feb. 5, at Walton-on-Thames, the wife of Edward Manson, Barrister-at-Law, of a son.

On Feb. 6, at 28 Broad Street, Peterhead, the wife of Robert Robertson, Solicitor, of a daughter.

On Feb. 7, at Merfield, 18 Trinity Road, Tulse Hill, S.W., the wife of Lewis Boyd Sebastian, Barrister-at-Law, of a son.

On Feb. 8, at 13 Evelyn Gardens, South Kensington, the wife of Hugh Fenwick Boyd, of the Inner Temple, Barrister-at-Law, of a son.

On Feb. 10, at 20 Sloane Gardens, S.W., the wife of Carteret F. Collins, Barrister-at-Law, of a daughter.

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## MARRIAGES.

On Jan. 17, at Christ Church, Rawal Pindi, India, Charles Richard Hodgins, Lieutenant Royal Artillery, youngest son of Thomas Hodgins, Esq., Q.C., Toronto, Canada, to Aimée Gertrude, eldest daughter of Col. H. M. Burgess, Royal Artillery.

On Feb. 4, at the Presbyterian Church, Rangoon, Edward Upton Eddis, Barrister-at-Law, to Ela Usher, daughter of Robert Binning, Dowannill, Glasgow.

On Feb. 7, at St. Mary Boltons, C. L. Saunders, of Ladbroke Gardens, W., to Rosetta, widow of the late Henry E. Swecting, of Lincoln's Inn, Barrister-at-Law.

On Feb. 10, at Neemuch, Bombay, Lieut. Alexander Fleetwood Pinhey, Bombay Staff Corps, and Assistant Political Agent, Rajputana, third surviving son of Mr Justice Pinhey, late one of the Judges of the Bombay High Court, to Violet Beatrice Gordon, youngest daughter of the late Sir Henry W. Gordon, K.C.B., and Lady Gordon, of Oak Hall, Hayward's Heath.

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## DEATHS.

On Feb. 1, at Rossmore House, Southsea, Colonel Rupert Barber Deering, late 99th Regiment and Rifle Depôt Battalion, last surviving son of the late John Deering, Esq., Q.C., of Mountjoy Square, Dublin, and Derrybrusk, co. Fermanagh.

On Feb. 3, at May Place, Crayford, Kent, the residence of her father, Edward Horner, Esq, Gertrude Elizabeth, the wife of Courtenay C. S. Fooks, Esq., Barrister-at-Law, aged 32.

On Feb. 5, at Ashby-de-la-Zouch, after a short illness, Edward Frederick Mammatt, Solicitor, aged 47.

On Feb. 5, Ella, daughter of the late Henry Macnamara, Barrister-at-Law and Railway Commissioner, aged 32

On Feb. 7, Caroline Dorothea, beloved wife of Captain Barrington Crake, Rifle Brigade, and daughter of the late Brent Spencer Follett Q.C.

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# The Law Journal.

*SATURDAY, FEBRUARY* 21, 1891.

## 'OBITER DICTA.'

AT page 139 we print the new Rules under the Companies (Winding-up) Act, 1890. They will also appear in due course in the LAW JOURNAL REPORTS.

MR. JUSTICE DENMAN has, we are glad to be able to state, sufficiently recovered from his recent long illness to resume his judicial duties. The learned judge's return to work is especially opportune at the present time, as the bench of the Queen's Bench Division is, owing to the circuits, becoming very shorthanded. On Tuesday only five judges were available for the Courts of that division, while on Wednesday only four were sitting, and by the end of the week two more of the judges will have left town.

AT the 398th page of 'Later Leaves,' by Mr. Montagu Williams, Q.C., only just issued, will be found a most interesting account of a mysterious circumstance in connection with the Whitechapel murders. It appears that Mr. Williams, foreseeing the possibility of 'the assassin,' if arrested, being brought before himself, as stipendiary magistrate, 'made it his business to personally visit all the scenes of the crimes, and to make what medical and other inquiries he thought desirable.' One day a visitor, whose name is not given, called on Mr. Williams and announced that he had set on foot a number of inquiries 'that had yielded a result which in his' (the visitor's) 'opinion afforded an undoubted clue to the mystery and indicated beyond any doubt the individual *or individuals* on whom this load of guilt rested.' 'My visitor,' proceeds Mr. Williams, 'handed me a written statement in which his conclusions were clearly set forth, together with the facts and calculations on which they were based; and I am bound to say that this theory—for theory it is of necessity—struck me as remarkably ingenious and worthy of the closest attention. . . . This gentleman also showed me copies of a number of letters he had received from various persons. . . . He had communicated his ideas to the proper authorities, and they had given them every attention.' This being so, all who have confidence in the proper authorities will probably be satisfied that everything will be done to test the 'theory' of Mr. Williams's mysterious visitor. But there is something more strange still to come. Mr. Williams, who had *carte blanche* from his visitor to make any use he pleased of the information afforded him, and who, doubtless, from good and well-considered reasons, declines to take the public further into his confidence at present, winds up as follows: 'The cessation,' writes he, 'of the East End murders dates from the time when certain action was taken as a result of the promulgation of these ideas.'

IT is material to point out, in connection with the baccarat scandals, that cheating at cards is (if successful, but not otherwise) a criminal offence, punishable by as much as five years' penal servitude. Such seems to be the clear effect of 8 & 9 Vict. c. 109, s. 17, which enactment provides that 'every person who shall by any fraud or unlawful device or ill practice in playing at or with cards, dice, tables, or other game, or in bearing a part in the stakes, wagers, or adventures, or in betting on the sides or hands of them that do play, or in wagering on the event of any game, sport, pastime, or exercise, win from any other person to himself or any other or others any sum of money or valuable thing, shall be deemed guilty of obtaining such money or valuable thing from such other person by a false pretence, with intent to cheat or defraud such person of the same, and being convicted thereof shall be punished accordingly.' Turning to the Larceny Act, 1861 (24 & 25 Vict. c. 96), we find that 'whosoever shall by any false pretence obtain from any other person any chattel, money, or valuable security with intent to defraud, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for three years or to be imprisoned for any term not exceeding two years, with or without hard labour.' The three years' term of penal servitude was increased to five by the Penal Servitude Act, 1864 (27

& 28 Vict. c. 47), s. 2, by which 'no person shall be sentenced to penal servitude in respect to any offence committed after the passing of the Act for a period of less than five years.' Inasmuch as the Larceny Act, 1861, was passed after 8 & 9 Vict. c. 109, some little doubt might arise whether section 17 of that Act is prospective and applies the law of false pretences for the time being to the offence of cheating at play, but we think that this doubt, notwithstanding the rule that all penal statutes are to be construed strictly, would not be solved in favour of a convicted offender. We believe that few, if any, prosecutions have been instituted under 8 & 9 Vict. c. 109, s. 17, since it was passed some forty-five years ago.

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THE Senate of the United States has now passed the Copyright Bill, with two amendments, by thirty-six votes to fourteen, having previously rejected, or, as the transatlantic phrase is, 'killed,' a set of substantial amendments by a majority, if we remember right, of two only. The bill will now have to go to the Conference Committee of both Houses, which will have sufficient time for discussion of the points still in difference before the termination of the session on March 4. There is now, therefore, a reasonable expectation that the bill will pass, and become law on July 1 next, as at first intended by its promoters. Lord Monkswell's bill still stands for second reading in the House of Lords. It contains no provision for 'retaliatory measures.' Any such measures, indeed, would be flatly in opposition to the report of the Royal Commission of 1878, on which the bill is founded. The question will be found discussed in the report, paragraphs 249–252. The commissioners (amongst whom were the Duke of Rutland, Lord Herschell, and Lord Knutsford) came to the conclusion, 'on the highest public grounds of policy and expediency, that it is advisable that our law should be based on correct principles, irrespective of the opinions or the policy of other nations.'

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IN the case of *In re The Johannesburg Hotel Company, ex parte The Zoutspansberg Prospecting Company*, L. R. 1891, 1 Chanc. 119, the Court of Appeal, affirming Mr. Justice Chitty, placed the prospecting company on the list of contributories of the hotel company in respect of shares which had been allotted as fully paid-up, but in respect of which no contract was registered under section 25 of the Companies Act, 1867. The appellants, it is almost needless to say, relied on *Spargo's Case*, 42 Law J. Rep. Chanc. 488; L. R. 8 Chanc. 407; but that case was clearly distinguishable, and the report seems to add little, if anything, to the law as laid down in *White's Case*, 48 Law J. Rep. Chanc. 820; L. R. 12 Chanc. Div. 511, and *Kent's Case*, 57 Law J. Rep. Chanc. 977; L. R. 39 Chanc. Div. 259, in which *Spargo's Case* was distinguished on similar grounds. Its importance seems to lie directly in certain observations made by the Lord Chancellor upon the decision of Lords Justices James and Mellish in *Spargo's Case*, to which he refers 'as one which has, I think, unfortunately established that payment in cash need not be what the words literally signify;' and, in another passage, as 'an authority by which sitting in this Court I am bound.' Further on, he says: 'I venture to doubt whether what is described by those eminent judges as the absurdity of handing money backwards and forwards when two people have cross demands is so great as the absurdity of construing the words "payment in cash" as payment without cash. However, as I have said, I am bound by the decision in this Court.' It is worthy of remark that *Spargo's Case*, though repeatedly recognised and followed by the Appeal Court, appears never to have received the express sanction of, or indeed any consideration by, the highest tribunal. It was cited in *Burkinshaw* v. *Nicholls*, 48 Law J. Rep. Chanc. 179; L. R. 3 App. Cas. 1004, where it was not in point, but not, so far as we have been able to discover, in any other reported case before the House of Lords. The tendency in recent years has perhaps been rather to 'distinguish' *Spargo's Case*, but we conceive that, if any alteration is to be made in the law which would amount to the reversal of that decision, which is now nearly twenty years old, it must be effected by the Legislature alone.

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OUR American cousins are an ingenious people and prone to give a trial to all sorts of legal and legislative experiments. Systematic attempts have been made and held up for our imitation to give effect to the remedial element in judicial punishments to a greater extent than ever entered the minds of English lawmakers. We commend to the consideration of Sir Wilfrid Lawson and Cardinal Manning the course taken by the judges of the Circuit Court of Ohio in the case of *Scott-Huff* v. *B. F. Dyer*, warden of the Ohio Penitentiary, decided last September. The plaintiff was sentenced in January, 1880, to a term of five years' imprisonment for assault with intent to rob. He was confined until October, 1888, when the governor granted him a pardon on the condition 'that he shall abstain from the use of intoxicating liquor as a beverage.' The plaintiff was set at liberty, and observed the condition to the end of January, 1885. But in 1890 he indulged in alcohol, and was incarcerated for breach of the condition. He was released, however, on a *habeas corpus*, on the ground that, no time having been limited in the condition, a construction must be adopted favourable to liberty, and the condition could only be read as extending over the period of the original sentence. The judges, however, seem to have entertained no doubt that a condition of this kind would have been valid.

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IN the Court of Appeal on January 21, during the hearing of a bill of sale case (*In re Heseltine; Woodward* v. *Heseltine* (Notes of Cases, p. 10), Lord Justice Lopes said he had introduced bills on the subject when in the House of Commons, and Mr. Napier Higgins, Q.C., excited some amusement by replying that he was glad his lordship was not responsible for the Act of 1882. It is time that that statute was repealed and something more intelligent and less stringent substituted. It is curious that there should be an outcry for simplicity in the transfer of land while people submit to such trammels on the assignment of a few sticks of furniture. Two points were raised. The bill of sale holder was called Simmons, but he carried on business as the Discount Bank of London, 6 Duncannon Street, Charing Cross. The bill of sale was made between the grantor of the one part and the Discount Bank of London, of 6 Duncannon Street, Charing Cross, in the county of Middlesex ('of which said bank Lewis Simmons is the

sole proprietor'), of the other part. The consideration was expressed to be paid by the bank, and the assignment of the goods was to 'the said bank and its assigns.' One objection was that this *alias*, or description of the grantee, was not in accordance with the schedule to the Act of 1882. The Court held that this was a fatal non-compliance, and that the bill of sale was bad. But neither in the argument nor the judgments was the proposition crystallised as it might have been. Whatever defects it may have, the Act contains a schedule which, so far as it goes, is a correct piece of conveyancing. It assigns the chattels to the bill of sale holder, his executors, administrators, and assigns; in other words, it contemplates an assignment of chattels in proper form to a person capable of taking by assignment. If the bank in this case had been a corporation, the assignment to it and its assigns would have been correct, but if it had been an unincorporated partnership of two or more persons it may be doubted whether such an assignment would have passed the property to the members of the firm jointly. The fact of Simmons being described as the sole proprietor showed the unsoundness of the argument that the 'Discount Bank' was the trade name, or another name of Simmons, for a man cannot be the proprietor of himself. Another question was whether the attesting witness had complied with the statutory requirements by describing himself as clerk to the bank, and giving the bank's, and not his own private, address. The Court decided this point in the affirmative, reversing the somewhat narrow decision of Mr. Justice North, who had held that the omission of the private address was fatal to the bill of sale.

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We commented a week or two ago on the growing tendency to State interference with almost all trades and professions. Two bills recently introduced still further illustrate this tendency. One is a little measure of thirteen sections which calls itself the Trading Registration Act, and is brought in by Mr. Arthur O'Connor, Mr. Addison, and Sir A. Rollit. The other is a more ambitious bill, with the title 'Registration of Firms,' and bears the names of Sir A. Rollit, Mr. Lockwood, Mr. Fulton, Mr. A. O'Connor, and others. The two bills are really complementary of each other. The Registration of Firms Bill requires the registration with the Registrar of Joint-stock Companies of all firm names which do not disclose the names of all the partners, the nature and place of business, the full name and other occupation, if any, of each of the persons carrying on or intending to carry on the business, and the date of the commencement of the business, if such business is started after the Act. Any changes in the constitution of a firm are, also, within a month of such change, to be registered in accordance with a form prescribed in the schedule. The penalty for default in registration is a fine not exceeding 1*l.* for each day the default continues. Firms in default instituting an action are also liable to an order by the Court or judge staying the action pending compliance with the statutory requirements. The making of false returns is to constitute a misdemeanour, for which imprisonment with hard labour for a term not exceeding two years may be inflicted. All particulars are to be filed, and certificates of registration issued, and the statements so registered may, like a will at Somerset House, be inspected on payment of 1*s.* The supervision of the whole business is, of course, to be given to the Board of Trade, which already promises to be the hardest-worked of all the Government departments.

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The Trading Registration Bill, which is intended to secure 'the more effectual prevention of fraudulent trading' by the provision of a register, in all cases in which persons trade under names other than their own, of the name or style under which the business is carried on, the nature of the business, the place or places of the business, and the full name and other occupation (if any) of every person having a proprietary interest in the business. In this case no fee is charged for registration, but the penalty for non-registration is the same as under the other bill; and a like disability is imposed on the bringing of an action by a person trading under a name not his own. The official under the bill, however, is not the Registrar of Joint-Stock Companies, but the registrar of the County Court in whose district the business is carried on. No doubt these well-meant attempts at legislation are intended for the protection of creditors; but creditors can usually take care of themselves, and if they are not fools, know perfectly well with whom they are dealing; and it is difficult to see the necessity of solemnly registering the little enterprise of every suburban greengrocer or milkman who may buy a small business and carry it on under his predecessor's name. The actual credit and character of a business soon become known to all whom it concerns, and it is not easy to see what security registration would give. But it is possible that startling statistics of hitherto unsuspected evils may be brought before the House of Commons in support of these bills.

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The Stamp Act, 1870, s. 54, subs. 1, enacts that the holder of a promissory note not being duly stamped, 'shall not be entitled to recover thereon, or to make the same available for any purpose whatever.' In the case of *Ashling* v. *Boon*, reported in our Notes of Cases for this week, at p. 30, Mr. Justice Kekewich had to decide whether an insufficiently stamped note could be put in evidence to prove the receipt of money by the maker of the note. In support of the evidence, counsel mainly relied on the case of *Evans* v. *Prothero*, 21 Law J. Rep. Chanc. 772; 1 De G. M. & G. 572, where Lord St. Leonards held that a document purporting to be a receipt was admissible as evidence of a contract, though inadmissible as a receipt by reason of its being insufficiently stamped. Mr. Justice Kekewich rejected the evidence, and distinguished the case before Lord St. Leonards on the ground that there the contract was something entirely different from the receipt, and, consequently, the two facts which the document would prove were wholly independent, as there might be a good contract and no receipt, or there might be a good receipt and no contract. Mr. Justice Kekewich's ruling appears to be in accordance with the terms of the Stamp Act and with the current of authority which will be found in Roscoe's 'Nisi Prius' (15th edit. 1884), vol. i., pp. 211, 558.

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Conveyancing barristers, no less than those who regularly practise in the Courts, have to keep their eyes open for decisions of judges which may materially

affect the advice which they give. In particular, we refer to points which affect their opinions in advising on title. Mr. Justice Stirling's decision in *In re Briggs & Spicer* (Notes of Cases, p. 24) will make it difficult for those claiming under a voluntary settlement within ten years of its execution to show a good, enforceable title. Section 47 of the Bankruptcy Act, 1883, makes a voluntary settlement void as against the settlor's trustee in bankruptcy if the settlor becomes bankrupt within two years of its execution, or if he becomes bankrupt within ten years, unless the parties claiming under it can prove that the settlor could have paid all his debts at the time of its execution without recourse to the settled property. In *In re Briggs & Spicer* B. executed a voluntary settlement whereby he conveyed certain land to trustees on trust for sale, and to pay the income of the proceeds of sale to himself for life with remainder over. The trustees endeavoured to sell by entering into a contract with intending purchasers, in which B. joined. The purchasers objected to the title on account of the section referred to above. The vendors suggested that the words 'parties claiming under the settlement' did not include *bonâ fide* purchasers and lessees from the trustees. Mr. Justice Stirling thought that the words were wide enough to include them so that the title could not be forced on the purchasers, though a title might be made by B. conveying to the purchasers, and directing the consideration-money to be paid to the trustees of the voluntary settlement. Although, if the purchasers were willing, they would thus in effect acquire a good title through the voluntary settlement, it must not be supposed that there is no difference in principle between a conveyance from a person to whom or to whose nominees you have given a *quid pro quo*, and a purchase from persons who owe it to the bounty of some settlor that they have any interest in the property. If all sales in the former case were liable to be upset, there would be an end, or at all events an arrest of that free trade in property which it is the policy of the law to encourage, but in the latter case the voluntary settlement should at once suggest that there is need of care, because the settlor has dealt in a comparatively rare way with his property, a way indeed which but for such provisions as those in the Bankruptcy Act might enable him to exempt a large part of his available assets from liability to bear his debts.

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Mr. Alderman Wicks (see *ante*, p. 118) reiterates his charge that the Lord Chancellor's salary is 20,000*l.*, substantiating, as he says, his statement 'from Parliamentary papers just issued.' We are not yet convinced. The Judicature Act of 1873 assigns to the Lord Chancellor the salary paid to him before the passing of that Act. On reference to 14 & 15 Vict. c. 83, s. 17, Mr. Wicks will find that the 10,000*l.* salary is made up of two sums, the history of which can be found by reference to 2 & 3 Wm. IV. c. 122. Practically it comes to this, that the Lord Chancellor has 6,000*l.* for the discharge of his official duties and 4,000*l.* for acting as speaker of the House of Lords. Mr. Wicks has put down the two separate amounts, and, by adding them together and adding the sum of the two to the total 'net yearly sum' fixed by 14 & 15 Vict. c. 83, arrived at the 20,000*l.* of which he is in search.

There is a useful though short Act of Parliament, which is occasionally dragged out of oblivion, authorising the sale of land under trusts for, or powers of sale, with a reservation of minerals. The statute is 25 & 26 Vict. c. 108, and the material parts of section 2 are that 'every trustee and other person now and hereafter to become authorised to dispose of land by way of sale . . . . may, unless forbidden by the instrument creating the trust or power, so dispose of such land with an exception or reservation of any minerals . . . . or may (unless forbidden as aforesaid) dispose of by way of sale . . . . the minerals . . . . separately from the residue of the land, and in either case without prejudice to any future exercise of the authority with respect to the excepted minerals, or (as the case may be) the undisposed-of land.' There is one drawback to the beneficence of this statute, and that is, that the sanction of the Court is necessary before it can be made use of. In *In re Hirst's Mortgage*, 60 Law J. Rep. Chanc. 48; L. R. 45 Chanc. Div. 263, the mortgagees of property in Yorkshire endeavoured to avail themselves of the Act by petitioning the Court to give the requisite sanction *ex parte*. Vice-Chancellor Wickens, in *In re Wilkinson's Mortgaged Estates*, 41 Law J. Rep. Chanc. 392; L. R. 13 Eq. 634, expressed himself satisfied that the order might be made, notwithstanding the opposition of one of the later mortgagees or the mortgagor, and thought that if necessary the mortgagor might be dispensed with. The latter phrase is somewhat curious. But though the mortgagor's consent may be dispensed with, Mr. Justice North, in *In re Hirst's Mortgage*, refused to dispense with service on him. The same Vice-Chancellor, in *In re Palmer's Will*, 41 Law J. Rep. Chanc. 511; L. R. 13 Eq. 408, considered that, where trustees for sale made the application, the beneficiaries should be parties to it, and Mr. Justice North could see no difference in principle between the case of a mortgagee and mortgagor and that of trustees and their *cestuis qui trustent*. Since such large powers are now entrusted by the Legislature to trustees and mortgagees, it would seem reasonable to expect that they would soon be enabled to exercise the powers of this Act without having to apply for the sanction of the Court. Possibly a notice to the beneficiaries or some of them, or to the mortgagor and subsequent incumbrancers, of a kind similar to that which tenants-for-life have to give under the Settled Land Acts, would be a safeguard against any possible abuse of the powers.

## DEBENTURES.

On February 10 the Court of Appeal, after deliberating for three months, delivered their judgment in the case of *In re The Standard Manufacturing Company: Ex parte Lowe*, and decided that debentures of an ordinary joint-stock company, creating a charge on its floating real and personal property, are not void for want of registration, or want of accordance with statutory form, under the Bills of Sale Acts, 1878 and 1882, or either of such Acts.

This is a good, common-sense, commercial decision, and the short judgment is a combination of the shrewdness of Lord Halsbury, the breadth and force of Lord Justice Bowen, and the accuracy and caution of Lord Justice Fry.

The Court made short work of the contention that debentures are within the Act of 1882.

It may be remembered that section 17 of that wretched piece of legislation exempts from its baneful influence 'debentures issued by any *mortgage, loan, or other incorporated company*, and secured upon the capital stock or goods, chattels, and effects of such company.' The Court of Appeal expressly overruled the decision in *Jenkinson* v. *Brandley Mining Company*, L. R. 19 Q. B. Div. 568, that 'other incorporated companies' are words limited to companies *ejusdem generis* with mortgage or loan companies. Wisely giving up any attempt to define the meaning of the mysterious terms 'mortgage company' and 'loan company,' the Court boldly declared that every incorporated company which is authorised to raise money on loan or mortgage comes within the section.

Then the Court tackled, with a firm but light hand, the Act of 1878, which is not such a clumsy piece of drafting as the more recent statute. Section 4 defines a bill of sale, and the Court frankly admitted that a debenture came within the words 'any agreement . . . by which a right in equity . . . to any charge or security' 'on any personal chattels' 'shall be conferred.'

Then follows a very clever explanation how the Act cannot apply to the mortgages or charges—and this part of the judgment is most cautiously worded—'of any incorporated company for the registration of which statutory provision has already been made by the Companies Clauses Act, 1845, or the Companies Act, 1862.'

The judgment, read at a glance, seems wide enough to exempt all debentures from the operation of the Act of 1878, but a reperusal shows that the remarks of the Court on this head only apply *to companies within the Act of* 1845 *and companies registered under the Act of* 1862; and, of course, there are incorporated companies which are not within either Act, and the debentures of which would, therefore, seem to require registration under the Act of 1878.

Confining its attention, therefore, to incorporated companies within the Acts of 1845 and 1862, the Court points out that these companies are not within the mischief of the Bills of Sale Acts, and were not actively present to the minds of the draftsmen of these Acts.

So far the judgment is admirable. But now comes what seems to be the weak part of it. The Court proceeds to remind everyone that the Acts of 1845 and 1862 required registers to be kept by the companies within them of mortgages, charges, &c. But, passing by the objection that the register, under neither Act, is open to the public, it seems to have been forgotten that the House of Lords has decided that the omission to register does not—at any rate in the case of companies under the Act of 1862—invalidate, or affect the priority of the mortgages, which ought to be registered (*Wright* v. *Horton*, 56 Law J. Rep. Chanc. 873; L. R. 12 App. Cas. 371); it is merely a question of money penalties payable by the person whose duty it is to register.

The Court of Appeal, however, says that, 'Having regard to the provision already made by statute for registration, such documents could hardly be described as secret or as belonging to the class of documents by which frauds were perpetrated upon creditors by secret bills of sale;' and their lordships 'cannot think that the Legislature could have intended in the Bills of Sale Act, 1878, to have interfered by mere general words with such well-known commercial instruments' as debentures.

We agree as to the intention of the Legislature; but there is no doubt that unsecured creditors have occasionally been defeated by means of unregistered mortgages and debentures, given by companies under the Act of 1862 on all their available assets, including uncalled capital, notwithstanding the registration clause (s. 43) of the Companies Act, 1862. To justify its inquiry into the intent of the Legislature the Court invoked the authority of a case in Plowden, which the Lord Chancellor had disinterred in the ecclesiastical case of *Cox* v. *Hakes*, L. R. 15 App. Cas. 518. The extract from the case in 'Plowden' is full of good sense, otherwise it would not have been brought forward by Lord Halsbury, and this part of the judgment may be passed over without further comment.

The Court then said that 'neither the cause nor necessity for the Bills of Sale Acts, 1854 and 1878, nor a comparison of the various sections'—and they particularised sections 4, 10, and 12 of the latter Act—drove them to the interpretation that debentures were included.

The judgment, so far as decision goes, practically ends with the observation, again cautiously framed, that '*it may be* that the language of section 3,' of the Act of 1878, 'is wide enough to include the bills of sale of a corporation.' This means bills of sale 'whereby the holder or grantee has power, either with or without notice, and either immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bills of sale.'

This part of the judgment *may* mean that the Court is ready to reconsider the decision in *Brocklehurst* v. *The Railway Printing Company* (Weekly Notes, 1884, p. 70), that a document which, although not expressly charging the property of a company, purports to give the holder, *pari passu* with other holders of similar documents, the benefit of an assignment to a trustee of the property, is not a debenture within section 17 of the Act of 1882, and consequently void.

But for some time those engaged in 'company drafting' have taken care not to include the chattels in an assignment in trust for debenture-holders: and they will be well advised if they continue to act with the same caution.

The fact that the execution creditors were ordered to pay the costs in both Courts may bring about an appeal to the Lords. A reversal of the decision would be a commercial disaster, and prompt legislation, affirming the decision of the Court of Appeal, would be hailed with the greatest satisfaction by the very many people who have advanced their money on debentures in the belief that the intent of the Legislature was that which is so tersely, yet eloquently, expressed in the judgment 'proposed by Lord Justice Bowen.'

## THE LIABILITY OF SOLICITORS IN INVESTING TRUST FUNDS.

FEW cases have raised more points of interest to solicitors who are concerned with the investment of trust funds than the three actions of *Blyth* v. *Fladgate*, *Morgan* v. *Blyth*, and *Smith* v. *Blyth*, heard together before Mr. Justice Stirling and reported in the February number of the LAW JOURNAL REPORTS (60 Law

J. Rep. Chanc. 66), from which we collect the following short statement of facts. Certain moneys subject to the Blyth settlement came with notice of the trust into the hands of a firm of solicitors consisting of three members, of whom Smith was one, at a time when there were no trustees of the settlement in existence. Smith, the member of the firm who attended to the affairs of the trust, negotiated an advance of the money on mortgage to one Searle, a client of the firm, and the mortgage was made in March, 1884, to Smith and two other persons, who had previously agreed to become new trustees of the settlement and had consented to the proposed investment. The three new trustees were duly appointed in April following. The investment resulted in loss, and in August, 1888, the beneficiaries obtained judgment against Smith and his two co-trustees, declaring that the investment was an improper one, and that the three trustees were jointly and severally liable to make good the loss. In May, 1884, the partnership between the solicitors was dissolved, and one member of the old firm died in 1888. In this state of things the first of the above-named actions was brought by the beneficiaries to make the surviving member of the old firm of solicitors and the representatives of the deceased member repay the trust-money to the trustees. The main question involved in this case, which Mr. Justice Stirling decided in favour of the plaintiffs, was whether Smith's copartners had become liable on the footing of constructive trusteeship, although they had no personal knowledge of the impropriety of the investment, which was entirely confined to Smith. There was obviously an important distinction between this case and cases like *Barnes* v. *Addy*, 43 Law J. Rep. Chanc. 513; L. R. 9 Chanc. App. 244—viz. that in this case the firm had not merely acted as solicitors for trustees who were guilty of a breach of trust, but had themselves received the trust-money while there were no trustees in existence, and had thus—knowingly in the case of Smith and with constructive notice in the case of his copartners—taken upon themselves the office of trustees *de son tort*, and rendered themselves liable as principals; and it is mainly on this ground, we apprehend, that Mr. Justice Stirling's decision must be sustained. Upon the constructive liability of Smith's copartners, Mr. Justice Stirling says: 'Smith, while acting as a member of the firm, became acquainted with the nature of the security on which the money under the control of the firm, and known by them to be a trust fund, was advanced; and the knowledge so acquired by Smith must, as it seems to me, be imputed to the other partners, whose agent he was, for the purpose of dealing with this trust fund under their control.'

The second of the above-named actions was brought by one of the trustees against Smith and the other surviving member of the firm of solicitors, for damages sustained by their negligence as solicitors in advising the improper investment. Smith, in this action, counter-claimed for contribution from the plaintiff of a proportion of the sum necessary to replace the trust fund. The first defence to the plaintiff's action was on the ground of no retainer. Mr. Justice Stirling, however, held that, though no express retainer was ever given by the plaintiff—the investment, it will be remembered, having been made before his actual appointment as trustee—the relation of solicitor and client subsisted under an implied contract to be inferred from the acts of the parties. 'It is not necessary, as I think,' he added, 'that the contract should be one for payment by him personally—a trustee or executor may retain a solicitor upon the terms that he is to look only to the estate for repayment.' In this case the costs of the mortgage had been deducted out of the advance to the mortgagor, but this circumstance was treated as immaterial. The next point was whether Smith, as solicitor, in fact took on himself the duty of advising whether the advance was a proper one. Mr. Justice Stirling thought that he did do so, and that he failed in his duty. 'The duty of a solicitor,' he observes, 'is not so much himself to form or express an opinion on the value of the property offered to a trustee as security for an advance—though the law does not prohibit him from so doing if he thinks fit—as to see that the trustee has before him the proper materials for forming a judgment of his own. He ought, therefore, to see that the trustee has before him proper valuations of the property and that he is acquainted with any facts known to the solicitor and not appearing by the valuation which may affect the value of the property, and that his attention is directed to any rules laid down by the Court for the guidance of trustees with reference to such matters.' A further defence was that the plaintiff's action was premature, as, though judgment had been obtained against him, he had not yet been called on to pay anything by the beneficiaries. This argument, however, as Mr. Justice Stirling points out, confuses a right to sue for damages on the ground of negligence with a right of indemnity against payment. In the latter case, time does not begin to run against the person entitled to the indemnity until he has made a payment; in the former case, the right of action accrues on the commission of the negligence, so that the damages, as is clearly laid down in Mr. Mayne's treatise on the subject, include the client's prospective as well as actual loss, and the client in such a case who waited for the actual loss to occur before bringing his action would run the risk of finding it barred by the Statute of Limitations.

The third action before Mr. Justice Stirling brought the other co-trustee before the Court, raising similar questions to those raised in the second action, and also the additional point whether the estate of the deceased member of the firm could be made answerable for the negligence. Mr. Justice Stirling—on the authority of *Sawyer* v. *Goodwin*, 36 Law J. Rep. Chanc. 578, amongst other cases—held that the maxim 'Actio personalis moritur cum personâ' was not applicable to the case, and that the estate of the deceased member was equally answerable for the damages occasioned by the negligence.

As regards Smith's claim in these two actions for contribution against his co-trustees, Mr. Justice Stirling held, in accordance with *Lockhart* v. *Reilly*, 25 Law J. Rep. Chanc. 697, that Smith, having been guilty of negligence as solicitor towards his co-trustees, could not claim from them any contribution in respect of the liabilities imposed by the original judgment obtained against the three trustees by the beneficiaries.

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Mr. Roland M. P. Willoughby, who gained the highest place in Honours, and an Exhibition, at the recent intermediate examination in Laws at the University of London, is the son of the late Mr. H. W. Willoughby, Solicitor, of Clifford's Inn, and is articled to Mr. Nichols of 7 Warwick Court.

# Reviews.

## THE STUDENTS' BANKRUPTCY.

*Gibson and Weldon's Students' Bankruptcy.* Intended as an Explanatory Treatise on the Law and Practice of Bankruptcy. Prepared specially for the use of Students, and more particularly for the use of Students for the Final (Pass) and Honours Examinations of the Law Society. Second Edition. By the Authors. London: 'Law Notes' Publishing Offices. 1891.

In this edition the Bankruptcy Act and Rules for 1890 have been skilfully incorporated, and the authors have obviously taken great pains in adding the new cases which are of importance. A change has also been made by treating the principle and the practice of bankruptcy law together, and not separately, as was done in the former edition. By this course, no doubt, repetition is avoided, but it may well be doubted whether the student would not find the work clearer and easier to follow if principle and practice were kept apart. The book is certainly carefully executed, and will be found useful. Here and there we have observed some small matters where improvement might be made. On p. 138 or 139 we ought to have had an allusion at least to the change introduced by section 15 of the Act of 1890, noticed on p. 42, as to the employment of a solicitor. On p. 30 we find mention of *two* cases in which a man or his estate may be liable to the bankruptcy law though he has not committed an act of bankruptcy, and *three* cases are then enumerated immediately after. In chapter x., on 'the public examination,' attention ought to have been directed to the important case of *In re a Solicitor*, 59 Law J. Rep. Q. B. 238; L. R. 25 Q. B. Div. 17, where it was decided that the notes of the public examination of a solicitor under the Bankruptcy Act may be used on an application against him under the Solicitors Act, 1888.

## HANDY BOOK FOR SOLICITORS' CLERKS.

*The Solicitor's Clerk.* A Handy Book upon the Ordinary Practical Work of a Solicitor's Office. With Precise Instructions as to the Procedure in Conveyancing Matters and the Practice of the Courts. By Charles Jones. London: Effingham Wilson & Co. 1891.

This little work will prove both interesting and instructive to the class of readers for whom it is intended. In chapter i. the author indicates a strong opinion that a solicitor's clerk ought to be 'caught young.' He ought to enter on his duties immediately on leaving school, and the authority of a legal writer is cited for the proposition that 'it is easier to write upon a perfectly blank and white surface than upon one on which are confused, half-erased impressions.' Suppose now the aspirant obtains a footing in a good office—and the author, while having due regard to the old saying that beggars must not be choosers, recommends an office of general practice—to what subjects ought he to turn his attention? He will find a good many useful hints in the book before us, which commences by pointing out the value of good handwriting, then deals with the work of the copying clerk, touches on the subject of shorthand, and then treats of conveyancing practice, &c. A table of contents would be a useful addition to the book.

[Erratum.—In our notice of the second edition of 'The Students' Probate, Divorce and Admiralty' at p. 117 of last week's issue, five lines from the bottom of the second column, for 'Due Influence' read 'Undue Influence.']

# Unreported Cases.

## ASSIZE CASE.

### ESCAPING FROM CUSTODY.

At Cambridge, before Mr. Baron Pollock, on February 18, Kate Elsdon, seventeen, prostitute, was indicted for that, whilst being in the custody of the keeper of the spinning-house or house of correction in the university and town of Cambridge, she did then escape and go at large on February 12. On February 11 last the defendant, who had previously been in prison, and had several times been confined as a prostitute by the university authorities in their spinning-house or house of correction, was arrested by the proctor and his constables or 'bulldogs' and taken by them to the spinning-house. Here she was kept all night, and next morning brought before the vice-chancellor, who, having heard the proctor and constables (who, however, were not sworn), ordered the defendant to be confined for twenty-one days for 'street-walking.' The spinning-house in which the defendant was to be confined is under the charge of a matron, who is a woman of advanced age, and a sub-matron, and whilst the sub-matron was out the defendant, having been allowed to walk in the yard, as she said she had a headache, got into the chapel, thence into the chaplain's room, and from there escaped out of the window into St. Andrew's Street. She was two days afterwards arrested at Dullingham.—Agnes Gray, assistant-matron at the spinning-house, said: The prisoner was brought in on the night of the 11th. The warrant under which she was committed is in the handwriting of the vice-chancellor. She was in my charge. I visited her. She complained of headache. I saw her last about 4 o'clock. I went out, and she escaped whilst I was gone.—Cross-examined: I was present at the proceedings. All the entries (in the spinning-house book) are in the vice-chancellor's handwriting. Defendant was not legally represented. She had no opportunity of getting counsel or solicitor to represent her. It was in a small room, not a public Court. They do not take evidence on oath. There is no clerk of the Court. The trial took a quarter of an hour, perhaps longer. I have known women acquitted. It depends on the vice-chancellor's view of the case and the proctor's. Police-constable Johnson then deposed to arresting the defendant after her escape. Dr. Louard, the registrar of the university, produced from the registry of the university the charter of James I. (dated March 9, 1604–5), by which it was provided that it should be lawful for the chancellor, masters, and scholars of the university, by themselves or by their deputies, as well by day as by night, at their pleasure, to make scrutiny, search, and inquiry in the town of Cambridge, and the suburbs of the same, of and for (*inter alia*) all common women, harlots, prostitutes, scholars passing the night out of their own colleges without just cause, and other persons suspected of evil; and all and singular upon whom any such scrutiny the said chancellor, masters, and scholars, or their deputies, officers, and servants, shall find guilty or suspected of evil to punish by imprisonment as

they shall see fit, 'without the impeachment, molestation, disturbance, or troubling of us, our heirs, or successors,' 'any statute or Act of Parliament now passed, or hereafter to be passed, in any wise notwithstanding.' This closed the case for the prosecution.—Mr. Livett, on behalf of the defendant, submitted that there was no case to go to the jury, as what the defendant had done was not an escape at common law.—Baron Pollock: The spinning-house is not a prison, but the defendant was in lawful custody on a criminal charge.—Mr. Livett argued that the custody was not lawful, as it was on a charge of street-walking, which was not an offence known to the law.—Baron Pollock: I have only to look to the charter, which was expressly acted upon in *Kempe* v. *Neville*, 31 Law J. Rep. C. P. 158; 10 C. B. (N.S.) 523, and I cannot go behind the conviction. If a person is in custody under an order of a properly constituted Court, you cannot go into the character of the offence. All I have to look to is whether the defendant was *de facto* in lawful custody. —Mr. Livett asked for a case to be stated, but the learned Baron declined.—Mr. Rawlinson then summed up his case, and Mr. Livett addressed the jury on behalf of the defendant.—The learned judge, in summing up, after explaining to the jury the nature of the charge, said that when a case affected the liberty of anyone, either rich or poor, of good character or bad, it was of the utmost importance, and should be treated with the greatest jealousy and care. He was bound to direct them that the defendant was in lawful custody. It was not for him or the jury to discuss the conduct of the tribunal by which the defendant had been placed in custody; that could be done by a writ of *habeas corpus*, or other means well known to lawyers. If the Court was an improper one it could be swept away by the Legislature, but with all this they had nothing to do, for the defendant was in lawful custody, and by the common law, if anyone so in custody made his escape, he was guilty of the offence charged against the defendant. The whole question for them was, Did she, in fact, escape? If she did, she must be found guilty.—The jury, after an absence of about twenty minutes, returned a verdict of 'Guilty.'—The foreman said that they had a rider to their verdict.—The learned Baron asked if it referred to the defendant or to the Vice-Chancellor's Court, because, if the latter, he could not receive it.—The Foreman: Then we cannot give it.—The defendant was then sentenced to three weeks' imprisonment without hard labour.—Mr. J. F. P. Rawlinson appeared for the prosecution; Mr. Livett for the defendant.

## COUNTY COURTS.

### WHAT IS A WHARF?

At the Marylebone County Court, on Thursday, February 12, before his honour Judge Stonor, the case of *Smead, Dean & Co.* v. *Allen & Sons* was heard. A curious and interesting point arose in this case. The plaintiffs, who are brickmakers at Sittingbourne, and also bargeowners, sued the defendants, who are builders and contractors, for 5*l.* damage in respect of the detention of their barge John Bright, for five days, in consequence of the defendants not having properly instructed them as to the place of delivery of several thousand bricks conveyed by it. It appeared that the defendants had given orders to a carrier to receive delivery of the bricks as their agent, and in that capacity the latter had directed the plaintiffs to deliver the bricks at Puddledock, Blackfriars. The plaintiffs had signed an agreement to deliver the bricks at any 'wharf' eastward of Chelsea, and they objected, and had objected on a previous occasion, to deliver bricks at Puddledock, on the ground that it was not a 'wharf' where they could go alongside from the river, but an inlet between two large warehouses where the delivery was 'at end' on the level and had to be effected by planks, and where a large barge (as in the present case) could only deliver at or about spring tide. It appeared that Puddledock was a free parish dock, and that there was one other similar free parish dock in the city, and that at all the wharves on the bank of the river there were always charges to be paid by the consignees or carriers. A resolution had been passed by the Brickmakers' Union boycotting Puddledock as a place for delivery. On the plaintiffs objecting to deliver the bricks at Puddledock, as directed by the first carrier named by the defendants, the latter, after some delay, named another carrier, who directed the plaintiffs to deliver them on a wharf called Falcon Wharf, on the other side of the river. In consequence, however, of the delay the barge was detained five days, and thence the present claim arose. The question for the Court was whether Puddledock was a 'wharf.'—His Honour adopted the definition of a 'wharf' given in 'Johnson's Dictionary'—viz. 'A perpendicular bank or mole raised for the convenience of lading or emptying vessels—a quay,' and decided that Puddledock was not a 'wharf,' and entered judgment for the plaintiffs. His Honour offered to give leave to appeal, but said that in that case he would give costs on the higher scale. The offer was not accepted.—Stratton for the plaintiffs; Griffiths for the defendants.

### RIGHT OF WAY—UNITY OF OWNERSHIP—CONVEYANCING ACT, 1881, S. 6.

At the Okehampton County Court, on October 21 and December 16, 1890, before his honour Judge Edge, the case of *Berg and Lotheren* v. *Sanders and Dennis* was heard. His Honour said: This is an action of trespass for pulling down a fence. The defendants justify the trespass on the ground that the fence had been erected across a way over which they had a right of passage. It appears that the plaintiffs and defendants are the respective owners and occupiers of two adjoining farms; the plaintiffs' farm being known as the Higher Coombe Farm and the defendants' farm as the Lower Coombe Farm. Prior to June, 1886, both farms belonged to the same owner, upon whose death they were put up for sale by auction by the trustees of his will. Neither of the farms were sold at the auction, but on August 28, 1886, Lower Coombe was sold to the defendant Dennis by private contract, and in the following month Higher Coombe was sold to the plaintiff Berg, also by private contract. Lower Coombe was conveyed to the defendant Dennis by a conveyance dated January 1, 1887, whilst Higher Coombe was conveyed to the plaintiff Berg by a deed dated March 25, 1887. Consequently both the defendants' contract and conveyance preceded, in point of time, the contract and conveyance respectively of the plaintiff Berg. At the time of the contract, and of the conveyance to the defendant Dennis, there was a road from Lower Coombe across Higher Coombe to a highway leading to Hatherleigh and Okehampton. For many years prior and up to the sale to Dennis this road had been used and enjoyed by the occupiers of Lower Coombe as the principal, or, I might almost say, the only way from Lower Coombe farm. There was another undefined way by which carts could get from Lower Coombe into a lane called Birchin Lane, but this road was inconvenient at all times, and generally impassable, and was very rarely used. In fact, one of the plaintiffs' witnesses stated that he might have taken lime that way twenty times in twenty-seven years. By the plan annexed to the conditions of sale, and by which the premises were subsequently sold, both roads are shown as being open, the first mentioned as traversing a portion of Higher Coombe and thence into the highway leading to Hatherleigh, and the other into Birchin Lane direct from Lower Coombe. Some time after the conveyance of

Higher Coombe to the plaintiff Berg he built a fence across the first-mentioned road where it enters Higher Coombe, which fence the defendant removed; hence the present action. The conveyance to the defendant Dennis is in general terms, and does not refer in any way to either of the two roads, or indeed to any right of way whatever; but it is contended on his behalf that by section 6 of the Conveyancing Act, 1881, a right of way is given to him over the road leading across Higher Coombe for such purposes and to such extent as the same was used by the occupiers of Lower Coombe at the time of the sale to Dennis. On the other hand, it is contended on behalf of the plaintiff Berg that, inasmuch as there is no mention of the way in question in the conveyance to Dennis, and consequently no grant to him of such way, and as it is not contended that a right of way has been acquired by prescription, the only way which could possibly be claimed by the defendants would be a way of necessity, and inasmuch as there is another way by which Dennis could enter into the highway known as Birchin Lane, no right to the way in dispute as a way of necessity can be established. A considerable number of cases were cited to me in the course of the hearing, but I do not think I need refer to them in detail, as the cases of *Barkshire* v. *Grubb*, 50 Law J. Rep. Chanc. 731; *Kay* v. *Oxley*, 44 Law J. Rep. Q. B. 210; L. R. 10 Q. B. 360; and *Bayley* v. *The Great Western Railway Company*, L. R. 26 Chanc. Div. 434, have modified, if not overruled, most of the earlier cases on the subject. In the above cases it was held that a grant of land, 'together with all ways now used or enjoyed therewith,' or, 'with all rights, members, or appurtenances to the hereditaments belonging or occupied or enjoyed, as part, parcel, or member thereof,' passed a right to use ways constructed during unity of possession, but used for the convenience of the land granted, though such ways were in strictness neither easements nor appurtenances. Now, by section 6 of the Conveyancing Act, 1881, a conveyance of land, having houses upon it, shall be deemed to include 'all rights appertaining to the land or houses conveyed, or at the time of the conveyance demised, occupied, or enjoyed therewith;' thus, by a statutory implication bringing, unless the contrary is shown, every conveyance of land and houses within the decisions above quoted. In the present case the right to use the way in dispute at the date of the contract and of the conveyance to Dennis was undoubtedly enjoyed by the occupier of Lower Coombe, and, therefore, in my opinion, passed to the defendant Dennis. This view of the effect of the statute is, I think, confirmed by the *dicta* of Mr. Justice Chitty in *Beddington* v. *Atlee*, 56 Law J. Rep. Chanc. 655; L. R. 35 Chanc. Div. 317. The verdict will therefore be entered for the defendants with costs.—Peter asked for leave to appeal, which was granted. —The appeal has since been abandoned.—Peter for the plaintiff; Sparkes for the defendant.

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MARRIED WOMEN'S PROPERTY ACT, 1882—RESTRAINT ON ANTICIPATION — SUFFICIENCY OF SEPARATE ESTATE TO FOUND A CONTRACT BY MARRIED WOMAN.

At the Eastbourne County Court, on Thursday, January 8, his Honour Judge Martineau gave judgment in the case of *Everett* v. *Paxton*: This is an action of contract remitted to this Court from the High Court. The defendant, Mrs. Paxton, at the time when the action was commenced was a married woman; her husband has died since the action was commenced. The action is brought to recover 53*l*., the balance of an account for grocery goods supplied to the defendant, who was living separate and apart from her husband. The plaintiff's bill consists of a number of small items for grocery goods supplied from time to time to the defendant; some of the items are for a few pence—*e.g.* a pot of jam, 6*d*. The account commenced some years back, I think, in 1885. Various payments on account were made by Mrs. Paxton from time to time, the last payment being in July, 1890, leaving a balance owing at the time when the action was brought of 53*l*. odd. There is no dispute as to the justice of the plaintiff's claim. It is an account for necessaries supplied to the defendant, who was living separate and apart from her husband. Her husband was in no way liable to pay for the goods, credit was given to Mrs. Paxton and to Mrs. Paxton alone, she was entitled to a separate income, and never raised any question as to her liability; she apparently intended to pay for them, and from time to time actually paid money on account out of her income. The defence set up is, that the only separate property to which she was entitled at the dates when she ordered the various items, the subject of the plaintiff's bill, was income subject to a restraint upon anticipation, and so she is not liable; and the defendant relies on the decisions in *Palliser* v. *Gurney*, 56 Law J. Rep. Q. B. 546; L. R. 19 Q. B. 519; *Leake* v. *Driffield*, 59 Law J. Rep. Q. B. 89; L. R. 24 Q. B. 98; and *Harrison* v. *Harrison*, L. R. 13 P. D. 180. Similar actions by other tradesmen who have supplied her with goods are threatened, and if she is liable to pay this bill she is liable to pay those, and in the result her income, as a widow, would be seriously diminished, and that perhaps is the real reason for resisting payment. The defence is to my mind shocking, but I am bound by the decisions referred to, and the only question is whether they apply to and govern the present case. The facts in evidence with respect to the separate property to which the defendant was entitled at the time the goods were supplied are apparently not in dispute. The defendant was entitled under the will of her father, who died in August, 1879, to an income arising from rents of houses or real estate. This income, which amounted to upwards of 300*l*. per annum, was payable to her for her separate use for life, but was subject to a restraint on anticipation. The solicitor to the trustees of the will received the income and paid it over to her by cheque from time to time as it was received. The payments were made month by month, there being sometimes two if not more payments in the course of a month. She was usually in debt to tradesmen, and as she received each cheque she cashed it and paid away the bulk of the money so received to tradesmen on account of their bills, but she admits she retained some portion, though only a few shillings, for her immediate use. The exact dates of the payments to her are ascertained. The exact dates of the different items for goods supplied are also known. Some of the claims for goods, as I have stated, are for very small amounts. I think it probable, and I infer, that at the times when she purchased numerous items for goods for small amounts, even if she had not got the cheque received from the solicitor to the trustees in her pocket, she actually had in her pocket sufficient money to enable her, if she thought fit, to pay for the goods purchased, but, having a running account, the price of the goods was entered up and not paid for at the time. In addition to the income as to which she was entitled during her life under her father's will, and which amounted to upwards of 300*l*. per annum, she was entitled, under a settlement dated May, 1879, to the use of some furniture during her life. She was entitled to the use of this furniture separately from her husband. If the furniture was sold under a power in the settlement, the trustees of the settlement had power to invest the proceeds in the purchase of other furniture. I have not got a copy of the settlement before me, but I think, if the proceeds were not reinvested in the purchase of furniture, that the

income of the sale proceeds, which would be invested in securities, was payable to Mrs. Paxton to her separate use without power of anticipation. Mrs. Paxton lived separate and apart from her husband in a house at Eastbourne, which belonged to her brother. She held this house from her brother during the whole period over which the plaintiff's account extends. According to her evidence, which I accept, there was an arrangement between her and her brother that she should pay her brother 50*l.* a year by way of rent, but the payment of rent was a nominal arrangement only, as she never in fact paid any rent, and her brother never attempted to enforce payment. The house was furnished with the furniture included in the settlement, to the use of which Mrs. Paxton was entitled for life under the settlement, and some furniture which she had purchased in substitution for some of the furniture included in the settlement, such as carpets, which had been worn out. Mrs. Paxton purchased this other furniture out of the income which was paid to her. This was not done under any arrangement between herself and the trustees of the settlement, and she does not appear to have been under any obligation to replace worn-out furniture; apparently, therefore, the purchased furniture was her separate property absolutely. Mrs. Paxton lived in this house so furnished during the whole period over which the plaintiff's account extends, except that on two occasions Mrs. Paxton let her house. She first let in 1888 for eight weeks, and then received 40*l.* or thereabouts for letting this house. It was let a second time in the year 1890, in July, August, and September. Mrs. Paxton was entitled to some trinkets worth about 4*l.*, but which no doubt cost more, and besides other wearing apparel, to a sealskin jacket which cost about 15*l.* She does not appear to have been possessed of, or entitled to, or interested in any other property during the period over which the plaintiff's account extends.—Mr. Gore, for the defendant, contended first, that in an action of contract against a married woman the plaintiff must prove that at the time the contract set up was entered into the married woman was entitled to separate estate, with respect to which she could enter into the contract in question; and he relied on *Pallisser* v. *Gurney*, 56 Law J. Rep. Q. B. 546; L. R. 19 Q. B. 519; *Harrison* v. *Harrison*, L. R. 13 P. D. 180, and other cases. Secondly, that when the only property which a married woman was possessed of or entitled to at the date of the alleged contract was income subject to a restraint on anticipation, the contract is not only not proved, but the contrary is shown within the meaning of section 1, subsection 3. Thirdly, that in the present case she had no separate property except income subject to a restraint on anticipation, her interest in the house which her brother allowed her to occupy rent free, and in the furniture, and in the trinkets and sealskin jacket and other articles of wearing apparel, being property as to which it is not reasonable to infer that she contracted to pay for the goods supplied out of them. Mr. Dale Hart, for the plaintiff, contended that the income, when actually received, was separate property, as to which she could contract, and that even if she at once spent most of the money received in paying bills, still the few shillings left in her pocket were sufficient on which to found a contract to pay for a pot of jam or the like, and that the enjoyment of the house and furniture, and the right to let and to take the rent for her separate use, was separate property, and so also as regards the sealskin jacket and the trinkets, they were sufficient to found a contract to pay for the grocery; and counsel relied on the decision in *Bonnor* v. *Lyon*, 38 W. R. I may mention that, in addition to the cases to which I was referred by counsel, I have looked at the case of *Whittaker* v. *Kershaw*, L. R. 45 Chanc. Div. 320, which was not referred to. In the present case I entertain no doubt that Mrs. Paxton contracted, and intended to pay, for every item of the grocery goods out of her separate estate. It was not intended that the husband should pay for the goods, and he was in no way liable. 'I cannot,' to use the language of the Court in *Johnson* v. *Gallagher*, impute to Mrs. Paxton 'the dishonesty of not intending to pay for the goods which she purchased.' When it is open to doubt whether a married woman has entered into a contract in respect of her separate estate, and it appears that she had no separate property out of which she could pay, except income subject to a restraint on anticipation or the clothing in which she stands up, the nature and value of her separate property afford grounds for coming to the conclusion that there was no contract to pay out of separate estate; but, assuming that a married woman clearly enters into a contract to pay for goods out of income as to which there is a restraint on anticipation, I should have thought that the contract was complete within the Married Women's Property Act, 1882, though the remedy by execution would fail. Lord Justice Cotton, in *Whittaker* v. *Kershaw*, uses words indicating that he thought section 1, subsection 2, admitted of such a construction, for he says in that case: 'It was urged that Mrs. Kershaw had no separate estate. This is not so; she has separate estate, and although the remedy against it may be defeated by the restraint on anticipation, still she has separate estate.' I cannot, however, reconcile that observation with the judgment in *Harrison* v. *Harrison*, nor with the earlier decision of Mr. Justice Pearson in *In re Shakespear*, L. R. 30 Chanc. Div. I feel bound by the decisions in *Palliser* v. *Gurney*, *Harrison* v. *Harrison*, and *Leake* v. *Driffield*. The only question, then, is whether, having regard to the fact that each item of goods purchased is comparatively small, and that Mrs. Paxton probably had savings of separate estate, though only a few shillings, in her pocket when she purchased, and the fact that she occupied a house with some small quantity of furniture in it, which belonged to her, to her separate use, having been purchased by her out of savings, and that she was able if she thought fit to let it furnished and receive rent, which was hers to take without any restraint on anticipation, constituted separate estate, with respect to which she could contract under section 1, subsection 2. I entertain a doubt on the point, but, in my opinion, these facts are sufficient to enable me to hold that she had separate estate sufficient to form the ground of a contract within section 1, subsection 2. I give no opinion as to the trinkets and sealskin jacket. There will be judgment for the plaintiff, with costs. The costs will be taxed according to scale C. I will certify for conference and refresher to counsel. I will stay execution for fourteen days. If there should be an appeal I will stay execution until the appeal is heard.—Dale Hart for the plaintiff; Gore for the defendant.

## NEGOTIABLE INSTRUMENTS AND ACCEPTANCES.

Lecturing before a crowded audience in the theatre of King's College last week, Mr. J. R. Paget, B.A., LL.B., said that in his opinion, outside bills, notes and cheques, there was absolutely nothing that could be, really and separately, considered as being negotiable. The reason was that there was no other class of documents that had a sufficiently general circulation or market. There was no such consent of the mercantile world brought to bear on any other class of instruments. Without such acceptance and recognition true negotiability could not exist. When they fairly classed them together for the Courts, even what were called international securities were of too limited recognition to be called negotiable. He did not think that their being dealt with on foreign bourses as

well as on the English market made them negotiable. Our law was one we made for ourselves, with which foreigners could not intermeddle. From our standpoint international bonds had no pre-eminence. When they found security which every English banker and stockbroker agreed was negotiable in every sense of the term he would admit its negotiability. Even though the Court assumed the negotiability of documents in favour of the defendants in some recent cases they were still held liable. It seemed as though nothing would stop the tide that had set in against bankers, except some legislation on the point. Referring to acceptances, Mr. Paget said that 'marking' a cheque as between banker and banker meant a binding acceptance that the cheque would be paid. Acceptance concerned bills alone. A signature of an acceptor which is gratuitous—which is not required by nor written at the request of the drawer—would constitute or render the acceptor liable. It was probably a sufficient acceptance if the drawer wrote on the back of the bill instead of on the front. Why a man should do so he (the lecturer) could not say, but the eccentricities of mankind were manifold. If a man only signed his name thus it was a question whether he would be liable as acceptor or endorser. The section (Section 17 Bills of Exchange Act) said that a man must not express that he will perform his promise by any other means than the payment of money. That seemed a self-evident proposition. An acceptance was either general or qualified. A general acceptance assented without qualification to the order of the drawer. A qualified acceptance in express terms varied the effect of the bill as drawn. If certain express terms were used the effect of the acceptance might be restricted or modified. The lecturer dwelt at considerable length on the question of the law as affecting bills drawn in one country and payable in another, as also on the liability of acceptors under certain conditions. In the course of his lecture he said that he had got into very hot water during the week owing to reports which appeared in the *Times* and the *Financial News* respecting his remarks in the previous lecture as to the liability of bankers for endorsements on cheques. He had received various communications on the subject calling his attention to sections of the Bills of Exchange and Stamp Acts. He had reconsidered his views on the matter, and was bound to say that there was a considerable amount of doubt encircling the question. He dealt at length on the various objections that had been raised, but did not alter his opinion as expressed in the lecture of the previous week, a short report of which appeared in the *Times*.

## COMPANIES (WINDING-UP) ACT, 1890.

*General Rules made pursuant to section 26 of the Companies (Winding-up) Act, 1890.*

### Petitions and Orders.

1. After a petition has been presented the petitioner shall, on a day to be appointed by the registrar, not less than two days before the day appointed for the hearing of the petition, attend before the registrar and satisfy him that the petition has been duly advertised; that the prescribed affidavit verifying the statements therein and the affidavit of service (if any) have been duly filed, and that the provisions of the rules as to petitions for winding up companies have been duly complied with by the petitioner. No order for the winding up of a company shall be made on the petition of any petitioner who has not, prior to the hearing of the petition, attended before the registrar at the time appointed and satisfied him in manner required by this rule.

2. Every advertisement of a petition shall contain a note at the foot thereof stating that any person who intends to appear on the hearing of the petition, either to oppose or support, must send notice of his intention to the petitioner within the time and in the manner prescribed by the next succeeding rule; and an advertisement of a petition for the winding up of a company by the Court which does not contain such a note shall be deemed irregular. Form 2 shall be used in substitution for the form of advertisement prescribed by the Companies Winding-up Rules, 1890.

3. Every person who intends to appear on the hearing of a petition shall serve on or send by post notice in writing of his intention to the petitioner at the address stated in the advertisement of the petition. The notice shall be signed by such person or his solicitor, and shall be served, or, if sent by post, shall be posted in such time as in ordinary course of post to reach the address, not later than six o'clock in the afternoon of the day previous to the day appointed for the hearing of the petition. The notice may be in the Form No. 1, with such variations as circumstances may require. A person who has failed to comply with this rule shall not, without the special leave of the Court, be allowed to appear on the hearing of the petition.

4. The petitioner shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition, and of their respective solicitors, which shall be in the Form 3. A fair copy of the list shall, on the day appointed for hearing the petition, be handed by the petitioner to the registrar in Court prior to the hearing of the petition.

5. When an order for the winding up of a company or for the appointment of the official receiver as provisional liquidator prior to the making of an order for the winding up of the company has been pronounced in Court, the registrar shall, on the same day, send to the official receiver a notice informing him that the order has been pronounced.

The notice may be in forms 4 and 5 respectively, with such variations as circumstances may require.

6. It shall be the duty of the petitioner, and of all other persons who have appeared on the hearing of the petition, at latest on the day following the day on which an order for the winding up of a company is pronounced in Court, to leave at the registrar's office the petition stamped with a proper filing stamp, and the counsel's brief and other documents required for the purpose of enabling the registrar to complete the Order forthwith.

7. It shall not be necessary for the registrar to make an appointment to settle or pass the Order or to give notice to any of the parties thereto, unless in any particular case the special circumstances make an appointment or notice necessary.

8. The costs of the solicitor to the petitioner, or of any persons whose costs of appearing on the hearing are allowed by the Court, properly incurred in carrying out these Rules shall be allowed as part of the costs of appearing on the petition.

9. Instead of the fee of 1*l.* on the petition and 1*l.* on the order, there shall be paid on the presentation of a petition a fee of 2*l.* to be stamped on the petition, which fee of 2*l.* shall cover the prescribed fee on drawing up and entering the order.

10. In these Rules—

'Petition' means a petition 'to the Court for the winding up of a company by the Court, or subject to the supervision of the Court.'

11. These Rules shall be construed as one set of Rules with the Companies Winding-up Rules, 1890. These Rules may be cited separately as the Companies Winding-up Rules (February), 1891.

"12. These Rules shall commence and come into operation on March 16, 1891.

(Signed) Halsbury, *C.*

I concur,

M. Hicks-Beach,

President of the Board of Trade.

Feb. 14, 1891.

## FORMS.

### No. 1.

Notice of Intention to Appear on Petition.

In the matter of the Companies Acts, 1862 to 1890, and

In the matter of the [insert name of company].

Take notice that *A.B.* [state full name, or, if a firm, the full name of the firm] a creditor [or contributory] of the above company intends to appear on the hearing of the petition advertised to be heard on the day of , 189 , and to support [or oppose] such petition.

(Signed) [To be signed by the person or his solicitor.]

[Name of person or firm.]

To [Address.]

### No. 2.

Advertisement of Petition.

In the matter of the Companies Act, 1862 to 1890, and

In the matter of the [insert name of company] Company.

Notice is hereby given that a petition for the winding up of the above-named company by [if the winding-up is to be subject to supervision, insert instead of 'by' the words 'subject to the supervision of'] the High Court of Justice [or the County Court of holden at ] [or, as the case may be] was, on the day of 189 presented to the said Court by the said company [or by A. B. of a creditor [or contributory] of the said company] [or, as the case may be]. And that the said petition is directed to be heard before the Court sitting at on the day of 189 ; and any creditor or contributory of the said company desirous to support or oppose the making of an Order on the said petition may appear at the time of hearing by himself or (in the County Court add 'his solicitor or') his counsel for that purpose; and a copy of the petition will be furnished to any creditor or contributory of the said company requiring the same by the undersigned on payment of the regulated charge for the same.

(Signed)

(To be signed by the solicitor to the petitioner, or the petitioner if he has no solicitor.)

(Name).

(Address),

(Solicitor to the petitioner).

*Note.*—Any person who intends to appear on the hearing of the said petition must serve on or send by post to the above-named notice in writing of his intention so to do. The notice must state the full name and address of the person (or, if a firm, the name and address of the firm), and must be signed by the person or firm or his or their solicitor (if any), and must be served, or, if posted, must be sent by post in sufficient time to reach the above-named not later than six o'clock in the afternoon of the of 189 .

### No. 3.

List of Parties attending the Hearing of a Petition.

(*Title.*)

The following are the names of those who have given notice of their intention to attend the hearing of the petition herein on the day of 189 :—

| Names | Addresses | Creditors | Contributories | Opposing | Supporting |
|---|---|---|---|---|---|
| | | | | | |

### No. 4.

Notification to Official Receiver of Orders Pronounced on Petitions for Winding-up.

(*Title.*)

To the Official Receiver of the Court.

(*Address.*)

Orders pronounced this day by the Honourable Mr. Justice (or, as the case may be) on petitions for winding up of companies under the Companies *Acts*, 1862 to 1890.

| Name of Company | Registered Office of Company | Petitioner's Solicitor |
|---|---|---|
| | | |

### No. 5.

Notification to Official Receiver of Order pronounced for Appointment of Official Receiver as Provisional Liquidator prior to Winding-up Order being made.

(*Title.*)

To the Official Receiver of the Court.

(*Address.*)

Orders pronounced this day by the Honourable Mr. Justice [or, as the case may be] for the appointment of the official receiver as provisional liquidator prior to any winding-up order being made.

| Name of Company | Registered Office of Company | Petitioner's Solicitor |
|---|---|---|
| | | |

## HONOURS AND APPOINTMENTS.

Mr. W. P. W. Phillimore, M.A., B.C.L., of 124 Chancery Lane, has been appointed a Commissioner to Administer Oaths.

Mr. William Davies George (of the firm of Davies, George & Co.), of Haverfordwest, has been appointed a Commissioner to Administer Oaths. Mr. George was admitted in 1877.

## LAW AND PROFESSIONAL NOTES.

By T. F. Uttley, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### INSURANCE COMPANIES AND COMMISSIONS.

Under the title of 'Modern Legal Abuses' a barrister is contributing a series of articles to our weekly contemporary the *Citizen*. He opens the course by raising the question as to solicitors receiving commission from insurance companies for the introduction of business, and seeks to prove that it is a most unpardonable professional sin to do so. He apparently admits, however, that if a solicitor openly proclaims to his client that he receives the commission then the sin is not so grievous. We assume, of course, that barristers' principles would apply equally *mutatis mutandis* to accountants. Several solicitors have written to our contemporary approving the views enunciated, and stating their entire disapproval of commissions. These gentlemen evidently forget the maxim, 'Other times other manners,' and do not reflect, in their eagerness to uphold the *morale* of the profession, that with the present keen competition growing keener every year, and there being no opportunity of extending business owing to the absurd etiquette of the profession as to advertising, insurance agencies, and so forth, legal business is likely to decline steadily to zero. A little more Radicalism is really wanted in the profession and less straitlaced Conservatism. The editor of the *Citizen*, who, we believe, is an accountant, does not coincide with his contributor altogether. After pointing out that insurance companies extend their business by advertising and by agents, he goes on to advance extenuating circumstances, and suggests that there need be no difficulty in a solicitor's informing his client or the insurance applicant that he will receive a commission. A solicitor's only other course would be to charge for the interview and accept no commission; but, says the editor, 'we would limit the payment to a stipulated sum, and not allow a single introduction to prove a source of income to the introducer.' This question seems one more for the insurance companies than the legal world, and, if its ventilation has the effect of drawing their attention to the matter, they will doubtless move in the case as to them seemeth best. As it is, the status of the insurance world is doubtless improved by its transactions with such responsible persons as the legal profession, and, if the agency has to descend to inferior rank, so much the worse for the insurance bodies.

### CONSPIRACY AND INTIMIDATION.

The secretary of the Ashton Trades Council has been in correspondence with Mr. Addison, Q.C., M.P., with respect to the recent attempt in Parliament to amend the law of conspiracy and intimidation. Mr. Addison considers that there ought to be no new legislation until the High Court has given its decision upon the cases stated by Mr. Bompas and (County Court) Judge Seymour, for this short reason, that the Act of 1875 is perfectly satisfactory, and cannot be improved upon, if it was rightly interpreted by Mr. Justice Cave at Liverpool (following a decision he gave at Bristol in the previous April). He believes those judgments to be as good in law as they are in sense, and that the decisions of the inferior tribunals will be set aside. Referring to the present matter, he states that a union is strictly within its rights in warning employers that it will withdraw its men if others to whom it chooses to object are further employed, even though the effect be to stop works or to prevent a ship going to sea. This is what Mr. Justice Cave said in Liverpool, and he added: 'To hold otherwise would be to repeal the Acts of 1871 and 1875. No single workman or body of workmen need continue to work for a moment under conditions which they disapprove. If by leaving without notice they are breaking their contracts, that is a civil wrong, for which each workman is individually liable; but it is not "intimidation," whether done by one man or in combination with others, either in the case of workmen or of those who advise them. Let me remind you that by the express words of the Act of 1875 that which is not an offence when done by one man cannot be made a crime when done by several in combination (section 3). "Intimidation" is an offence when committed by one person, and so is an offence when committed by more than one; but the word "intimidation" is used in the Act in its natural sense, and means "to frighten," "to inspire with fear by threats of violence." This is made clear to a legal mind by the words with which it is connected in the same sentence—"uses violence," "injures property" (section 7, subsection 1). I do not understand that in the Plymouth case there was any intimidation in the natural sense of the word. The word "intimidate" was strained to cover some constructive or non-natural meaning; and so it was wrongly held that the employers, because they were alarmed at the consequences with which they were threatened, and contracts of service were broken, were intimidated within the meaning of the statute. But this sort of alarm and apprehension is a weapon which the unions may lawfully use. The Act, by carefully defining the four ways of compulsion which may not be used, makes (by a familiar rule of construction) all others lawful, or at least non-criminal. This is the interpretation I have given to the statute, and which I had thought until recently was the view of every skilled person, so that if I turn out wrong I shall be personally interested in the matter being set right by a declaratory Act.' Discussing the views given in this letter, one of the labour organs states that: 'Workmen generally, but the officers of trades-unions in particular, ought to feel some relief after the information which has been given them by that eminent lawyer, the M.P. for Ashton-under-Lyne, Mr. Addison, Q.C. If workmen are to be governed by such law as was recently laid down by the Recorder of Plymouth they might as well break up their trades-unions and throw themselves on the mercy of those who don't care a rap about their welfare, but are always on the outlook to take advantage of their weakness. When workmen give a legal notice to leave their employment, and do leave in a body, as in the case of a strike, it is absurd to suppose they have intimidated their employer by their action, and yet, when a trades-union officer sends a letter to an employer informing him that his workmen will strike unless certain terms which they require are granted, he is held liable to be summoned for intimidation, and must either pay a fine or suffer imprisonment. Where does the difference come in, whether an employer gets his information of what is about to happen if he does not comply with conditions which his workmen require from the men or from the secretary of the trades-union, as he is bound to get from one or the other? It is a part of the work of trades-union officials to correspond with employers and managers when disputes take place, and it is most unreasonable to think that they should be open to charges of intimidation for sending word that a strike will take place if so-and-so is not done by an employer.' The labour paper concludes its views thus: 'It may at first sight look unfair that workmen should threaten employers with a strike for employing non-union men; but, whether bad or good policy—which depends on circumstances—there can be no doubt but that in fairness the men must have this right. Employers do not bring themselves within the law when they discharge a workman for belonging to a union, and the converse of that being the refusal of a man to work with a non-unionist, they must both be placed on the same footing.

### SOME ACCOUNTANCY ITEMS.

Now and again there are discussed in the accountancy periodicals matters which are of as equal interest to the legal profession as to the accountant. For instance, the following point was recently given in the *Accountant*, which, it was admitted, was rather a solicitor's point than an accountant's. It has been held that an accountant, employed by the plaintiffs, cannot criticise the statement made by the defendant's accountant in reply to interrogatories until such replies have been put in as evidence. It therefore follows that, unless the plaintiff can make a *primâ facie* case without calling his accountant, and reserve power to call him after the witnesses for the defence have been heard, there is a risk of the case being dismissed without the counsel for defence being called upon to reply. An A. C. A. has been discussing the questions set at the recent examination of the Institute of Chartered Accountants, and pertinently asks what bearing question 4 of the mercantile law paper has upon accountancy work. It was as follows: 'A parcel of watches delivered to a common carrier comes open in transit through being insufficiently packed. Some of the watches are broken and some stolen. What is the liability of the carrier? What would have been the liability if the carrier had been a railway company?' 'Possibly,' says the writer, 'the provincial members of the profession may not yet be awakened to the advisability of combining the functions of a lawyer with those of an accountant, but I should like respectfully to submit that any accountant who in actual practice took upon himself to decide such a point as that raised in the above question would be meddling with matters altogether outside the scope of his profession.' No doubt the counsel of the institute will be taking these criticisms into consideration. Referring to company prospectuses and waiver clauses, the same contemporary submits that no amount of 'waiver clauses' can deprive a shareholder of the rights conferred upon him by section 38 of the 1867 Acts, and that the presence of such a clause would afford no excuse for the concealment of a contract affecting the desirability of the investment. Section 38 may not be perfect, but at least it cannot be made non-existent. We believe contrary opinions are held to this, and as much may doubtless be said on the one side as the other and with equal force.

### 'WODGERTOUCHITFOR.'

In our last Notes allusion was made to Mr. George Augustus Sala's versatile remarks on legal points. Here is another instance: 'Wodgertouchitfor?' Was not this the laconic retort of the philosophical builder (in Mr. Sullivan's inimitable picture in *Fun*) to the householder who complained that the brand-new tenement which he had leased had collapsed under simple pressure from the forefinger? One is reminded of 'Wodgertouchitfor?' in reading a recent case just decided in the Queen's Bench Division, in which the plaintiff, a working bricklayer, obtained 25*l.* damages under the Employers' Liability Act for injuries sustained by him in demolishing a chimney stack. The bricklayer had been directed by his employer's foreman 'to take a pickaxe, and, standing on a ladder placed on a scaffold, to pull a stack of chimneys down.' He objected to the pickaxe as an unsafe implement under the circumstances, and used a chisel instead. He had got down three feet of the stacks when the residuum suddenly caved in, throwing down ladder, working bricklayer, chisel and all. The man was badly hurt and brought a stiff action for compensation. With the legal bearings of the case I have nothing whatever to do, but it may be considered as a slightly remarkable one, inasmuch as it had been four times before the Court, and even after the last verdict the defendant wanted to appeal. 'Oh no,' quoth Mr. Baron Pollock, in refusing the application, 'it is for the interest of the suitors that there should be no more litigation.' I should say so, indeed. 'Wodgertouchitfor?'

## LAW STUDENTS SOCIETIES.

DEBATING.—The ordinary weekly meeting of this society was held at the Law Institution, Chancery Lane, on Tuesday, February 17; Mr. Crawford in the chair. The subject for discussion, 'That Trial by Jury should be abolished in civil cases,' was opened by Mr. W. E. Windsor, followed by Mr. W. M. Woodhouse.—Mr. W. T. Wilkinson and Mr. W. R. Kinipple opposed. The debate having been declared open, the following gentlemen spoke: In the affirmative, Mr. Allen; in the negative, Messrs. Watson, Maudesley, Blagden, and Curtis. Mr. Windsor replied. On the motion being put to the meeting, it was lost by a majority of 9. There was a large number of members present. At the next meeting of the society, on Tuesday, February 24, Mr. F. K. Munton will deliver an address on 'The Outlook for Law Students,' to be followed by a discussion. Any gentlemen interested in the subject, whether members of the society or not, are invited to attend.

LIVERPOOL.—The next meeting of this association will be held at the Law Library on Monday, the 23rd inst. The chair will be taken at 5.30 P.M. by R. A. Hampson, Esq, Solicitor. Subject for discussion: 'A., a builder, was employed to build a house under an agreement with a landowner, the agreement providing that C. & Co., a firm of ironfounders (selected by the landowner's architect), should do certain work on the premises, for which the builders were to pay. C. & Co. employed their own workmen. B., one of the builder's workmen, was injured by the negligence of one of C. & Co.'s workmen. Can B., in an action, recover damages against C. & Co.?' (*Johnson* v. *Lindsay*, 58 Law J. Rep. Q. B. 581; 23 Q. B. Div. 508).—Mr. W. H. T. Brown in the affirmative; Mr. F. J. Priest in the negative.—The subject for discussion at the joint debate with the Leeds Law Students' Society was decided in the negative by the unanimous judgment of the Court.

BETTING BY BOYS.—Lord Herschell has introduced a Bill to render penal the inciting of youths or boys to betting. He proposes to make it a misdemeanour if any one, for the purpose of earning commission, reward, or other profit, sends to a person whom he knows to be an 'infant' any circular, notice, letter, telegram, or other document which invites, or may reasonably be implied to invite, the person receiving it to make a bet or to enter into or take any share or interest in a wagering transaction, or to apply to any person or at any place with a view to obtaining information or advice for the purpose of any bet, or for information as to any race, fight, game, sport, or other contingency upon which betting is generally carried on. For such a misdemeanour the penalty is to be imprisonment, with or without hard labour, for a term not exceeding three months, or a fine not exceeding 100*l.*, or both imprisonment and fine. If the document is sent to any one at a University, college, school, or other place of education the person sending it is to be deemed to have known that the recipient was an 'infant,' unless he proves that he had reasonable ground for believing him to be of full age.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d.* DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## CALENDAR OF THE COUNTY COURTS.

FROM FEBRUARY 23 TO FEBRUARY 28.

| No. of Circuit | His Honour | February 23 | February 24 | February 25 | February 26 | February 27 | February 28 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | — | Northwich | Warrington | Birkenhead | — |
| 8 | Judge Heywood | — | Manchester | Manchester | Manchester | Manchester | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | Middlesbrough | Stockton-on-Tees | Thirsk | — | — | — |
| 19 | Judge Barber | — | Ashborne | Ilkeston | Burton | — | — |
| 47 | Judge Powell | Lambeth | Greenwich | Lambeth | Lambeth | — | — |
| 55 | Judge Machonochie | Poole | Christchurch | Bournemouth | Wimborne | — | — |

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, BOWEN, L.J., and FRY, L.J.

THURSDAY, FEBRUARY 12.

*Schroder* v. *The Merchants' Marine Insurance Co.* (*Lim.*) (application of defendants from judgment or new trial on appeal from verdict, findings and judgment at trial before Denman, J., and special jury in Middlesex).—Dismissed.

FRIDAY, FEBRUARY 13.

*Wolff* v. *May* (application of plaintiff in person for new trial on appeal from judgment of nonsuit, at trial before Stephen, J., with a jury in Middlesex).—Granted.

*Walklin* v. *Johns* (application of defendant for judgment or new trial on appeal from verdict and judgment at trial before Charles, J., and a common jury in Middlesex).—Judgment for defendant.

*Armitage* v. *Hornsby & Sons* (*Lim.*) (application of plaintiff for judgment or new trial on appeal from verdict and judgment of nonsuit at trial before Denman, J., with a special jury in Middlesex).—Refused.

SATURDAY, FEBRUARY 14.

No sitting.

MONDAY, FEBRUARY 16.

*Franks* v. *Viner* (appeal of plaintiff for leave to enter judgment in accordance with the verdict of jury or reverse refusal of judge to enter judgment).—New trial ordered.

*Rowcliffe* v. *Goldthorp* (appeal of plaintiff from order of Wills, J., and Williams, J., dated February 10, discharging master's order for commission to Australia).—Dismissed.

*Urmston* (*Treasurer, &c.*) v. *Whitelegg Bros.* (Q.B. *Crown Side*) (appeal of plaintiff from judgment of Day, J., and Lawrance, J., dated November 5, on appeal from judgment of County Court).—Dismissed.

*Oakley* v. *Marston* (appeal of defendant from judgment of Pollock, B., dated November 7, at trial without a jury in Middlesex).—Dismissed.

*Neil and another* v. *Hayward* (appeal of defendant in person from judgment of Day, J., dated June 10, at trial without a jury in Middlesex).—Dismissed.

Before the LORD CHANCELLOR, the MASTER OF THE ROLLS, and FRY, L.J.

TUESDAY, FEBRUARY 17.

*Great Grimsby Ice Company* (*Lim.*), *Owners of the Smack Almoner, and others* v. *Owners of the General Gordon* (appeal of defendants from judgment of Butt, J., dated June 12).—Allowed.

WEDNESDAY, FEBRUARY 18.

*Stoomvaart Maatschappy Nederland and others* v. *Owners of the Marpessa and freight* (appeal of plaintiffs from judgment of Butt, J., dated July 22).—Dismissed.

*Elmore & Scott* v. *Owners of Steamship Dione* (appeal of plaintiffs from judgment of Butt, J., dated August 8).—Part heard.

## APPEAL COURT II.

Before LINDLEY, L.J., LOPES, L.J., and KAY, L.J.

THURSDAY, FEBRUARY 12.

*Bown* v. *Centaur Cycle Company* (appeal of plaintiff from judgment of Kekewich, J., dated November 19).—Settled.

*Gibbens* v. *Kenrick* (apeal of defendants from order of Kekewich, J., dated February 7, restraining defendants from acting on resolution to wind up company).—Stand over.

*Saxby* v. *Thomas* (appeal of defendant from judgment of Romer, J., dated December 16).—Allowed.

FRIDAY, FEBRUARY 13.

*In re Halifax Sugar Refining Company* (*Lim.*) *and Companies Acts* (appeal of executors of Hugh M'Calmont, dec., from order of Stirling, J., dated December 16, directing executors to be placed on contributory list).—Dismissed.

*In re Sir E. H. Page-Turner, Bart., dec.* (*construction*). *Maberly* v. *Blaydes* (appeal of defendant Rev. F. H. M. Blaydes from order of Kekewich, J., dated November 29, on originating summons and notice of contention by Lady A. P. T. Guest).—Allowed.

*In re John Lawrenson, dec.* (*construction*). *Payne-Collier* v. *Vyse* (appeal of plaintiff from judgment of Pearson, J., dated July 1, 1885; drawn up in December, 1890).—Dismissed.

SATURDAY, FEBRUARY 14.

No sitting.

MONDAY, FEBRUARY 16.

No sitting.

Before LINDLEY, L.J., BOWEN, L.J., and KAY, L.J.

TUESDAY, FEBRUARY 17.

*Tucker* v. *Tucker* (application of defendant for judgment or new trial on appeal from verdict and judgment at trial before Charles, J., with a common jury in Middlesex).—Settled.

WEDNESDAY, FEBRUARY 18.

*Corporation of the Hall of Arts and Sciences* (*commonly known as the 'Royal Albert Hall'*) v. *Dowager Countess of Winchilsea and another* (application of defendants for judgment or new trial on appeal from verdict and judgment at trial before Stephen, J., and a jury in Middlesex).—*Cur. adv. vult.*

*Foa* v. *A. J. White* (*Lim.*) (application of defendants for new trial on appeal from verdict and judgment at trial before Lawrance, J., and special jury at Leeds).—Part heard.

## NOTICES FOR THE WEEK.

### ROTA OF REGISTRARS.

MONDAY, February 23. — Court of Appeal No. 2: Mr. Leach. Mr. Justice Chitty: Mr. Rolt. Mr. Justice North: Mr. Carrington. Mr. Justice Stirling: Mr. Beal. Mr. Justice Kekewich: Mr. Ward. Mr. Justice Romer: Mr. Jackson.

Tuesday, February 24.—Court of Appeal No. 2: Mr. Godfrey. Mr. Justice Chitty: Mr. Farmer. Mr. Justice North: Mr. Lavie. Mr. Justice Stirling: Mr. Pugh. Mr. Justice Kekewich: Mr. Pemberton. Mr. Justice Romer: Mr. Clowes.

Wednesday, February 25.—Court of Appeal No. 2: Mr. Leach. Mr. Justice Chitty: Mr. Rolt. Mr. Justice North: Mr. Carrington. Mr. Justice Stirling: Mr. Beal. Mr. Justice Kekewich: Mr. Ward. Mr. Justice Romer: Mr. Jackson.

Thursday, February 26.—Court of Appeal No. 2: Mr. Godfrey. Mr. Justice Chitty: Mr. Farmer. Mr. Justice North: Mr. Lavie. Mr. Justice Stirling: Mr. Pugh. Mr. Justice Kekewich: Mr. Pemberton. Mr. Justice Romer: Mr. Clowes.

Friday, February 27.—Court of Appeal No. 2: Mr. Leach. Mr. Justice Chitty: Mr. Rolt. Mr. Justice North: Mr. Carrington. Mr. Justice Stirling: Mr. Beal. Mr. Justice Kekewich: Mr. Ward. Mr. Justice Romer: Mr. Jackson.

Saturday, February 28.—Court of Appeal No. 2: Mr. Godfrey. Mr. Justice Chitty: Mr. Farmer. Mr. Justice North: Mr. Lavie. Mr. Justice Stirling: Mr. Pugh. Mr. Justice Kekewich: Mr. Pemberton. Mr. Justice Romer: Mr. Clowes.

UNITED LAW SOCIETY.—The usual weekly meeting was held on Monday, Mr. Common in the chair. Mr. G. L. Bannerman moved 'That cremation be made compulsory by Act of Parliament,' and referred to the opinion of Mr. Justice Stephen to the effect that it was not illegal in this country. Mr. Meyer opposed the motion in a maiden speech of some ability. The motion gave rise to a very interesting discussion, in which Messrs. G. D. Elliman, Herbert Smith, F. B. Moyle, D. McMillan, M. Ahmad, J. L. V. S. Williams, A. K. Common, J. R. Atkin, and W. S. Sherrington joined. Mr. Bannerman replied. A vote was taken, when the motion was lost by a large majority. The subject for discussion on the 23rd inst. is the Chinese immigration question in the colonies.

SHAKESPEARE'S BIRTHPLACE.—Lord Morley, the Lord Chairman, had before him on February 17 the Bill to vest in certain trustees the property in Stratford-upon-Avon known as Shakespeare's Birthplace, and to provide for the maintenance in connection therewith of a library and museum, and, after the usual formalities had been gone through, the Bill was allowed to pass through committee. The trustees named in the Bill are the Lord Lieutenant of the county of Warwick, the High Steward of the Borough of Stratford-upon-Avon, the justices of the peace and town clerk, the vicar of the parish, the master of the Free Grammar School *ex officio*, and Ernest Edward Baker, the Rev. Charles Evans, Charles Edward Flower, Edgar Flower, Henry Graves, Frederick Haines, Sir Arthur Hodgson, K.C.M.G., Henry Irving, Sir Theodore Martin, K.C.B., and Samuel Timmins, to be denominated the trustees and guardians of Shakespeare's birthplace.

MR. JUSTICE DENMAN.—Mr. Justice Denman, who has been absent from Court for some weeks past on account of indisposition, resumed his judicial duties on Monday the 16th inst., when he attended at Queen's Bench Judges Chambers, and disposed of a long list of summonses.

CORONERS' INQUESTS AND THE PAYMENT OF JURORS.—In thirteen of the counties of England and Wales jurors attending coroners' inquests have hitherto been paid fees ranging from 4*d.* to 1*s.* each, and in the rest of the country nothing. When the county of London was formed it was found by the London County Council that, whereas coroners' jurors in that part of Surrey within the new county received fees, no remuneration was paid to those of Middlesex and Kent. The Sanitary Committee of the Council have now presented a report to the Council, which the latter have adopted, disallowing fees in all the three counties, so far as they are comprised in the county of London. The committee, in their report, say that the coroners themselves declined to give any opinion as to the payment or non-payment of jurors. 'But,' add the committee, 'we think that there can be but little question that on the whole the principle of the non-payment of jurymen is the soundest. Every citizen is expected to share to some extent in the administration of the law, and to make the necessary sacrifices for so doing. To many persons it is doubtless the cause of loss to serve upon the coroner's jury, and in the case of workmen it may be a serious matter We do not, however, think that the payment of the fee of a shilling goes very far in reducing the hardship; and, indeed, we believe that in a large number of cases the fee is not taken by the jurymen at all. It has been pointed out that the shilling fee is only tempting to a certain class of persons who may not be the most desirable class from which to select jurymen. We think any system of payment, to be really just, should not only be extended to the whole country, but should be based upon the real cost to the individual jurymen of the time given to the duty. As this would entail an enormous expense, and is practically impossible, we have come to the conclusion that no fee should be paid for this service.'

## BIRTHS.

On Feb. 15, at Chapel Allerton, Leeds, the wife of Arthur Thomas Perkins, Solicitor, of a daughter.

On Feb. 13, at 11 Kensington Square, the wife of E. B. Weatherall, Barrister-at-Law, of a son.

On Feb. 13, at 37 Norland Square, W., the wife of George Wallace, Barrister-at-Law, of a daughter.

## MARRIAGES.

On Feb. 6, at the Presbyterian Church, Rangoon, Edward Upton Eddis, Barrister-at-Law, to Ela Usher, daughter of Robert Binning, Dowanhill, Glasgow.

On Feb. 12, at Karachi, Lucas White King, Deputy-Commissioner, Dera Ismail Khan, Punjaub, eldest son of Deputy-Surgeon-General H. King, of Dublin, to Geraldine Adelaide Hamilton, eldest daughter of the late Alfred Harmsworth, Esq., of the Middle Temple, Barrister-at-Law.

On Feb. 12, at Holy Trinity Church, Southwark, Cyril Lloyd Jones, M.A., M.D., late of Caius College, Cambridge, and the Middle Temple, Barrister-at-Law, of 2 Ashley Gardens, Victoria Street, S.W., and Blackfriars Road, S.E., second surviving son of the late Frederick Charles Jones, M.D., to Catherine Gertrude (Katie), youngest daughter of Dr. John Sleeman, of Southwark Bridge Road, S.E.

## DEATHS.

On Feb. 7, Caroline Dorothea, beloved wife of Captain Barrington Crake, Rifle Brigade, and daughter of the late Brent Spencer Follett, Q.C.

On Feb. 15, at Holmlea, Ryde, Isle of Wight, Arthur Chichester Crookshank, late Chief Magistrate of Sarawak, Borneo, son of the late Colonel Chichester Crookshank, K.H. (33rd Duke's Own Regiment), and grandson of the late Right Hon. Sir Alexander Crookshank, Chief Justice of Common Pleas, Ireland.

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# The Law Journal.

*SATURDAY, FEBRUARY* 28, 1891.

## 'OBITER DICTA.'

THE Lord Chancellor sat for the greater part of last week in Appeal Court I., which was occupied with the hearing of Admiralty appeals and appeals from the Queen's Bench Division. His lordship's attendance was due to the absence of Lord Justice Lopes owing to the illness of Lady Lopes. On Tuesday last the lord justice sat with the second Appeal Court, but on Wednesday Lord Justice Lindley and Lord Justice Kay sat alone, and took interlocutory appeals from the Chancery Division.

As to the acceptance of any reduced pension by a judge suffering from illness, it may be well to call attention to section 14 of the Judicature Act, 1873, by which, as read with 39 Geo. III. c. 110, s. 7; 53 Geo. III. c. 153; 6 Geo. IV. c. 82, s. 10; 6 Geo. IV. c. 83, s. 9; and 6 Geo. IV. c. 84, s. 4, Her Majesty may grant to the Lord Chief Justice a pension of 4,000*l.*, to the Master of the Rolls a pension of 3,750*l.*, and to any other judge of the Supreme Court a pension of 3,500*l.*, upon any of those learned judges having served fifteen years, *or* having unhappily become 'disabled by permanent infirmity from the performance of the duties' of their office. Neither the Judicature Act nor any other Act we know of contains anything about a *reduced* pension. It may be added that the late Mr. Justice Hill and the late Mr. Justice Honeyman retired on a pension (of what amount we know not) within about two years of their appointment.

THE Penal Servitude Bill, recently brought in by the Home Secretary, proposes to introduce what we venture to think is a very desirable alteration in the administration of the criminal law. Under the present law the least term of penal servitude which can be awarded is a term of five years. There has long been a very general impression that this minimum is excessive, and the Home Secretary's bill proposes to reduce it to three years, and also to empower the Court to substitute a sentence of imprisonment for a sentence of penal servitude. Section 1 provides that, where under any enactment a Court has power to award penal servitude, 'the sentence may, at the discretion of the Court, be for any period not less than three years, and not exceeding either five years or any greater period authorised by the enactment.' By the same section it is further provided that, 'where under any Act now in force or hereafter to be passed a Court is empowered or required to award a sentence of penal servitude, the Court may in its discretion, unless any future Act otherwise expressly provides, award imprisonment for any term not exceeding two years, with or without hard labour.' It is proposed that these alterations shall come into operation on October 1 next.

THE debate in the House of Lords on the second reading of the Tithes Bill is a very instructive one, and we think all interested in the subject will do well to study it carefully. In particular it is of importance to bear in mind that, as Lord Salisbury pointed out, the bill, in expressly substituting the owner for the occupier as the person on whom tithe is to be levied, is really returning to the original policy of the great Tithe Commutation Act of 1836. 'The present state of things,' observed his lordship, 'by which the payment of the tithe and the risk of all alteration in the value of the tithe fall upon the farmer, which is a state of things over a large part of the country, certainly was not contemplated by the Act of 1836;' and, no doubt, the words of section 80 of that Act contemplate that the precise sum which the occupier has paid to the titheowner he shall afterwards recover from his landlord. For various reasons, however, it has long been a common form in all written contracts of tenancy that the tenant shall bear and pay the tithe-rentcharge. In future this common form will be absent, but the landlord will in most cases take care that the rent is increased by a sum equivalent to the tithe-rentcharge. The bill will, no doubt, be considerably amended before it is returned to the House of Commons, and the Arch-

bishop of Canterbury's important point, that the tithe-owner ought to have a right to take possession of land seemingly valueless for cultivation, is likely to find much favour in the Upper House, though it will find but little in the Lower.

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'Quid leges sine moribus?' asked Horace. The modern legislator would reverse the order, and say, 'Quid mores sine legibus.' Proposals are made in the present Parliament to interfere with and regulate almost every relation of life, as well as many professions and callings, from architects to midwives. Children are, of course, the especial care of the philanthropic press and M.P.s, and the bill to amend the law relating to their custody is in a fair way to become an Act. The bill is a short one of six sections, and gives the Court power to refuse a parent the custody of his child, and to enforce repayment by the parent of the cost of bringing up the child when the child has been maintained by another person or boarded out by the poor-law guardians. A special clause is devoted to the question of religious belief, and the right of the parent is recognised to prescribe the faith of the child even in cases in which he or she is judged unfit to have the custody of the child. The Court, however, has a discretion, and is entitled to consult the wishes of the child. It will be a great boon if some such legislation as this will avail to diminish the number of actions, some painful and others scandalous, in which benevolence has not been accompanied by wisdom or discretion.

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Another measure founded on the maxim that to 'spare the rod is to spoil the child' is Mr. Matthews's bill to amend the Summary Jurisdiction Acts with respect to the punishment of youthful offenders, which empowers a Court of summary jurisdiction, with or without proceeding to conviction, and without prejudice to its other powers, to adjudge the offender to be whipped. No regard is had to women's rights in this respect, as the whipping is confined to males. The bills debated a few days ago in the House of Lords intended to prevent infant betting and the distribution of betting circulars are of a still more parental—some would say grandmotherly—character. It is doubtful, however, whether they are calculated to be so repressive of this particular evil as the course which was taken many years ago by the present Chancellor of the Exchequer. Mr. Goschen, though he obtained a first-class in classics in 1853, did not take his degree until 1875, and consequently his name appeared in the calendar for many years as the Senior Commoner of Oriel. Accordingly a money-lender sent a circular to Mr. Goschen as well as to all the other undergraduates, and must have been more surprised than pleased when the right hon. gentleman—who was then either a Cabinet Minister or a director of the Bank of England—published in the *Times* the circular in full, with the money-lender's name, and accompanied it with a letter of his own.

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There will, however, be general approval of Lord Herschell's effort to mitigate this abominable nuisance. The Peers, who discussed the bill on Monday last, were unanimous in adopting the principle, and contributed some interesting examples of the extent to which the evil had grown. Lord Aberdeen mentioned that his son (only twelve years of age) had already received communications from the money-lending community, inducements being held out to the boy to borrow money, which (as he was considerately informed) his father would be happy to repay on his behalf. Legislation which shall provide an adequate and summary remedy for the admitted evil is not, however, so simple as it appeared at first sight to some of the Peers who supported Lord Herschell. The Lord Chancellor, with the shrewd common sense for which he is renowned, made a suggestion which was adopted, and at any rate secured the *summary* character of the measure, without which, indeed, its effect would be little felt. Lord Salisbury also summed up the discussion with some caustic but practical remarks, and the public will look with considerable anxiety for the appearance of the bill in its amended shape.

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Besides Lord Herschell's bill, which has passed the second reading, Mr. Pickersgill has given notice of his intention to move in the House of Commons that the laws relating to gaming ought to be consolidated and amended; and Mr. Morton has, with indifferent success, endeavoured to elicit from Mr. Matthews a definition of 'unlawful game' with especial reference to baccarat 'club prosecutions.' It is, therefore, evident that some alteration of the law is impending. Nothing can exceed the complexity and difficulties of the existing statutes. They were, however, very fully and carefully reviewed by Mr. Justice Hawkins in *Jenks* v. *Turpin*, 53 Law J. Rep. Chanc. M. C. 161. In that case it was held that the proprietor of the Park Club and four members of the committee could be convicted under 17 & 18 Vict. c. 38, for using and managing the club for unlawful gaming, but that the players could not be convicted for assisting by playing, the game played being baccarat, which Mr. Justice Hawkins held to be an 'unlawful game.' Other unlawful games are 'ace of hearts, pharaoh, basset, and hazard,' by virtue of 12 Geo. II. c. 28, s. 2; passage and other games with dice, except backgammon, by virtue of 13 Geo. II. c. 19; and 'roulet, otherwise roly-poly,' by virtue of 18 Geo., II. c. 24; and in *Jenks* v. *Turpin* Mr. Justice Hawkins inclined to think that any game of mere chance was an unlawful game.

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The *Financial News* of Thursday last very properly calls attention to a new feature in prospectuses. 'The customary waiver clause relating to contracts which may be within the meaning of section 38 of the Companies Act, 1867, is,' so says our contemporary, 'now supplemented by one of almost sublime audacity.' In a prospectus recently issued, it appears that the following words occur: 'Applicants for shares shall be deemed absolutely to waive all rights to compensation under the Directors' Liability Act, 1890.' In the opinion of many, the waiver clause in respect to section 38 of the Companies Act, 1867, is of doubtful validity (see, *e.g.*, 'Palmer on Companies,' p. 58; 'Lindley on Company Law,' p. 92). If such a waiver clause be invalid, *à fortiori* will the new one be? But, looking to the maxim, 'Cuilibet licet renunciare juri pro se introducto,' we incline to think that in either case the waiver clause would be good. Perhaps Mr.

Warmington may see his way to coming forward with an amending bill to make the waiver clause in either case bad. The matter is a very serious one.

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Mr. Oldroyd, Sir Matthew White Ridley, and others have introduced a little bill, amending the Trust Investment Act, 1889, to authorise trustees to invest 'in nominal, inscribed, or debenture stock, or in mortgages, debentures, or other securities issued, or to be issued by the corporation of any municipal borough, whether according to the returns of the last census prior to the date of investment the population exceeds fifty thousand or not.' It is necessary to add that this bill is only to extend to England and Wales. It is startling enough as it is, but the wildest imprudence would hardly suggest its extension to Ireland. A New Tipperary, or even an Old Tipperary, debenture would hardly be saleable at par.

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The plaintiff in an action is allowed very wide scope in framing his reply to the defence; he is not restricted to a joinder of issue, but may set up in answer to the defence any matter which he thinks relevant, so long as he does not contradict his own statement of claim. Under the old system of pleading, generally speaking, the defendant had a similar range in rejoining; but now, whatever new matter may be contained in the reply, the defendant must apply to the Court for leave if he wishes to rejoin specially, 'no pleading subsequent to reply other than a joinder of issue being allowed without leave of the Court or a judge' (Order XXIII., rule 2). Curiously enough, however, these words are so wide that they refuse to a defendant who has set up a counterclaim the wide right of replying which is possessed by an ordinary plaintiff, and this in spite of the general principle that a counterclaim is for practical purposes to be treated as a cross-action. If he wishes to reply to his opponent's defence-to-counterclaim ('rejoin to the reply-to-counterclaim' is the unfortunate expression sanctioned by the rules) otherwise than by joining issue, he must apply for leave. This appears to be an unjustifiable anomaly, probably due to oversight, since the same reasons are applicable to the latter case as to the former, and the latter case is not more liable to abuse than the former. A few words in Order XXII. would remove a difficulty which may not often arise, but which, whenever it arises, causes quite needless expense.

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In the recent case of *Budgett & Co.* v. *Binnington & Co.*, 60 Law J. Rep. Q. B. 1, the Court of Appeal had to decide the question whether the owner of a ship or the owner of the cargo was to bear the loss arising from a delay in unloading the vessel caused by a strike amongst the dock-labourers at the port of discharge. The Court of Appeal, affirming the decision of the Divisional Court, held that the loss must fall upon the owner of the cargo. Lord Justice Lindley, in giving judgment, said: 'I protest against the idea of a shipowner being held responsible for a strike of dock-labourers; the shipowner does not hire them, he cannot discharge them, and in no sense are they his servants. It cannot, therefore, be said that by reason of such strike the shipowners here prevented the freighters from performing their part of the contract.' The frequency of dock-strikes at the present time makes the decision one of great practical importance to merchants and shipowners.

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An important point of building society law that has never been previously decided came before Justices Wills and Vaughan Williams in the case of *In re An Arbitration between Knight and the Tabernacle Building Society* (Notes of Cases, p. 28). Their lordships held that they had no jurisdiction to order arbitrators, appointed to determine a dispute between an incorporated building society and one of its members, to state a case raising a question of law for the decision of the High Court. Under section 36 of the Building Societies Act, 1874, arbitrators 'may, at the request of either party, state a case for the opinion of the Supreme Court of Judicature on any question of law.' In the opinion of their lordships that provision gives the arbitrators complete jurisdiction over the matter in dispute, free from the control of any Court, unless they choose to state a case. According to that view 'the request of either party' that a case should be stated is to be of no avail unless it coincides with the arbitrators' notion of what is necessary under the circumstances of the case. Seeing that the word 'may' is used in the section, and not 'shall,' this conclusion seems to be inevitable. The arbitrators have a discretion. They are not to incur needless expense simply because one of the parties considers that there is some question of law that the arbitrators cannot themselves satisfactorily adjudicate upon. It is only if the arbitrators are personally in doubt, and desire to have the opinion of the Court upon a question of law, that they are at liberty to state a case; but they cannot be compelled to do so.

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Section 19 of the Arbitration Act, 1889, empowers the Court to order an arbitrator to state a special case for the opinion of the Court; and section 24 renders that statute applicable to every arbitration under any Act passed before or after the commencement of the Act of 1889, 'except so far as this Act is inconsistent with the Act regulating the arbitration, or with any rules or procedure authorised or recognised by that Act.' It was urged that the Arbitration Act, 1889, extended to the case of arbitrators appointed under the Building Societies Act, 1874. Mr. Justice Wills and Mr. Justice Vaughan Williams could not, however, be prevailed upon to adopt that view. Their lordships thought that it would be highly 'inconsistent' with section 36 of the Building Societies Act, 1874, that arbitrators should be ordered to state a case when the substance of that section was that the Court should have jurisdiction only where its assistance was invoked by the arbitrators themselves. And with this opinion it seems impossible to disagree.

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The Court of Appeal have, in *In re Mundy's Settled Estates* (Notes of Cases, *ante*, p. 3) refused to give the narrow construction to the meaning of a 'settlement' under the Settled Land Act, 1882, which was given, though with hesitation, in the Court below. A testator by his will gave real estate, and money to be laid out in the purchase of real estate, to trustees to be held

upon the trusts of a certain settlement. The trustees of the settlement were with one other person also trustees and executors of the will. Did the settlement and will form one settlement within section 22 of the Act above referred to? The section mentions, 'any deed, will, . . . . or other instrument, or any number of instruments.' In Wolstenholme and Turner's fifth edition, p. 218, it is stated that, 'where land is settled by reference to the limitations of an existing settlement, the result is the same as if the limitations referred to were repeated. A separate settlement is created, and capital money under the first settlement cannot be applied to pay charges on land comprised in the settlement made by reference. If this were not so a solvent estate under the first settlement might be made the means of paying the charges on an insolvent estate comprised in the second settlement. That the reverse proposition holds good is not so clear, and may depend on the terms of the second settlement. It seems clear that an order appointing trustees of one settlement would not constitute them trustees of the other settlement.' Now, in *In re Mundy's Settled Estates* the application to the Court was made by the tenant-for-life asking that the trustees of the settlement might be directed to approve of certain drainage works on property within the settlement, and it was desired that some of the money directed by the will to be laid out in the purchase of land, but which had not been so laid out, should be applied in defraying the cost of those works. The Court of Appeal decided that the money in question was 'capital money,' as the express language of section 33 of the principal Act declares that money under a settlement in the hands of trustees, and 'liable to be laid out in the purchase of land to be made subject to the settlement,' may be applied as such. Further, their lordships held that the settlement and will together constituted one settlement within the meaning of the Act, and granted the application of the tenant-for-life.

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'Lady Delmar' is the title of a novel written by Mr. Thomas Terrell and Mr. T. L. White, and published by Trischler & Co. It is not within our province to comment on the socialistic delineations, misaristocratic sentiments, and religious disquisitions which are scattered broadcast through it, nor on the transcendental alchemistic feat achieved by the Jew lapidary in the manufacture of millions and millions' worth of rubies and emeralds, an idea worthy of Mr. Rider Haggard's imagination. We are commonplace matter-of-fact people we lawyers, and infinitely more than the above do we realise the last few lines of the author's description of the Temple: 'Go yourself to the Temple, not with a guide, but alone; wander about its old courts and passages, wander into the halls and chiefly into the church sacred to the memories of the Knights Templars, and, if you are not an iconoclast, you will see for yourself what we feel about it.' The unscrupulous aristocrat's trick in marrying the heroine in Scotland without banns and before the parties had resided in Scotland for twenty-one days opens some questions of Scotch marriage law upon which we, from our happy ignorance of that branch of jurisprudence, are unable to form an opinion. With the remark that the English counsel is too clever for the wicked aristocrat, and in the end shows the marriage to be valid, we commend the story to our readers.

## THE ELECTORAL DISABILITIES REMOVAL BILL.

We took occasion last year (Law Journal, May 17, 1890), in connection with the bill then brought in to relieve soldiers, sailors, and policemen from disfranchisement by absence on duty, to examine the existing law on the subject, with the view of considering whether the proposed legislation was satisfactory. The result was to show that there were very strong grounds for contending that the distinction taken in recent times between the absence of a man on duty and his absence for his own business or pleasure—the former being held a break of residence, the latter no break—is as unsound in law as it is wanting in common sense. The authority in its favour is weakened by the great reluctance shown by the Irish judges in adopting it, and, as we may now add, by the doubt that must be felt, since the observations made in *Watt* v. *M'Guire*, 16 Sess. Cas. 4th ser. 263, whether it would be adopted in Scotland. It seemed probable that, if the decisions which have created the disqualification could be brought for review before the Court of Appeal, they would be overruled, and the electors affected would obtain a full restitution of the rights they formerly enjoyed. We therefore expressed the opinion that no legislation affecting the matter would be adequate unless it went directly to the root of the evil by sweeping away the distinction altogether, for an imperfect measure would frustrate the efforts which might otherwise be successful to get complete relief by means of an appeal. Since the bill left the distinction in full force—with the addition of an implied legislative sanction—in all cases of absence for more than four months at a time, it could not be regarded as satisfactory.

It is disappointing to find that the bill, as reintroduced this year, is not, except in its extension to others besides soldiers, sailors, and policemen, a larger measure than that of last session. Fortunately, there are indications that it will not be allowed to pass in its present shape; there is room, therefore, for hoping that it will come out of committee with amendments which will make it—what it is not now—a valuable and useful measure. We propose in this article to point out in detail what we consider to be the faults of form and substance of the bill as drafted, and to submit an alternative clause which, we think, would correct those faults.

It may be noted, in passing, that the very title of the bill is somewhat ill-chosen, for it would be better to confine the word 'disabilities' to personal incapacities, such, for instance, as are dealt with by the Police Disabilities Removal Act, not to use it, as here, of the failure to qualify through what has been held to be non-residence. 'Electoral Disqualifications Removal Bill' would be an improvement.

The substance of the bill is contained in section 2, as follows:—

> A man shall not be disqualified from being registered
> (*a*) in the Parliamentary register of electors for a county or borough in respect of his inhabitant occupation of a dwelling-house or lodgings or his occupation of any land or tenement; or
> (*b*) in the local government register of electors for a county or borough in respect of his occupation of any house, warehouse, counting-house, shop, building, land, or tenement,

by reason only that during part of the qualifying period not exceeding four months at any one time he has in the performance of any duty arising from or incidental to any office, service, or employment held or undertaken by him been absent from his dwelling-house or lodgings, or not resided in or within the required distance from such county or borough.

'A man.' Since the measure is to apply to electors who need not necessarily be of the male sex, for 'man' should be read 'person,' the term adopted in the Municipal Corporations Acts and County Electors Act.

'Shall not be disqualified from being registered.' Would it not be as well to add 'or from voting'? No doubt the meaning is clear enough, but it is clumsy in point of style to confer the franchise indirectly by merely authorising registration.

'His inhabitant occupation of a dwelling-house' is an awkward phrase and questionable English. 'His inhabitant occupation of . . . lodgings, is doubly objectionable, for though 'inhabitant occupier' is a term well known to election law it has nothing to do with the lodger franchise.

'In the local government register.' What is this? Does it include the burgess roll of a borough for all purposes, for the purposes, that is, of the Municipal Corporations Acts as well as for those of the Local Government Act?

'Has not resided in or within the required distance from.' 'The required distance' is a strange expression for the distance within which a man is required to live. What is meant is the 'authorised' or 'allowed' distance.

The above are defects of form rather than of substance; the following are more important.

Residence is required by law as an element of other qualifications than those mentioned in the section—*e.g.* of the qualifications in respect of reserved rights in certain boroughs, and of the qualification of occupiers who, not being entitled to elect, may yet be elected to county or borough councils. There can, of course, be no real intention to introduce a fresh anomaly into the law by leaving the conditions of residence for these purposes on their present footing, yet the words as they stand certainly have that effect.

According to the most obvious interpretation of the clause a man would not be disqualified though he were away off and on for practically the whole qualifying period, provided that no one spell of absence exceeded four months. This presumably is the meaning of section 3 of the Police Disabilities Removal Act—a section, by the way, that the bill ought to repeal as no longer necessary—which allows 'temporary absence . . . in the execution of duty as a police officer during a part of the qualifying period not exceeding four consecutive months.' On the other hand, 41 & 42 Vict. c. 3, a statute sometimes cited as a precedent for the proposed legislation, entitles a man to be registered and to vote as an inhabitant occupier, though he has let his house furnished 'during a part of the qualifying period not exceeding four months in the whole.' There is great difference between four months at one time and four months in the whole. The difference between permitting absence on duty for four months at a time and permitting it for the whole qualifying period, though slight, is likely to prove vexatious.

As we read the clause it provides that while absent on duty for the four months an elector is, for the purpose of a 10*l.* occupation, or old burgess, qualification, excused altogether from the requirement of residence. Those to whom the bill does not apply must, if temporarily absent, be constructively resident—that is, they must retain throughout a home in the qualifying district to which they have either right or permission to return at any time, and intention to return whenever it suits their convenience or pleasure to do so. Thus, instead of assimilating the positions of those absent on duty and those absent for other causes, the bill creates a new distinction between them. What its precise effect may be is not quite clear; difficult cases may arise under it; but the following may be put as illustrating its operation:—

If a 10*l.* occupier, having duties which require him to be absent almost continuously throughout the qualifying six months, has a residence kept up for him, and is allowed a day's leave when he might return, then, provided that day's leave occurs not more than four months from the beginning or from the end of the six months, he is not disqualified. It would not be necessary that he should return; he would be constructively resident if he had the legal power to do so. But an occupier whose leave occurred a little earlier or a little later would be disqualified. On the other hand, an occupier whose duties required him to be absent during the last four months of the six might, so far as we can see, sell his house as soon as he goes away without thereby losing his title to a vote.

We doubt very much whether those responsible for the bill intend these results. Why in the two former cases, where the man has in substance the character and interests of a resident, should his vote be made to depend on the date at which he gets his holiday, a wholly unimportant detail? Why in the last case should a vote be acquired by one who for the greater part of the qualifying period has been to no intent or purpose a resident? Can any good reason be given for thus increasing the confusion and complications of the law, instead of resorting to the simple remedy of obliterating the distinction between absence on duty and other absence?

We append a clause embodying the alterations which we suggest should be made in section 2:—

The absence of any person during the whole or part of the qualifying period from his dwelling-house or lodgings in any county or borough, or from his residence in, or within the authorised distance from, any county or borough, shall not, by reason only that such absence is required for the performance of some duty arising from or incidental to an office, service, or employment, held or undertaken by him, disqualify him

(*a*) from being registered or enrolled or from voting as a Parliamentary or county elector or burgess for such county or borough in respect of a household qualification or in respect of any qualification for which residence in, or within a certain distance from, such county or borough is required;

(*b*) from being registered or voting as a Parliamentary elector for such county or borough in respect of a lodger qualification;

(*c*) from being registered or enrolled as an occupier entitled to be elected, or from being elected a councillor or alderman for such county or borough;

(*d*) from being elected chairman of the council of such county or mayor of such borough.

We have not here dealt with the question of disqualification through absence in prison, though we

think that on this point also the law is unsatisfactory, and ought to be amended by the bill. The effect of the decision in *Powell* v. *Guest*, 34 Law J. Rep. C. P. 69; 16 Com. B. Rep. (N.S.) 72, is that imprisonment, after conviction, out of the qualifying district constitutes a break of residence, and disqualifies for the 10*l.* occupation franchise. The Court of Session in Scotland has recently decided in a case already mentioned—*Watt* v. *M'Guire*—that imprisonment does not disqualify for the household franchise. It is difficult to see how the two cases can be reconciled in principle; and, whatever may be said in favour of a disqualification imposed on convicted criminals, we fail to see why the infliction of this penalty should depend on the situation of the prison where they are confined.

## EXTENSION OF RELIEF AGAINST FORFEITURE.

Section 14 of the Conveyancing Act, 1881, which gives very full powers of relief against forfeiture of a lease for causes other than non-payment of rent (which is still provided for by the Common Law Procedure Acts), contains an excepting subsection of the greatest importance. This is subsection 6, by which section 14 does not extend to covenants against assignments or underletting, *or* conditions for forfeiture on bankruptcy, *or* conditions for forfeiture on taking in execution of lessee's interest, *or* covenants in mining leases to allow inspection.

Mr. T. H. Bolton, Mr. Warmington, Mr. Kimber, and Mr. Cobb have brought in a bill to amend the Conveyancing Act, 1881, with reference to leaseholds, and the first thing the bill does, is, *sans phrase*, to repeal subsection 6 of section 14, in order, as is said in a very full memorandum prefixed to the bill, to allow the Court to possess full power to relieve from forfeiture in all cases upon fair terms. Now, with regard to underletting, there is no doubt that *Barrow* v. *Isaacs*, upon which we recently commented (*ante*, p. 2), has shown great hardship in the existing law. In that case a lessor 'actually ejected' (as the memorandum puts it) 'his lessee for underletting without consent, although it was admitted that such consent could not have been refused if it had been applied for, as the lease contained a provision that the consent was not to be arbitrarily withheld, and that the underlessees were most desirable and responsible parties. In cases like this, and in cases which must frequently occur of a landlord being resident abroad and difficult to get at, while the tenant may have urgent reasons for wishing to underlet, and more than one unexceptionable person may be desirous of becoming undertenant, it seems very hard that the Court should have no power to relieve, especially when it is borne in mind that all reasonable compensation in money must be given as a condition of the relief, and that it is absolutely discretionary with the Court whether relief shall be granted or not. Thus far the bill has our decided approval. But we have some doubt about the removal of the other exceptions. With regard to bankruptcy and taking in execution, it must be borne in mind that, in the absence of these conditions—in the case of bankruptcy, at all events—the landlord might be saddled with a tenant not of his own choosing, whereas, both in the case of an assignment and underlease, the tenant of the landlord's original choice continues liable. Then, again as to the mining covenant. The breach of covenant to allow inspection is so wilful a breach that it is not without reason that it finds a place amongst the existing exceptions. Perhaps, however, the fact that the breach may really be caused in many, if not most, cases by the guilty servants of an innocent master may afford a reason for doing away with the exception.

But the bill goes still further. It not only enables the Court to relieve against forfeiture for assignment or underletting without license, but endeavours to prevent a breach occurring at all. Clause 3 provides that—

> In all leases containing a covenant, condition, or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without license or consent, such covenant, condition or agreement shall be deemed to be subject to a proviso to the effect that such license or consent shall not be unreasonably withheld, and no fine or sum of money in the nature of a fine shall be payable for or in respect of such license or consent.

The proviso which it is proposed to require by this clause has, no doubt, been very frequently inserted of late years (see as to the effect of it, *Treloar* v. *Bigge*, 43 Law J. Rep. Exch. 95), but the express barring of a pecuniary consideration for the license is as yet unusual (see 'Woodfall,' 14th ed. at p. 679). In many cases, more especially of underletting, perhaps even the strong course of an express bar by Act of Parliament may be justifiable, but it is easy to conceive cases, more especially of assignment, where to require a premium for the license would be perfectly just, and the clause as it stands certainly seems to require alteration.

The bill goes on to provide that, where a lessor is proceeding for a forfeiture, the Court may, 'on application by any person claiming as underlessee any estate or interest in the property comprised in the lease or any part thereof, either in the lessor's action or in any action brought by such person for that purpose, make an order vesting the property,' for the whole time or any part of it, in the underlessee 'upon such conditions as to costs, &c., as the Court in the circumstances of the case should think fit.' Here it is to be observed that all reliance is placed in the Court to do complete justice in the matter. But surely the clause goes too far in allowing the Court to grant the underlessee the whole interest created by the lease. What seems to be perfectly sufficient (assuming the principle to be agreed upon that the underlessee is not to suffer for the lessee's default) is, that the underlessee should continue to enjoy the property for the length of the underlease. Why, because the lessee is in default, should the underlessee get more than he ever contracted to have from anyone?

The only remaining clause in the bill contains a provision that in the Conveyancing Act 'lease' shall include 'agreement for lease,' thus solving the question which appears to have been left open in *Coatsworth* v. *Johnson*, 55 Law J. Rep. Q. B. 220, and *Swain* v. *Ayres*, 57 Law J. Rep. Q. B. 428.

The New Queen's Counsel.—The following gentlemen have been appointed Her Majesty's Counsel, learned in the law:—Mr. John Edward Barker, M.A., called at the Inner Temple in 1862; Mr. Joseph Francis Leese, B.A., called at the Middle Temple in 1862; Mr. Henry Wilson Worsley-Taylor, B.A., called at the Middle Temple in 1871; and Mr. Robert Alfred M'Call, M.A., LL.D., called at the Middle Temple in 1871.

# Unreported Cases.

## ASSIZE CASE.

### APPRENTICESHIP INDENTURE.

The case of *Walter* v. *Everard*, involving an important question of law, was tried at Lincoln before Mr. Justice Grantham and a special jury, on February 25. The plaintiff, who was an auctioneer and valuer with a large business in Lincolnshire, sued the defendant for a balance of 30*l.* due under a covenant in an indenture of apprenticeship, dated May 21, 1886, executed by the defendant at a time when he was under age. The defendant was the son of a farmer who had died some years since, leaving a will, under which the defendant was entitled on his coming of age to a sum of about 4,000*l.* By the indenture of apprenticeship the defendant was bound for a term of four years at a premium of 500*l.*, which was to cover board and lodging for four months in each year. The indenture contained no restrictive covenant by the apprentice against after-trading. A sum of 200*l.* was paid upon its execution, and the balance, 300*l.*, in respect of which the present action was brought, was payable by the defendant on his attaining the age of twenty-one, which happened in December, 1889. The defence rested in the main on the plea of infancy, and there was a counterclaim in respect of the alleged negligence of the plaintiff in discharging his duty under the indenture.—Mr. Gould contended, on the authority of the well-known case of *Gilbert* v. *Fletcher* (Cro. Cas. 179), that an infant could not be sued on the covenant in an indenture of apprenticeship, and pointed out that the authority of that case was recognised in the recent case of *De Francesco* v. *Barnum*, 59 Law J. Rep. Chanc. 151; 60 Law J. Rep. Chanc. 63; L. R. 43 Chanc. Div. 165. Mr. Dugdale, for the plaintiff, argued that this was an action for necessaries, and that an infant might be sued on a bond for necessaries suitable to his estate, and that Lord Justice Fry, in the course of his judgment in *De Francesco* v. *Barnum*, had expressly recognised the teaching of a trade as a necessary in certain circumstances. In answer to questions left by his lordship to the jury, they found that the indenture was a provident and proper arrangement; that the arrangement was necessary if the defendant wished to learn a trade; and that, irrespective of the indenture, the premium was fair and reasonable. They found, however, that the plaintiff had to a certain extent neglected his duty in not exercising sufficient control over the defendant, and expressed an opinion that 50*l.* should be deducted.—His lordship entered judgment for the plaintiff for the balance of his claim after deducting the 50*l.*, but granted a stay of execution.—Mr. Dugdale, Q.C., M.P., and Mr. Garrett appeared for the plaintiff; and Mr. Gould for the defendant.

## MAYOR'S COURT.

### CURIOUS ACTION BY A SOLICITOR.

On February 20, in the Lord Mayor's Court, the case of *Hope* v. *Williams* came on for trial before the assistant-judge and jury. The plaintiff, Mr. John Henry Hope, a solicitor, practising at Bell Yard, Temple Bar, E.C., sued the defendant, Miss Elizabeth Williams, an artist, of North Audley Street. It appeared that the present defendant was defendant in an action brought against her in the High Court, and the present plaintiff acted for her. The plaintiff, in cross-examination, said that he had an office with a Mr. Miller, a solicitor, and there were two other solicitors in the same office. Mr. Miller was the solicitor against Miss Williams in the High Court, and the plaintiff admitted that, in the course of doing clerical work for Miller, he had actually made out the writ and statement of claim which was served upon Miss Williams. It was further suggested, in cross-examination, that the plaintiff had never acted towards Miss Williams other than as Miller's clerk; but this was denied. Eventually, before the defence was entered upon, the plaintiff consented to judgment against him, with two guineas agreed costs.—The learned judge said he should report the peculiar circumstances of the case to the Lord Chancellor.

## QUARTER SESSIONS.

### RATING APPEAL.

At the Tewkesbury Quarter Sessions, on February 18, before Mr. L. Morton Brown, recorder, an appeal in which the Tewkesbury Gas Company (Lim.) were appellants and the Guardians of the Tewkesbury Union respondents, and which was partly heard on Tuesday and Wednesday, the 10th and 11th inst., and adjourned for the decision of the recorder upon several preliminary points of law raised by the appellants, was continued. The learned recorder gave judgment upon the questions raised by the appellants' counsel, in pursuance of the seventh ground of objection mentioned in the notice of appeal to the quarter sessions, which was to the effect that the appellants' hereditaments were not rated according to the annual rateable value thereof appearing in the valuation list in force in the parish of Tewkesbury at the time of the making of the rate. He said the three objections which were urged on behalf of the appellants to be fatal to the rate were founded upon the seventh ground of appeal. First, it was urged that the rate was bad because the requirements of the Acts of Parliament as to the deposit and re-deposit of the valuation list with the overseers, and the posting of notices on the doors of the churches and chapels concerning the last deposit and re-deposit, had not been complied with. Having reviewed the evidence on this point, he (the learned recorder) had come to the conclusion that the appellants had failed to satisfy him that their contention was correct, and he found as a fact that the supplemental valuation list was deposited when and as often as it was incumbent by law it should be, and he found that the necessary notices of the deposit and re-deposit were fully published. That brought him to the second point, 'Was the rate void because section 30 of 31 & 32 Vict. c. 122 had not been fully complied with, that section directing a fair copy of the valuation list, signed by three members of the assessment committee, and countersigned by their clerk, to be delivered to the overseers?' In the case before the Court the copy valuation list relates to the parish of Tewkesbury, and as delivered to the overseers undoubtedly and admittedly was not signed by three members of the assessment committee and countersigned by their clerk. It was copied throughout, the signatures being copied as well as the rest of the valuations. He had to decide which was the valuation list in force for the parish of Tewkesbury, the original or the copy delivered to the overseers, and was the omission sufficient to render the rate void? He thought the original valuation list of July 30, 1890, retained by the guardians of the union, must be looked upon as the one in force for the parish of Tewkesbury, and not any copy; and he was not prepared to hold, and did not hold, that the omission he had alluded to invalidated the rate, but he regarded the requirements of the statute as to signature and counter-signature as merely directory. He then came to the third and last objection raised to the rate under the seventh ground of appeal—*i.e.* that the rate was bad because it did not properly and sufficiently appear in the valuation list at which sum the special properties (among which the Tewkesbury Gas Company's properties appeared) were rated, the contention being that the entries made were uncertain and

confusing. He did not think the objection sustained, as he believed any one desirous of ascertaining could ascertain at what these properties were assessed, and he was borne out in this belief by the fact that the appellants themselves were not misled. One further point raised on behalf of the respondents, but which in the face of the above judgment it was almost unnecessary to consider, though one on which perhaps he had better give a decision, remained to be considered. The learned counsel for the respondents contended that it was not open for the appellants to raise any of the objections in the notice of appeal to the Court, which were not specified in the notice of appeal against the valuation list given to the assessment committee, because there could be no failure to obtain relief thereunder until the objections had been heard and determined by the committee. This contention was based on section 1 of 27 & 28 Vict. c. 39. It appeared to him (the learned recorder) that if objections were allowed to be there raised which had never been previously raised and considered it would be a misnomer to call the proceedings an 'appeal.' After reviewing the various cases decided upon this section, he thought that appellants could not avail themselves of any objections to the rate except those of which notice had been given to the assessment committee, and on which they had, prior to coming there, failed to obtain such relief as they deemed just.—Mr. Moore then applied for a special case to the High Court upon the above points.—Mr. Stewart Sim opposed the application, urging that the arbitration which had been agreed upon in the event of the judgment on the preliminary points being, as it was, in favour of the respondents should be first proceeded with, and then a special case might be granted on these and on any other points which then arise.—The Recorder decided that he could not grant a special case upon points as they arose. but they must conclude the whole appeal and arbitration, and then state any questions upon which the opinion of the High Court was desired by either side.—The Court was then adjourned until the award in the arbitration was given, and the question of costs was also reserved.—Mr. C. H. S. Moore (with Mr. Hugo Young), instructed by Messrs. Moore & Romney, appeared for the appellants; and Mr. J. D. Stewart Sim (with Mr. Alfred Young), instructed by Mr. H. A. Badham, represented the respondents.

## COMPANIES (WINDING-UP) ACT, 1890.

### ORDER AS TO FEES.

I, THE Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, do, by virtue of the powers vested in me by the Companies (Winding-up) Act, 1890, direct that the fees in the scale hereto annexed shall, from and after January 1, 1891, be the fees to be paid in respect of proceedings under the said Act.

HALSBURY, C.

Dated December 18, 1890.

SCALE OF FEES.

*Table A.*

| | £ | s. | d. |
|---|---|---|---|
| Every petition | 1 | 0 | 0 |
| Every bond with sureties | 0 | 10 | 0 |
| Every subpœna or summons | 0 | 3 | 0 |
| Every order made in Court | 1 | 0 | 0 |
| Every order made in chambers | 0 | 5 | 0 |
| Every affidavit filed other than proof of debts | 0 | 2 | 0 |
| For taking an affidavit or an affirmation, or attestation, upon honour in lieu of an affidavit or a declaration, except for proof of debts, and except declaration by a shorthand writer under rule 16 (Form 6) for each person making the same | 0 | 1 | 6 |
| And in addition thereto for each exhibit referred to therein and required to be marked | 0 | 1 | 0 |
| On every proof of debt above 2*l.* (other than proof for workmen's wages under rule 106) | 0 | 1 | 0 |
| Every application for search other than by petitioner, liquidator, or officer of the company | 0 | 1 | 0 |
| Every office copy, each folio of seventy-two words | 0 | 0 | 4 |
| Every application to inspect liquidator's statement lodged with registrar of joint-stock companies under section 15 of the Act | 0 | 2 | 6 |
| Every copy of, or extract from, such statement, each folio of seventy-two words or figures | 0 | 0 | 4 |
| Every application by a committee of inspection to the Board of Trade for a special bank account | 1 | 0 | 0 |
| Every order of the Board of Trade for a special bank account | 2 | 0 | 0 |
| Every application by a liquidator to an official receiver acting as committee of inspection | 0 | 10 | 0 |
| Every application under section 15 of the Act to the Board of Trade for payment of money out of the companies liquidation account; and every application for the re-issue of a lapsed cheque or money order in respect of moneys standing to the credit of the companies liquidation account | 0 | 2 | 6 |
| On one copy of the cash-book showing assets realised, forwarded by the official receiver or liquidator to the Board of Trade, a fee according to the following scale on the gross amount of the assets realised and brought to credit—viz. 1*l.* on every 100*l.* or fraction of 100*l.* up to 5,000*l.*, and 10*s.* on every 100*l.* or fraction of 100*l.* above that amount. | | | |
| For taxation of costs.—The same fees as those directed to be paid and collected by the order for the time being as to Supreme Court fees. | | | |

*Table B.*

I.—Where the official receiver acts as provisional liquidator only

(*a*) If the petition is withdrawn or dismissed:—

Such amount as the Court may consider reasonable to be paid by the petitioner (in addition to the fee payable on the petition) in respect of the services of the official receiver as provisional liquidator.

(*b*) Where a winding-up order is made but the official receiver is not continued as liquidator:—

(1) In respect of every ten members, creditors, and debtors, and every fraction of ten . 0 10 0

Provided that where the net assets of the company are estimated to exceed 500*l.*, three-fifths of the above fee only shall be charged.

(This fee to cover cost of official stationery, printing, books, forms, and postages.)

(2) On the value of the company's property, as estimated in the statement of affairs:—

On the first 5,000*l.* or fraction thereof, 1 per cent.

On the next 20,000*l.* or fraction thereof, ½ per cent.

On the next 75,000*l.* or fraction thereof, ¼ per cent.

On all above, ⅛ per cent.

II.—Where the official receiver is continued as liquidator of the company (including his services as provisional liquidator)

| | £ | s. | d. |
|---|---|---|---|
| (1) In respect of every ten members, creditors, and debtors, and every fraction of ten | 1 | 0 | 0 |
| Provided that where the net assets of the company are estimated not to exceed 500*l.*, three-fifths of the above fee only shall be charged. | | | |
| (This fee to cover cost of official stationery, printing, books, forms, and postages.) | | | |
| (2) Upon the total assets, including produce of calls on contributories, realised or brought to credit, after deducting sums paid to secured creditors (other than debenture-holders), and not being moneys received and spent in carrying on the business of the company:— | | | |
| On the first 1,000*l.* or fraction thereof, 5 per cent. | | | |
| On the next 1,500*l.* or fraction thereof, 4 per cent. | | | |
| On the next 2,500*l.* or fraction thereof, 3 per cent. | | | |
| On the next 5,000*l.* or fraction thereof, 2 per cent. | | | |
| Above 10,000*l.*, 1 per cent. | | | |
| (3) On the amount distributed in dividend or paid to contributories, &c., half the above percentages. | | | |
| III.—Travelling, keeping possession, legal and other reasonable expenses of the official receiver, the amount disbursed. | | | |
| IV.—On every payment, under section 15, of money out of the companies liquidation account, threepence on each pound or fraction of a pound to be charged as follows:— | | | |
| Where the money consists of unclaimed dividends, on each dividend paid out. | | | |
| Where the money consists of undistributed funds or balances, on the amount paid out. | | | |

*Table C.*

| | | | |
|---|---|---|---|
| High bailiff for attending sittings of the Court, under each winding-up order, per case | 0 | 6 | 0 |
| Serving every petition or subpœna or winding-up or other order (not serviceable by post) within two miles, including affidavit of service | 0 | 3 | 6 |
| If serviceable by post | 0 | 1 | 0 |
| Executing every warrant of seizure, or search warrant, or warrant of apprehension, or order of commitment within two miles of Court | 0 | 10 | 0 |
| Keeping possession under a warrant, for each day the man is actually in possession, including affidavit of possession being actually kept (Not less than 3*s.* 6*d.* of the above sum is to be paid to the man in possession, and his receipt produced.) | 0 | 4 | 6 |
| High bailiff's, or (in the London district) officer's man, travelling to place of possession, or to execute a warrant of or order of commitment, or to serve a summons or subpœna, or for any other purpose specially directed by the Court, per mile | 0 | 0 | 5 |
| His time, per day, where distance exceeds ten miles | 0 | 4 | 6 |
| His expenses, per day | 0 | 4 | 6 |
| If high bailiff of a County Court or officer of Supreme Court directed by the Court personally to travel, per mile | 0 | 0 | 7 |
| His time, per day | 0 | 10 | 0 |
| His expenses, per day | 0 | 10 | 0 |

We, the undersigned Lords Commissioners of Her Majesty's Treasury, do hereby sanction the foregoing scales of fees, and do direct that the fees mentioned in Table A shall be taken in money, except when they are to be taken by an officer of the Supreme Court of Judicature, or an officer of the Board of Trade, or an officer in the Companies Registration Office, and that the fees mentioned in Tables B and C shall be taken in money.

The documents to be stamped and the description of stamps to be used shall be as provided in the schedule annexed hereto.

The adhesive stamps shall be judicature fee stamps, when the fee is to be taken by any officer of the Supreme Court of Judicature; they shall be stamps overprinted with the words 'Companies Winding Up,' when the fee is to be taken by the official receiver or any other officer of the Board of Trade; and they shall be the stamps used for the purpose of the 'Companies Act,' when taken by any officer in the Companies Registration Office.

They shall be cancelled by the various Court or other officials by perforation, or in such other manner as the Commissioners of Inland Revenue may from time to time direct.

The impressed stamp shall be of such character as the said commissioners may adopt for the purpose.

And we further direct that wherever practicable the stamp shall be affixed or the money paid in respect of every fee before the proceeding is had in respect of which the fee is payable; and that the charge to be made by the *London Gazette* for the insertion of each notice authorised by the Act or Rules shall be 5*s.*

HERBERT EUSTACE MAXWELL,
SIDNEY HERBERT,
Two of the Lords Commissioners of Her Majesty's Treasury.

Dated December 19, 1890.

The Schedule above referred to.

| Proceeding | Document to be stamped | Character of Stamp to be used |
|---|---|---|
| Every petition | Petition | Impressed |
| Every bond with sureties | Bond | Impressed |
| Every affidavit filed | Affidavit | Impressed or adhesive |
| Every subpœna or summons | Subpœna or summons | Impressed |
| Every Order made in Court or Chambers | Order | Impressed |
| For taking an affidavit or an affirmation, or attestation upon honour in lieu of an affidavit or a declaration | Affidavit | Impressed or adhesive |
| Every proof of debt above 2*l.* | Proof | Impressed or adhesive |
| Every application for search | Application | Impressed |
| Every application to inspect liquidator's statement | Application | Impressed |
| Every copy or office copy | Office copy | Impressed or adhesive |
| Every certificate of taxation by any officer of the Court for any costs, charges, or disbursements | Certificate | Impressed or adhesive |

ILLNESS OF MR. PLOWDEN.—At West London Police Court, on Tuesday, February 24, Mr. Plowden became seriously unwell, and was attended by Dr. Walker. He left the Court in a cab, and in the morning a telegram was received stating that he was unable to attend to discharge his magisterial duties. A telegram was at once sent off to Bow Street for assistance, and it was not until nearly one o'clock that Sir John Bridge was able to commence the business of the day.

## SUCCESSFUL CANDIDATES.

The following candidates (whose names are in alphabetical order) were successful at the Preliminary Examinations of the Incorporated Law Society held on February 4 and 5, 1891:—

Abbott, Lionel Cranfield
Adams, Cadwallader Edmund
Anderson, Edgar James Varden
Ashe, St. George
Ayrton, Edwin
Barber, Charles Gilbart
Barchard, Eustace Heywood
Barnes, Goodwin Howard
Bass, Arthur John Vere
Bate, Launcelot Brabant
Bates, Arthur
Battiscombe, Henry James
Bayliffe, Alfred Danvers
Bedford, Herbert
Birt, Ernest William
Blair, Herbert
Brevitt, Arthur Nelson
Brown, Frederick William
Buchanan, William Samuel
Cardell, Maurice George
Cotes, Herbert Victor Merton
Cox, Henry Herbert
Curry, Charles Hector
Daly, Edwin Newton
Daniel, Henry Edwin
Davies, Arthur
Davies, Harry Arthur
Dawson, Harold Worrall
Duffell, Tom Haynes
Ellett, Robert William
Elliott, John Fisher
Ellis, John
Elmslie, John Edward Graham
Francis-Williams, Herbert
Gledhill, Willie
Green, Bernard Nuttall
Gregory, Charles
Haigh, Hubert
Haigh, William Mackenzie
Hales, Percy
Hands, Arthur William
Hankey, Charles Frederick Thornhill
Hardcastle, Guy Ralph
Harris, Alfred
Hartley, Holliday
Heath, George Somerville
Hebblethwaite, Samuel
Henderson, Walter Scott
Hewitt, Joseph
Howard, Arthur Edward
Jackson, Frederick
Jackson, Hugh MacDonald Caunter
Jackson, William
Jesson, Richard Charles
Jones, Gwilym Cleaton
Josselyn, John
Kino, Granville Montague
Kirkup, George Edward
Kyle, George
Landau, Isaac
Laurance, Howard
Laycock, William Ewart
Lean, Frederick John
Livesey, Frederick William
M'Candlish, George Glennie Leslie
Marks, Henry
Martinez, Robert John
Nutt, Walden Hubert
Orchard, James William
Outram, Herbert Ridsdale
Parry, Alfred Ivor
Pocock, Ernest William
Pumfrey, Henry
Rastall, Herbert George
Redfern, John Edward
Russell, Edwin
Shortt, Charles Septimus
Skynner, Charles Reginald
Smith, James Robert
Snow, Arthur
Spencely, Hugh
Spencer, Edmund Tyndale
Stanton, Arthur William
Stephens, John
Stevens, Edgcombe
Taylor, Claude Philip Eaton
Thompson, Charles Edward
Tochatti, Frederick Vincent
Tompson, Edward Harvey
Trafford, Wilfred Broughton
Turnbull, Arthur
Vaughan, Herbert
Vaux, Alfred Julian
Walker, Laurence Edward
Watts, Robert Phillip Hooper
Williams, Alfred Benjamin
Wilson, Charles Eustace
Wilson, Walter
Wootten, George Albert

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United Law Society.—On February 23, Mr. Common in the chair, Mr. H. D. Woodcock moved: 'That Colonial Legislatures have no power to pass enactments forbidding the immigration of Chinese" (see *Musgrove* v. *Ah Toy*, Times L. Rep., Nov. 14, 1890). Mr. Herbert Smith opposed. The other speakers were Messrs. H. Walton, J. L. V. S. Williams, J. R. Atkin, and H. W. Marcus Gwyn (visitor). Mr. Woodcock having replied, the house divided, and the motion was lost by four votes.

## HONOURS EXAMINATION FOR SOLICITORS.

January, 1891.

At the examination for honours of candidates for admission on the roll of solicitors of the Supreme Court, the examination committee recommended the following candidates as being entitled to honorary distinction:—

First Class (in Order of Merit).

Harry Goring Pritchard, who served his clerkship with Messrs. Young & Sons, and Messrs. Sharpe, Parker, Pritchard & Sharpe, both of London.

Thomas Henry Aldous, who served his clerkship with Mr. Charles Butcher, of London.

Thomas Estyn Jones, who served his clerkship with Mr. Samuel Smith (of the firm of Messrs. Walker, Smith & Way), of Chester, and Messrs. Chester, Mayhew, Broome & Griffith, of London.

Second Class (in Alphabetical Order).

William Henry Cardale, who served his clerkship with Messrs. Iliffe, Henry & Sweet, of London.

George Coplestone Carter, who served his clerkship with Mr. John Durham, of Kingston-on-Thames and London.

Martin Grunebaum, who served his clerkship with Mr. Hugh Mewburn Walker (of the firm of Messrs. Walker & Mewburn Walker), of London.

Arthur Trowbridge Keeling, who served his clerkship with Mr. William Charles Woodhouse and Mr. Walter Trower, of London.

Sidney Alfred Mitchell, who served his clerkship with Mr. Edward Roy Longcroft, of Havant, and Messrs. Powell & Rogers, of London.

Walter Peel, who served his clerkship with Mr. Samuel Field, of the firm of Messrs. Field, Son, & Hannay, of Liverpool.

Henry Thomas Smith, who served his clerkship with Messrs. Corner & Corner, of Hereford, and Messrs. Crowders & Vizard, of London.

Third Class (in Alphabetical Order).

Robert Aitken, who served his clerkship with Mr. Henry George Church, of London.

Hugh Bellingham, who served his clerkship with Messrs. Stricks & Bellingham, of Swansea, and Messrs. Tamplin, Tayler, & Joseph, of London.

Alban Gardner Buller, who served his clerkship with Mr. Alban Gardner Buller, of Birmingham, and Dr. Alfred Henry Arnould, of London.

David Frederick Cooke, who served his clerkship with Mr. Arthur Proudfoot, of London.

Frederick Graham Emanuel, who served his clerkship with Mr. William Mitchell, of London.

William Claude Fawcett, who served his clerkship with Mr. Thomas Henry Faber (of the firm of Messrs. Fawcett & Faber), of Stockton-on-Tees.

Thomas Goodair, who served his clerkship with Mr. William Hamilton Maynard, of Preston.

William Griffiths, who served his clerkship with Mr. Gwilym Cristor James, of Merthyr Tydfil; and Messrs. Schultz & Son, of London.

Kyrle Chatfield Hankinson, B.A., who served his clerkship with Mr. Henry Stopford Ram (of the firm of Messrs. Bannister, Williams & Ram), of London.

Robert Lewis Hitchings, who served his clerkship with Mr. John Pope, of Exeter; and Messrs. Taylor, Hoare & Box, of London.

Sidney Shea, who served his clerkship with Mr. William Henry Dees and Mr. Charles Robinson, both of London.

Frank Feusdale Smith, who served his clerkship with Mr. Alfred Taylor, of Sheffield.

Thomas Standring, who served his clerkship with Messrs. Dixon, Watts & Elkin, of London.

William Walford, who served his clerkship with Mr. Alfred Waterhouse, of Wolverhampton; and Mr. Charles John Howe, of London.

James Henry Welfare, who served his clerkship with Mr. Charles Butcher, of London.

Edward John Welman, who served his clerkship with Mr. Joseph Welman, of London.

Frederick Bullen Wyatt, who served his clerkship with Mr. William Alford, of Crewkerne.

The council of the Incorporated Law Society have accordingly given class certificates and awarded the following prizes of books:—

To Mr. Pritchard, the prize of the Honourable Society of Clement's Inn—value 10 guineas; and the Daniel Reardon prize—value about 25 guineas.

To Mr. Aldous, the prize of the Honourable Society of Clifford's Inn—value 10 guineas.

To Mr. Jones, the prize of the Honourable Society of New Inn—value 5 guineas.

To Mr. Carter, the John Mackrell prize—value about 12*l.* 10*s.*

The council have given class certificates to the candidates in the second and third classes.

On report of the Examination Committee, and
By Order of the Council,
E. W. Williamson,
Law Society's Hall, Secretary.
Chancery Lane, London: February.

## THE COUNTY COUNCILS ASSOCIATION.

The first annual general meeting of the Association of County Councils in England and Wales was held on February 25 at the Westminster Town Hall. The chair was taken by Mr. J. T. Hibbert, and there was a very large attendance. In replying to a resolution re-electing him president of the association, the Chairman remarked that, on the occasion of the previous meeting nine months before, there were twenty-nine county councils in association with them, whilst, at the present time, they had forty-four out of the fifty-six or fifty-seven councils in existence. He claimed that, since the county councils had been established, they had achieved great success, and had had very little friction with the Local Government Board, while the establishment of the councils had given new life to local government in the counties.

A discussion on the Electors' Registration (Acceleration) Bill was opened by Mr. Holton, and it was eventually agreed: 'That the Association of County Councils have heard with the deepest regret of the threatened withdrawal of the Registration (Acceleration) Bill, and urge upon the Government the necessity of passing such a measure. That, in the event of such bill being withdrawn, the date of the ensuing county council elections be postponed until the new registers are completed and provided for the use of the public. That a committee be appointed to wait on the President of the Local Government Board for the purpose of representing to him the views of the association, and of taking such further action as may be necessary, to consist of the President, Lord Monk Bretton, Sir John Dorington, M.P., Mr. G. W. Hastings, M.P., and Mr. Hobhouse, M.P.

The council proceeded to discuss questions referring to the maintenance of footpaths by the side of main roads in urban districts, and passed a resolution requesting that power should be given to county councils not only to create main roads, but also to dismain roads, wholly or in part, without the necessity of a provisional order, but with the assent of the Local Government Board.

A further resolution was then passed approving of a County Councillors' Disabilities Removal Bill; and

On the motion of Sir H. St. John Halford, seconded by Mr. A. Sperling, a resolution was also passed approving of Sir Henry Roscoe's Technical Instruction Bill.

Mr. Graham proposed a resolution expressing the desirability of legislation with the view to the settlement of one basis of assessment for all purposes, imperial, local, and parochial, and this was seconded by Sir H. St. John Halford and agreed to.

After discussing the question of delay in creating district councils, the meeting closed with a vote of thanks to the chairman.

## MR. MUNTON ON THE OUTLOOK FOR LAW STUDENTS.

Last Tuesday Mr. F. K. Munton delivered an interesting extempore address to the members of the Law Students' Debating Society. He contrasted the practice of the law at the present day with the system which obtained when he was a student himself, some thirty years ago, and pointed out that the proportion of solicitors to the number of inhabitants, about one in 2,500, had been maintained during all those years, though much of the work of a purely ministerial character, on which members of the profession then largely subsisted, had, and very properly, been swept away. The volume of real business, however, had kept pace with the advance of the country until the last few years, when a falling off commenced in the commercial and other important issues submitted to the public tribunals. Many causes had contributed to this, one of them being, he contended, from the Treasury action in not providing an adequate judicial staff—a state of things accentuated by difficulties of organisation and the objectionable circuit arrangements. Such great uncertainty existed as to tire business men into adjusting their disputes more speedily, though less satisfactorily, in a private way. The mere machinery of the law was providing much less work, and he believed that as time went on the bulk of the solicitors' labours would be confined to that which, after all, he ventured to think was the more agreeable part of their duties—that is to say, such work as fell to the *homme d'affaires* across the Channel as distinguished from that of the *avoué*. We had no separate equivalent in this country, the business being merged in the general avocation of a solicitor. It was well known that the number of trials in the High Court from one year's end to the other would not, if it were equally distributed, mean a single cause apiece for all the barristers and less than half a cause each for all the solicitors, so that, irrespective of the falling off of this class of business, the major portion of the work of solicitors must always be that of general advisers and diplomatists in the management of the affairs of their clients. To acquire the ability to perform this satisfactorily a man had to do much more than become learned in book law—he had to study his fellow-man, and to obtain that kind of knowledge which of all others was wanted to safely, securely, and dexterously attain the rights to which a client might be entitled. He was of opinion that many young men were wrecked in the early stage by disregarding the necessities of the position and overlooking the circumstance that tact was sometimes more valuable than all else put together. He did not undervalue close attention to the study of the law; on the contrary, he was glad to see the present stringency of the test in this respect, and there was no question that under the system now in force—that for honours especially—first-rate lawyers pure and simple were daily admitted to the profession. But even honours—of which he wished to speak gently, as he himself was

lucky enough to get a place in his day—counted for very little in the affairs of life—cultivation of business memory, carefulness of detail, caution when on delicate ground, careful listening to others to make sure of grasping the correct point, conciliatory firmness with an adversary, mixing with the world in various other pursuits—thus getting to know something of its ways—in short, the acquiring of a general knowledge of men and manners which went so far to make up the successful lawyer. He had come to the conclusion that the outlook showed that it was absolutely impossible for all the solicitors who were now admitted to find lucrative employment for their time, and that work was gradually becoming of such a character that people would do well to carefully consider the real aptitude of those they desired to send into the profession instead of merely seeking a place because the avocation was one that stood well in the eyes of the world. If a solicitor in good practice advertised for an admitted clerk he was inundated with answers, many of the candidates being so closely packed with law that it was difficult to unpack any of it in an emergency; but he believed that there was abundant work ready for many young men unfavourably situated if they would only bear in mind that, besides reading law, they should take every opportunity of storing up miscellaneous information, essential attributes to what was popularly known in the profession as a 'good all-round man.' Mr. Munton touched upon a number of other topics, and especially the advantages of debating societies.

A discussion ensued, in which several members of the society took part, and Mr. Munton was accorded a hearty vote of thanks.

## LAW STUDENTS SOCIETIES.

Manchester.—The seventh meeting of the session was held on Tuesday evening, Mr. H. T. Crofton, solicitor, in the chair. The following was the subject for debate: 'The owners of an hotel erected a stove in their kitchen, which, though only used in an ordinary way and protected in the rear by asbestos, rendered the wine cellar of the adjoining house unfit for ordinary and reasonable use. Was an injunction rightly granted to restrain them from using the stove?' (*Reinhardt* v. *Mentastie*, 58 Law J. Rep. Chanc. 787).—Mr. Gibbons opened in the affirmative, and was supported by Messrs. Simpson, Hardicker, and Watts.—Mr. Pott opposed, and was supported by Messrs. Risque and Foyster.—The question was ultimately decided in the affirmative by a majority of four.

Liverpool.—At a meeting of this association on Monday, February 23, a debate was held on the following subject for discussion: 'A., a builder, was employed to build a house under an agreement with a landowner, the agreement providing that C. & Co., a firm of ironfounders (selected by the landowner's architect), should do certain work on the premises for which the builders were to pay. C. & Co. employed their own workmen. B, one of the builder's workmen, was injured by the negligence of one of C. & Co.'s workmen. Can B., in an action, recover damages against C. & Co.?'—Mr. E. Lloyd opened in the affirmative, which was also supported by Messrs. F. H. Wilson, jun., H. Glover, F. Gittins, jun., F. Barnes, H. Macmaster, and H. Todd.—Mr. F. J. Priest opened in the negative, and was also supported by Mr. F. R. Martin.—The question was decided in the affirmative by a majority of six.

Home Cure for Deafness.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means: it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. De Vere & Co., Publishers, 22 Warwick Lane, London, E.C.—Advt.

## HONOURS AND APPOINTMENTS.

Mr. Walter Spyer (of the firm of Spyer & Son), of 53 New Broad Street, London, E.C., has been appointed a Commissioner to administer Oaths. Mr. Spyer was admitted in 1883.

Mr. Arthur Wright, B.A., LL.M., of Cambridge, has been appointed Deputy-Clerk of the Peace for the county. Mr. Wright was admitted in 1888.

Mr. Joseph Thornthwaite Jackson, B.A. Oxon (of the firm of Meek, Jackson & Jackson), of Devizes, has been appointed Town Clerk of Devizes, Clerk to the Urban Sanitary Authority, Clerk to the School Attendance Committee, and Clerk to the Committee of Visitors to the County Lunatic Asylum. Mr. Jackson was admitted in 1886.

Mr. Thomas Cousins, who recently retired from the office of Clerk to the Justices of the Borough of Portsmouth after twenty years' service, has been appointed a Magistrate of that borough in compliance with the unanimous memorial of the magistrates to the Lord Chancellor. Mr. Cousins was admitted in 1854.

Mr. Charles Frederick Johnson (of the firm of Johnson & Johnsons), Stockport, has been appointed Clerk to the Guardians and Superintendent Registrar of the Stockport Union, rendered vacant by the death of the late Mr. Francis Williams Johnson. Mr. C. F. Johnson was admitted in 1882.

Mr. Lawrence William English, of Norwich, has been appointed a Commissioner for Oaths. Mr. English was admitted in 1876.

Mr. Edward Sharman Giles, of Chester, has been appointed a Commissioner for Oaths. Mr. Giles was admitted in 1884.

Mr. James Deakin Yates, of Eccleshall, has been appointed a Commissioner for Oaths. Mr. Yates was admitted in 1884.

## NOTICES FOR THE WEEK.

### Rota of Registrars.

Monday, March 2.—Court of Appeal No. 2: Mr. Rolt. Mr. Justice Chitty: Mr. Pemberton. Mr. Justice North: Mr. Pugh. Mr. Justice Stirling: Mr. Godfrey. Mr. Justice Kekewich: Mr. Clowes. Mr. Justice Romer: Mr. Lavie.

Tuesday, March 3.—Court of Appeal No. 2: Mr. Farmer. Mr. Justice Chitty: Mr. Ward. Mr. Justice North: Mr. Beal. Mr. Justice Stirling: Mr. Leach. Mr. Justice Kekewich: Mr. Jackson. Mr. Justice Romer: Mr. Carrington.

Wednesday, March 4.—Court of Appeal No. 2: Mr. Rolt. Mr. Justice Chitty: Mr. Pemberton. Mr. Justice North: Mr. Pugh. Mr. Justice Stirling: Mr. Godfrey. Mr. Justice Kekewich: Mr. Clowes. Mr. Justice Romer: Mr. Lavie.

Thursday, March 5.—Court of Appeal No. 2: Mr. Farmer. Mr. Justice Chitty: Mr. Ward. Mr. Justice North: Mr. Beal. Mr. Justice Stirling: Mr. Leach. Mr. Justice Kekewich: Mr. Jackson. Mr. Justice Romer: Mr. Carrington.

Friday, March 6.—Court of Appeal No. 2: Mr. Rolt. Mr. Justice Chitty: Mr. Pemberton. Mr. Justice North: Mr. Pugh. Mr. Justice Stirling: Mr. Godfrey. Mr. Justice Kekewich: Mr. Clowes. Mr. Justice Romer: Mr. Lavie.

Saturday, March 7.—Court of Appeal No. 2: Mr. Farmer. Mr. Justice Chitty: Mr. Ward. Mr. Justice North: Mr. Beal. Mr. Justice Stirling: Mr. Leach. Mr. Justice Kekewich: Mr. Jackson. Mr. Justice Romer: Mr. Carrington.

## CALENDAR OF THE COUNTY COURTS.

FROM MARCH 2 TO MARCH 7.

| No. of Circuit | His Honour | March 2 | March 3 | March 4 | March 5 | March 6 | March 7 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Altrincham | — | — | Birkenhead | — |
| 8 | Judge Heywood | — | Manchester | Manchester | Manchester | Manchester | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | Middlesbrough | York | Tadcaster | Easingwold | Knaresborough | Ripon |
| 19 | Judge Barber | — | Derby | Derby | Chesterfield | Chesterfield | — |
| 26 | Judge Jordan | Stoke | Newcastle | Lichfield | Stafford | Leek | Cheadle |
| 47 | Judge Powell | — | Lambeth | Woolwich | Lambeth | Greenwich | — |
| 54 | Judge Metcalfe | Bristol | Bristol | Bristol | Bristol | Bristol | — |
| 55 | Judge Machonochie | Shaftesbury | Wincanton | Crewkerne | Yeovil | Salisbury | — |
| 58 | Judge Edge | — | Exeter | Exeter | Exeter | Newton Abbot | Newton Abbot |

# Court of Appeal Register.

## APPEAL COURT I.

Before the LORD CHANCELLOR, the MASTER OF THE ROLLS, and FRY, L.J.

THURSDAY, FEBRUARY 19.

*Elmore & Scott* v. *Owners of Steamship Dione* (appeal of plaintiffs from judgment of Butt, J.).—Dismissed.

*Owners of Ship Ovington* v. *Owners of ss. Queen Victoria and freight* (appeal of plaintiffs from judgment of Butt, J.).—Dismissed.

FRIDAY, FEBRUARY 20.

*In re Kennedy, ex parte Moss* (application of Mark Moss, a creditor, for payment of costs of an abandoned appeal; notice of appeal, dated February 3, served February 6; not set down).—Refused.

*In re Cuninghame, ex parte Wylie and another* (appeal of Messrs. Wylie and another (creditors) from Mr. Registrar Giffard, dated February 10, refusing to rescind receiving order, dated January 26).—Dismissed.

*In re J. Hodgkins, ex parte J. Hodgkins* (appeal of debtor from order of Mr. Registrar Linklater, dated February 6, adjourning the hearing of petition until another person added as joint petitioner).—Dismissed.

*North-Eastern Railway Company* v. *Mayor, &c., of Kingston-upon-Hull* (appeal of plaintiffs from judgment of Day, J., and Lawrance, J., dated October 31, on special case).—Dismissed.

*Fulton* v. *Pipe* (appeal of plaintiff from judgment of Lopes, L.J., dated July 30, at trial without a jury in Middlesex).—Dismissed.

SATURDAY, FEBRUARY 21.

No sitting.

Before THE MASTER OF THE ROLLS and FRY, L.J.

MONDAY, FEBRUARY 23.

*Drew and another* v. *Lewis* (appeal of Martin from order of Wills, J., and Wright, J., dated January 27, affirming refusal to rescind charging order absolute, dated August 9).—Dismissed.

*Deramore Steamship Company (Lim.)* v. *Wheatley & Co.* (appeal of defendants from order of Wills, J., and Williams, J., dated February 9, refusing to stay proceedings under section 4 of Arbitration Act, 1889).—Dismissed.

*Ward* v. *Proctor* (appeal of plaintiff from order of Cave, J., and Williams, J., dated January 30, refusing liberty to sign final judgment and giving unconditional leave to defend).—Dismissed.

*Brandon* v. *M'Henry* (appeal of plaintiffs from part of order of Wills, J., and Wright, J., dated January 26, setting aside execution under judgment entered July 15, 1885).—Part heard.

Before THE MASTER OF THE ROLLS, BOWEN, L.J., and FRY, L.J.

TUESDAY, FEBRUARY 24.

*Wilson, Sons & Co.* v. *Morgan* (application of defendant for judgment or new trial on application from verdict and judgment at trial before Day, J., with a jury in Middlesex).—Struck out.

*Paine* v. *Chisholm* (application of plaintiff for judgment or new trial on application from verdict and judgment at trial before Stephen, J., with a special jury in Middlesex).—Dismissed.

WEDNESDAY, FEBRUARY 25.

*Pinto and another* v. *Badman* (application of defendants for judgment or new trial on appeal from verdict and judgment on counterclaim at trial before Day, J., with a special jury in Middlesex, and motion by order).—Part heard.

## APPEAL COURT II.

Before LINDLEY, L.J., BOWEN, L.J., and KAY, L.J.

THURSDAY, FEBRUARY 19.

*Fox* v. *A. J. White (Lim.)* (application of defendants for new trial on appeal from verdict and judgment at trial before Lawrance, J., and special jury at Leeds) —Application refused.

*Hargraves* v. *Walker* (application of defendant for judgment or new trial on appeal from verdict and judgment at trial before Lawrance, J., and common jury at Leeds). —Application refused.

*Woodhall* v. *Bamber* (application of defendant for judgment or new trial on appeal from verdict and judgment at trial before Wills, J., with a special jury at Leeds).—Application refused.

FRIDAY, FEBRUARY 20.

*Devaney* v. *Davies* (application of defendants for judgment or new trial on appeal from verdict and judgment at trial before Wills, J., at Liverpool).—Application refused.

*Lorck* v. *Keun and others* (application of defendant L. Cloete for judgment or new trial on appeal from verdict and judgment at trial before Mathew, J., and a special jury in Middlesex).—Part heard.

*Lee* v. *Rumilly* (application of defendant for judgment or new trial on appeal from verdict and judgment at trial before Grantham, J. (jury discharged), in Middlesex). —Application refused.

SATURDAY, FEBRUARY 21.

*Lorck* v. *Keun and others.*—Part heard.

MONDAY, FEBRUARY 23.

*Lorck* v. *Keun and others.*—*Cur. adv. vult.*

Before LINDLEY, L.J., LOPES, L.J., and KAY, L.J.

TUESDAY, FEBRUARY 24.

*Esilman* v. *Hassall* (application of defendant for judgment or new trial on appeal from verdict and judgment at trial before Wills, J., at Salford).—Dismissed.

*Coutts & Co.* v. *The Irish Exhibition in London* (appeal of plaintiffs from judgment of. Kekewich, J., dated October 28, 1890).—Part heard.

Before LINDLEY, L.J., and KAY, L.J.,

WEDNESDAY, FEBRUARY 25.

*Gibbens* v. *Kenrick* (apeal of defendants from order of Kekewich, J., dated February 7, restraining defendants from acting on resolution to wind up company).—Allowed by consent on terms.

*Daniel* v. *Ferguson* (appeal of defendant from order of Stirling, J., dated December 19, restraining continuance of wall interfering with access of light).—Dismissed.

*Beecham* v. *Thompson* (appeal of defendant from refusal of Chitty, J., dated February 6, for trial at Durham assizes with a jury).—Dismissed on terms.

*Cox* v. *Bennett* (appeal of defendant, L. Midwinter, from order of Kekewich, J., dated January 21, for retention of costs by trustees of real estate).—*Cur. adv. vult.*

BARRISTERS AND SOLICITORS.—Barristers are supposed to be more learned in the law than solicitors, and, as a rule, they are so; still there are exceptions, as is shown by the recent examinations for the LL.B. degree at the London University. Two solicitors head the honours list—viz. Mr. E. Ivens Watson, of Coleman Street, and Mr. Fred. W. Atkinson, of Finsbury Circus. As there were no fewer than forty candidates for the degree, which is, as is well known, the severest examination test that lawyers can undergo, the solicitors' branch of the profession have no reason to be ashamed of their candidates.

TRUST INVESTMENT BILL.—A bill to amend the Trust Investment Act, 1889, was issued recently. The object of this bill is to remove the restriction which at present exists under that Act, forbidding the investment of trust money in corporation stocks where the population is under 50,000. The bill, which only extends to England and Wales, proposes to enact that, 'notwithstanding anything to the contrary in the Trust Investment Act, 1889, it shall be lawful for a trustee, unless expressly forbidden by the instrument (if any) creating the trust, to invest any trust funds in his hands in nominal, inscribed, or debenture stock, or in mortgages, debentures, or other securities issued or to be issued by the corporation of any municipal borough, whether, according to the returns of the last census prior to the date of investment, the population exceeds 50,000 or not.'

RENTS COLLECTED AND DISTRAINTS LEVIED TO RECOVER SAME, by Messrs. HENRY C. WOOD (Surveyor to the Parish of Tooting) and HENRY KIRBY (Wood & Kirby), Certificated Brokers, 1 Great James Street, Bedford Row, W.C. No charge made to Landlords if Rent over 20*l.* Troublesome tenants got rid of. Possession also taken under Bills of Sale, Mortgages, &c. Bailiffs to the Parish of St. Dunstan in the West and City of London (Farringdon Ward). Money paid over same day received. Bankers: City Bank, Holborn Viaduct. References, if desired, to clients of many years' standing. Prompt and personal attention given.—ADVT.

THE MUZZLING ORDER IN MIDDLESEX.—The reports of the veterinary inspector of the county of Middlesex for the quarter ending December last show that there were seized in the county in the preceding three months under the Rabies Order, 518 dogs, 70 of which were claimed and the remainder slaughtered. These figures compare with 38, 2 and 36 respectively in the preceding quarters, and 903, 151 and 683 in the corresponding quarters of last year. The total number of dogs seized in Middlesex since September, 1889, is 3,806, of which no less than 3,093 were destroyed. During the quarter just ended no case of rabies was reported, while in the corresponding quarter of last year there were 13. Since the passing of the order in September, 1889, 72 cases of rabies occurred. The cost of enforcing the order during the last quarter was 178*l.* 17*s.* There were 177 persons prosecuted for disobeying the order, and the total fines and costs imposed amounted to 97*l.* 7*s.*

INCOME-TAX ASSESSORS.—Mr. Jackson, financial secretary of the Treasury, has introduced a bill to regulate the remuneration payable to clerks to commissioners of income-tax and inhabited house duties, and to assessors. The bill proposes to abolish the present method of payment by way of 'poundage.' In lieu of poundage, the commissioners' clerk is to receive the same sum as the amount of his allowances by way of poundage for the year which commenced on April 6 last. The assessor is to receive—(1) in respect of assessments of the duties under Schedules D and E of the Income-tax Acts the same sum as the amount of his allowance for the year just mentioned; and (2) in any year in which he acts as assessor under Schedules A and B, he is to receive the same sum as the amount of the allowance to the assessor appointed for the year which commenced on April 6, 1888, in respect of the assessments for those duties. The bill is not intended to have any effect in the case of an assessor appointed to act in a division or district where the commissioners of income-tax and inhabited house duties fix the amount of his remuneration, under section 25 of the Inland Revenue Act of 1885, which enables them to do so where they think that the ordinary amount would exceed a fair remuneration for his trouble.

## BIRTHS.

On Feb. 16, at Midge Hill, Tottenham Green, N., the wife of Herbert Nield, Solicitor, of a son.

On Feb. 20, at the Elms, Bushey, Watford, the wife of Gurney Coombs, Solicitor, of a son.

## MARRIAGES.

On Feb. 20, at Geraldine, New Zealand, Hugh Wastel Postlethwaite, Barrister-at-Law, Inner Temple, second son of William Postlethwaite, Esq., of Raukapuka, Canterbury, N.Z., late of the Oaks, Cumberland, to Mildred Evill, third surviving daughter of B. Fox Overbury, of Palace Court Mansions, Bayswater, and First Avenue, Brighton.

On Feb. 21, at Mount Street, Grosvenor Square, Bernard Abrahams, Solicitor, of 22 Great Marlborough Street, W., and Queen Anne's Gate, to Madge Mildred, widow of the late Laurence Grey Buist, of the Hermitage, Porchester Gate, Hyde Park.

## DEATHS.

On Feb. 8, at Manor Cottage, Walton-on-Thames, Elsie, the beloved wife of Edward Manson, Barrister-at-Law, aged 42.

On Feb. 11, at Cheltenham, General G. Cliffe Hatch, C.S.I., formerly Judge-Advocate-General in India, aged 71.

On Feb. 15, at Belle Vue House, Lindley, Huddersfield, Elizabeth, the beloved wife of John Haigh, Solicitor.

On Feb. 15, at Holmlea, Ryde, I.W., Arthur Chichester Crookshank, late chief magistrate of Sarawak, Borneo, son of the late Colonel Chichester Crookshank, K.H. (33rd Duke's Own Regiment), and grandson of the late Right Honourable Sir Alexander Crookshank, Chief Justice of Common Pleas, Ireland.

On Feb. 19, at 33 Steele's Road, Haverstock Hill, Thomas Freeman Morse, Barrister-at-Law, aged 69.

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# The Law Journal.

*SATURDAY, MARCH* 7, 1891.


## 'OBITER DICTA.'

THE sittings of Appeal Court I. were suspended on Friday and Saturday last. This short holiday would appear to have been warranted by the present state of the business of the Court. Out of a list of forty-three appeals from the Queen's Bench and Admiralty Divisions at the beginning of the sittings, some thirty have already been disposed of, while the New Trial Paper, which has been taken in the two divisions of the Court in alternate weeks, is almost finished.

THE article which appeared in the *Times* last week advocating the appointment of an additional judge of the Chancery Division did not overstate the pressing necessity for such an appointment. We are quite unable to agree, however, with the alternative remedy suggested in the article. The writer appears to think that a few changes in the Queen's Bench Division, similar to those contained in Mr. Finlay's original bill, would set free one of the judges of that Division for the trial of causes entered in the Chancery Division, many of which, it is pointed out, are virtually common law actions. We cannot share this view. Unless the present circuit system is to be done away with, the bench of the Queen's Bench Division is by no means overmanned, as is clearly shown by the fact that at the present time there are only three judges of that Division in town, and that for the remainder of the sittings—a period of nearly three weeks—it is very improbable that there will ever be more than four judges available. Nothing short of the total abolition of the Divisional Courts would enable the Queen's Bench Division to spare even one of its judges.

THE Government Penal Servitude Bill, which we noticed shortly last week (*ante*, p. 145), is prefixed by a very full explanatory memorandum which is almost as long as the bill itself. The main object of the bill is to reduce the minimum term of penal servitude from five years, at which it now stands, fixed by the Penal Servitude Act, 1864 (impliedly repealing many scores of enactments in the Criminal Law Consolidation Acts of 1861), to three years, the term originally fixed by the Criminal Law Consolidation Acts. With this object it is proposed that 'where under any enactment in force when this section comes into operation a Court has power to award a sentence of penal servitude, the sentence may, at the discretion of the Court, be for any period not less than three years, and not exceeding either five years or any greater period authorised by the enactment.' We can find no words in the bill providing that this enactment is to be retrospective. Will it by its own force be retrospective or not—that is, will it have application whether the crime in respect of which the sentence of penal servitude is to be awarded was committed before the passing of the bill or not? Grammatically, no doubt, it is retrospective, but we have some doubt whether the rule 'Nova constitutio futuris legem imponere debet, non præteritis' would not apply so as to avoid the retrospective operation. It might be suggested that, as the change was for the benefit of a sentenced prisoner, he would not be likely to try to bring this rule into effect. But we are not so sure of that. There is also a rule to the effect that, where less than a minimum sentence is awarded, the prisoner is entitled to an acquittal; and we think it would be desirable to provide expressly that the bill is to be retrospective in the fullest sense. Of the other amendments proposed by the bill, which are all of a comparatively minor character, the most important is that of clause 8, by which it is proposed to extend the power of photographing so as to enable photographs to be taken of prisoners *before conviction*, and also to provide for the measuring of prisoners. These objects are to be attained by Home Office regulations to be made for that purpose, but there is no provision in the bill for the regulations being laid before Parliament. The present law as to photographing prisoners, which only applies *after conviction*, is to be found in section 6 of the Prevention of Crime Act, 1871 (34 & 35 Vict. c. 112).

MR. PEEK'S article on the 'Eclipse of Justice,' in the current number of the *Contemporury Review*, will well repay a careful study. The writer argues with much force that, from the too light sentences passed in some cases, and the too heavy sentences passed in others, confidence in the administration of justice has become to a very serious extent impaired, and he especially dwells on the practical mischief which, as he maintains, has followed from a succession of exceptionally light sentences passed by Mr. Hopwood as Recorder of Liverpool. The policy of our criminal law is to invest the judges with an absolute and uncontrolled discretion in the matter of sentences, and there are many enactments by which a sentence may range between penal servitude for life and a day's imprisonment, the crime of manslaughter, which indeed may be punished by a nominal fine, affording a conspicuous instance of the confidence which the Legislature reposes in the Judicature. Mr. Peek does not propose to abolish the judicial discretion; all he wishes is that some distinct principles should be laid down to guide it, so that some of the most glaring inequalities of the present system may cease to exist. The establishment of a Court of Criminal Appeal, and the codification of the criminal law, which was set on foot under such happy auspices by Mr. Justice Stephen's bill so long ago as 1878, are also strenuously advocated. As to the first, we think that a Court merely to revise sentences might very easily be established. As to the second, we think that it should be preceded by a consolidation of the Criminal Procedure Acts, as distinguished from the Criminal Law Consolidation Acts, which latter are of a comparatively modern date, having been passed in 1861.

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THE American Copyright Bill has at last passed, and those concerned in the production of literature in the English tongue will now be carefully considering what they will get by it. As to the term of copyright, this is at present a little less than that obtainable on this side of the Atlantic, being only for twenty-eight years from registration, with a power of extension for fourteen years at the end of the twenty-eight; whereas the English term is for forty-two years from publication or till seven years from the death of the author, whichever shall be the longer. The Royal Commission of 1878 and Lord Monkswell in his consolidating and amending bill now before Parliament would substitute for this uncertain period the life of the author and thirty years after his death, being the same as that which obtains in Germany, though less by twenty years than that which obtains in France, Russia, Spain, and Portugal. Perhaps it is not too much to expect that before many years are over one and the same term of copyright may be adopted throughout the civilised world. The Royal Commissioners of 1878, in recommending the term of life and thirty years, recommended also that, 'in the event of an international agreement being concluded by which a common term is fixed for all countries, power should be given to Her Majesty to adopt by Order in Council, in lieu of such term of life and thirty years, the term fixed by such international arrangement.'

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MR. T. H. BOLTON'S important bill to amend the Conveyancing Act, on which we commented fully last week (*ante*, p. 150), was read a second time last Wednesday, in the teeth of the Attorney-General's opposition, but, no doubt, profiting greatly by the support of Sir H. James and Sir H. Davey, by a majority of 159 to 141. The bill, as was admitted by most of its advocates, needs considerable amendment, but in its main principle it is quite just and fair. In one particular, moreover, it is as much to the advantage of landlords as of tenants. Where a tenant falls suddenly into difficulties, and his landlord is abroad, under the present law the underletting which would save the landlord his rent is impossible, for no person would become an undertenant at the risk of forfeiture. Perhaps the chief faults of the bill are its failure to provide for a premium to the landlord in cases where it may be justly due, its giving to the undertenant the tenant's unexpired interest instead of his own in case of the landlord proceeding successfully for a forfeiture, and its treating the breach of covenant in mining leases for inspection of books with too great leniency. But these and other faults can be easily removed if only the bill be approached in a friendly spirit. One substantial addition would be a great advantage, and that is a reshaping of the law of relief against forfeiture for non-payment of rent, which Lord Cairns so unhappily omitted from the Conveyancing Act; and, inasmuch as this law at present is too hard upon landlords, and would probably be amended in their favour, the landlord interest would do well to come forward with a set of clauses to amend it. We incline, on the whole, to think that the bill will ultimately pass, and that during the present session.

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WE expressed a doubt some little time ago (*ante*, p. 113) whether Mr. Justice Kekewich's decision in *The Whitwood Chemical Company* v. *Hardman* could be supported, and our hesitation in accepting it as good equity has been justified by its reversal in the Court of Appeal on March 2. The decision was supposed to be based upon the celebrated decision in *Lumley* v. *Wagner*, 21 Law J. Rep. Chanc. 898; 1 De G. M. & G. 604, and that of Vice-Chancellor Malins in *Montague* v. *Flockton*, 42 Law J. Rep. Chanc. 677; L. R. 16 Eq. 189. But in the case under comment, although the defendant had contracted to devote his whole time to his employers' business, he had not entered into a negative covenant—he had not said that he would not carry on any other business. The case, therefore, differed on a material point from *Lumley* v. *Wagner*, in which, as we pointed out, Mademoiselle Wagner had expressly agreed not to use her talents elsewhere without the plaintiff's consent. The case, however, before Mr. Justice Kekewich resembled *Montague* v. *Flockton* in this respect (though it differed widely in other respects), for Flockton's agreement contained no negative covenant restricting him from performing elsewhere. The Court of Appeal have now said, as Lord Justice Fry said lately, that the doctrine of *Lumley* v. *Wagner* is not to be extended, and that *Montague* v. *Flockton* cannot be supported. The decision is quite what we expected, and the case is not likely to be carried to a higher tribunal.

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IN one sense, no doubt, a clergyman is a public official; he is 'the parson'—*i.e.* the person whom the State recognises as having the cure of souls of a par-

ticular locality. In most cases, however, the endowment of the living was created, and often augmented, by the generosity of private donors, and, as Professor Freeman has shown, the endowment of any particular church was a gift to that church, and not to the Church of England at large. When a clergyman becomes chaplain to a workhouse he is more nearly becoming a State-paid official than the rector or vicar of an ordinary parish. But Mr. Justice Cave, in *In re Mirams*, Notes of Cases, p. 36, has held that even such a chaplain is not a public official, and, therefore, he can mortgage his salary without infringing on the rule of public policy which forbids an officer of the State to do so. Nor does he come within the provisions of the statute 13 Eliz. c. 20, which provides 'that all chargings of such benefices with cure hereafter with any profit out of the same to be yielded or taken, hereafter to be made, other than rents to be reserved upon leases hereafter to be made according to the meaning of this Act, shall be utterly void.' In a note on this Act in Chitty's 'Statutes' (4th edit. vol. ii. p. 616), it is stated that, though this statute was repealed altogether, it has been revived by a later Act, so that 'the invalidating of all charges on benefices is still in full force.' A workhouse chaplaincy is not a benefice with cure, therefore it is not within that Act. The chaplain in question, after charging his salary, had become bankrupt, and the salary, subject to the charge, was therefore vested in the official receiver as his trustee in bankruptcy under section 44 of the Bankruptcy Act, 1883. But even what remains after the satisfaction of the charge cannot be divided as of right amongst the creditors in the bankruptcy of the chaplain, as, under section 53 of the last-mentioned Act, 'the Court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of the salary . . . or of any part thereof to the trustee to be applied by him in such manner as the Court may direct.'

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LORD HERSCHELL has again introduced the Sale of Goods Bill. This important measure first saw the light in 1888. In 1889 it was read a second time and referred to the House of Lords' standing committee on law, but pressure of other business prevented its being proceeded with. In 1890 it does not appear to have been reintroduced. The object and scope of the bill may be fully gathered from the recently published treatise of his Honour Judge Chalmers on the sale of goods, 'the large type propositions' of which, so we are told in the preface, are taken almost *verbatim* from the bill. With the exception of section 17 of the Statute of Frauds, the legislative enactments relating to the sale of goods are of very little importance, and the bill is mainly a reproduction of the case law as to the sale of goods framed in a similar manner to the reproduction of the law of bills of exchange which was so successfully accomplished by the Bills of Exchange Act, 1882, and to the reproduction of the law of partnership, which in an equally neat manner has been placed upon the Statute-book under the name of the Partnership Act, 1890. The codification of mercantile law, if Lord Herschell succeeds in adding a Sale of Goods Act to the Bills of Exchange Act, the Factors Act, and the Partnership Act, will be fast advancing towards completion.

A MARKED feature of House of Commons practice is the increase in the number of names of members, not unfrequently of opposite sides in politics, who, by 'backing' bills to which they are specially favourable, no doubt greatly facilitate the passing of such bills. There is no corresponding practice in the House of Lords. Again, if the bill should succeed in passing the House of Lords it will not, when introduced in the House of Commons, have the advantage of being backed specially by any member of that House. It will be marked simply as 'Brought from the Lords.' We would venture to suggest that a change in the practice of both Houses might be made, with the view of allowing all House of Lords' bills to be 'backed' as in the House of Commons, and all such bills, when brought down from the Lords, to have an advantage equal to that which they would have had if originally introduced in the Commons.

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IN the recent case of *In re Evans, ex parte Evans*, 60 Law J. Rep. Q. B. 143, the Court of Appeal had to decide whether the London Bankruptcy Court had jurisdiction to make an order under section 125 of the Bankruptcy Act, 1883, for the administration of the estate of a deceased debtor, who had resided for more than six months prior to his death in Africa, where he had carried on his business and where he died. It was contended that such an order could only be made in the Chancery Division, upon the ground that 'Court' is defined in section 125, 'unless the context otherwise requires,' as 'the Court within the jurisdiction of which the debtor resided or carried on business for the greater part of the six months immediately prior to his decease.' The Court of Appeal, however, declined to adopt this view, and held that the Bankruptcy Court had jurisdiction to make the order by reason of section 95, which provides that, if the debtor against whom a bankruptcy petition is presented is not resident in England, the petition is to be presented to the High Court.

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THE Stamp Act, 1870, amongst other definitions, defines 'settlement' as any instrument whereby 'any definite and certain amount of stock' is settled, and makes it chargeable with an *ad valorem* duty of 5*s.* per cent. In *Onslow* v. *The Commissioners of Inland Revenue*, 60 Law J. Rep. Q. B. 138, by marriage settlement, the wife assigned reversionary and, in certain events, defeasible interests in certain specified amounts of stock standing in the names of prior trustees with power to vary investment; and the question raised on a case stated by the commissioners was whether the settlement, so far as it related to these funds, was chargeable with the *ad valorem* duty. It was admitted that the duty applied to reversionary interests, but not, it was contended, to contingent or defeasible interests. The words 'definite' and 'certain,' it was argued, are not synonymous terms. The word 'definite' means something which can be ascertained by description, and the word 'certain' means sure. The Court of Appeal, affirming the Queen's Bench Division, held that the *ad valorem* duty was payable. On the construction of the words Lord Justice Bowen, whose judgment is a model of brevity, says that these words 'are terms applied, not to the interest or the nature of the interest, but to the amount of the stock, and that the amount of the

stock does not become uncertain because the chance of getting the stock may be uncertain.' The point does not seem to have been previously raised.

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THE indictment in *Regina* v. *Hall*, in which the defendant, an overseer, was charged with wilfully omitting voters' names from the electoral lists, and with the wilful insertion of unqualified persons' names in the same lists, has been quashed by Mr. Justice Charles, on the ground that the offences charged were statutory offences having a statutory penalty attached to them, so as to exclude the remedy by indictment. The question turns upon the construction to be given to a series of enactments, of which section 76 of the Reform Act, 1832, and sections 51 and 97 of the Parliamentary Registration Act, 1843, are the most important. By section 76 of the Reform Act, 1832, 'if any overseer shall wilfully contravene or disobey the provisions of that Act with respect to any matter or thing which such overseer is required to do, he shall for such his offence be liable to be sued for the penal sum of 500*l.*, and the jury before whom such action shall be tried may find their verdict for the full sum of 500*l.*, or for any less sum, provided that no such action shall be brought except by an elector or candidate or member actually returned or other party aggrieved.' This section is still unrepealed, though the sections to which it mainly applies are repealed by the Act of 1843, with which, it is presumed, it must be read. Then, by section 51 of the Act of 1843, revising barristers have power to fine overseers for neglect of duty, and, by section 97 of the same Act, 'every overseer required by this Act to do any matter or thing shall, for every wilful misfeasance or wilful act of commission or omission contrary to this Act, forfeit to any party aggrieved the penal sum of 100*l.* or such less sum as the jury consider just: provided always that nothing herein contained shall be construed to supersede *any remedy*, or action against *any returning officer*' [which officer is one of those against whom the remedy by penal action is given] 'according to any law now in force.' We have no doubt that the judgment is correct. As to whether it is desirable on public grounds that the remedy by indictment should be called into existence, we incline to think with the learned judge that no such change ought to be made. The liability to fine by the revising barrister and the liability to penal action appear to us to be quite sufficient.

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## 'LAW JOURNAL REPORTS' FOR MARCH.

IN the March number the work of the Chancery Division is represented by sixteen cases (pp. 105–176), of which two were in the House of Lords and seven in the Court of Appeal; the Queen's Bench Division by nine cases, comprising two House of Lords and four Appeal cases; whilst the Probate, Divorce, and Admiralty Division contribute six cases, of which two were in the Court of Appeal. There were also five Magistrates' Cases, of which two were heard by the judges of the Appeal Court.

In the Chancery Division, the House of Lords, in *Vickers, Sons & Co.* v. *Siddell*, affirming the Court of Appeal and Mr. Justice Kekewich, held that the provisions as to the form of a specification contained in section 5, subsection 5, of the Patents Act, 1883, are discretionary only, and have not the effect of rendering a patent void when the specification does not 'end with a distinct statement of the invention claimed.' *In re Langham and the Langham Hotel Company* decides that where an heir-presumptive of an estate in fee agreed to sell his interest free from incumbrances, the succession duty ought to be paid by the purchaser. In *In re Patrick* it was held that a voluntary settlement by which certain debts, including money due on bills of sale, were assigned to trustees was a complete assignment within the principle of *Kekewich* v. *Manning*, 21 Law J. Rep. Chanc. 577, though no notice was given to the debtors and no express assignment made of the bills of sale or the chattels comprised therein. *In re Pyle Works* established the validity of a mortgage by way of indemnity in favour of directors upon the uncalled capital of a company in pursuance of a power contained in the memorandum and articles. *In re M'Gowan* settled a question arising under the Solicitors' Remuneration Act, 1881, and rule 11, part 1, schedule 1, of the General Order under that Act. In *Williamson* v. *Hine* the procuring of charters and freights was held to be one of the ordinary duties incumbent on the managing owner of a ship, for which he is not entitled to retain as against the ship commissions on the charters or freights procured. In *The Attorney-General* v. *Morgan*, the famous gold-mining case, the Court of Appeal defined, on January 21, the scope of 1 Wm. & Mary, c. 30, and 5 Wm. & Mary, c. 6, with respect to the discovery and working of gold and silver in mines. The House of Lords, in *The Colonial Bank* v. *Cady & Williams*; *The London Chartered Bank* v. *Cady & Williams*, applied the principles of English law in adjudicating against the validity of the transfer by a broker of shares in an American company where such transfer would have been good by American law. In *In re Lashmar* it was held that a bare trustee for an illegitimate son of a remainder in fee vested in the testator, which fell into possession after that son's death, was not entitled to call for a conveyance of the legal estate. According to *Barnett* v. *King* a covenant for the payment of a sum of money out of the covenantor's estate within six months after his death creates a debt provable in bankruptcy, and any action upon such covenant is barred by bankruptcy proceedings in respect of the covenantor's estate. *In re Whiteley and Roberts's Arbitration* decides that an arbitrator's admission that his award was improperly obtained must be made on oath to the Court in order to be made evidence for impeaching the award. *The Liverpool and Manchester Aërated Bread and Café Company* v. *Firth* establishes that on application for discovery against several defendants who have severed in their defences and appeared by different solicitors, the plaintiff must pay into Court separate sums of 5*l.* in respect of each defendant. In *Bellamy* v. *Wells* (the Pelican Club case) an injunction was granted in favour of the freeholders, lessees, and tenants of a house against the proprietors of a club to restrain a nuisance caused by cabs and carriages and the assembling of crowds between midnight and 7 A.M. In *Makins* v. *Percy Ibotson & Sons* a receiver and manager of a company was appointed on the motion of the owner of debentures charging all the present and future property of the company including uncalled capital. In *Bellamy* v. *Debenham* the question was involved of a contract constituted by letters and the repudiation of the contract by the intending purchaser.

*In re Foster; Lloyd* v. *Carr* was an interesting case laying down the principles of apportionment of loss applicable between a tenant-for-life and remainderman arising from a deficiency of capital.

In the Queen's Bench Division, in *Bell-Cox* v. *Hakes*, the House of Lords held that an order made upon a writ of *habeas corpus* to discharge from custody a prisoner attached under a writ *de contumace capiendo* is not a judgment in a criminal cause or matter within the Judicature Act, 1873, s. 47, and a majority of five to two of their lordships also held that, notwithstanding section 17 of the same Act, no appeal lies from such an order of discharge. In *The Darlington Wagon and Engineering Company* v. *Harding* the effect was considered of sections 14 and 15 of the Arbitration Act, 1889, when not only an action but other matters in difference were referred. In *Cox* v. *Ambrose*, under section 12 of the Municipal Corporations Act, 1882, a candidate in a municipal election was disqualified because he was a member of a firm interested in continuing contracts with the corporation, although, before offering himself as a candidate, he had dissolved partnership and assigned his interest in the contracts to the other partner. In *The Lancashire and Yorkshire Railway Company* v. *The Assessment Committee of the Bolton Union* the House of Lords decided that where, under section 161 of the Public Health Act, 1875, a rural sanitary authority was invested with the powers of an urban sanitary authority, the order did not affect the conditions as to rating applicable under sections 207 to 211, and that a railway company was liable to be assessed to the whole and not to one-quarter only of the net value of its land. According to *In re Langlois and Biden*, on taxation as between solicitor and client of the costs of a County Court action, in which the amount claimed exceeded, but that recovered was less than 10*l.*, the trustee has a discretion to allow costs on the higher scale. In *Smith, Hill & Co.* v. *Pyman, Bell & Co.* the charterers of a ship which was lost by an excepted peril were held liable for advance freight under a charter-party containing the following clause: 'One third freight, if required, to be advanced, less 3 per cent. for interest and insurance.' The Railway and Canal Commission Court in *Ford & Co.* v. *The London and South-Western Railway Company* decided a question of undue preference as between the railway company and competing carriers. In *Onslow* v. *The Commissioners of Inland Revenue* it was held that a settlement of contingent and defeasible interests in certain specified amounts of stock vested in trustees with a power to vary investments was chargeable with an *ad valorem* duty under the Stamp Act, 1870, section 3, schedule, as being a settlement 'whereby any definite and certain amount of stock is settled.' *In re R. M. Evans* decides that the London Court of Bankruptcy has jurisdiction to make an order for the administration of the estate of a domiciled Englishman resident abroad for more than six months immediately prior to his decease.

In the Probate, Divorce and Admiralty Division, in *Redfern* v. *Redfern & Williams*, discovery was refused against a litigant in a divorce suit to prove adultery, and a doubt was expressed whether or not, in accordance with the Chancery practice, an infant litigant in a divorce suit is exempt from discovery. In *Swift* v. *Swift*, evidence was held to be admissible of the conduct of a husband or wife against whom a decree of restitution of conjugal rights had been pronounced in an application for an allowance under the Matrimonial Causes Act, 1884, s. 3. *In the Goods of J. C. Crawford* settled questions arising from a testamentary appointment in England and a subsequent will reciting the appointment in New Zealand. In the case of *The Goods of Timothy Evans*, the president appointed the receiver in a Chancery action to be administrator *pendente lite* in a probate action relating to the same estate. In *Bethuen* v. *Bethuen* a wife whose health had been impaired by the habitual insults and studied unkindness of her husband obtained a decree *nisi*, although the respondent had committed no act of physical violence. *Beauclerk* v. *Beauclerk* was a case of unreasonable delay in the presentation of a petition, disentitling a wife to a divorce.

In the Magistrates' Cases *The Merthyr Tydfil Local Board of Health (appellants) and The Assessment Committee of Merthyr Tydfil Union* gives an exposition of the principles applicable under a local Act for the purpose of arriving at the rateable value of waterworks. In *Ex parte The Leicestershire County Council* the powers conferred upon the justices in quarter sessions by the Police Act, 1840, ss. 3, 27, with respect to the determination of police districts was held to be vested by the Local Government Act, 1888, in the standing joint committee of the quarter sessions and county council. *The Hornsey Local Board* v. *Brewis* settled questions of liability for paving expenses in respect of a building used partly as a chapel and partly for secular purposes. In *Regina* v. *The Assessment Committee of St. Mary Abbot's, Kensington*, the defendants were held to have no right to refuse to hear a surveyor who had been sent by a ratepayer to appear as his agent before the committee in support of the objection to the valuation list. In *Showers and others* v. *The Assessment Committee of the Chelmsford Union* premises used exclusively as police residences, for which rent was paid by the police officers, were held not to be exempt from rateability, as they were neither one building occupied solely for public purposes nor an ordinary police-station.

## FINANCING AN EXHIBITION.—II.

IN an article with the above heading in the LAW JOURNAL of November 1, 1890, we commented on the decision of Mr. Justice Kekewich in the case of *Coutts & Co.* v. *The Irish Exhibition*. Before the defendant corporation was registered under the Companies Act a banking account was opened in its name with Messrs. Coutts & Co., who received a letter from the secretary of the exhibition enclosing the 'signatures of the gentlemen who are authorised to draw upon the account of the council of the Irish Exhibition.' These gentlemen, or some of them, drew, and even overdrew, the account to a very considerable amount, both before and after the exhibition had been incorporated. After the exhibition had gone into liquidation it was sought, in the action above mentioned, to make those who signed the cheques personally liable for the overdraft. Mr. Justice Kekewich, however, held that they were not liable; in other words, that the bank financed the exhibition in the hope that the contributions of the public would ultimately recoup them, and make the business one of profit. In our former article we stated our expectation that, if the matter went to the Court of Appeal, 'a more businesslike view would be taken of the transaction.' The case has now

been taken to the Court of Appeal, with the result that the decision of Mr. Justice Kekewich has been reversed and that Messrs. Coutts & Co. have established the joint liability, in respect of the overdraft, of those who were responsible for it. The very idea of a bank without a customer shocked the Court of Appeal, which, with Lord Justice Lindley presiding, took the eminently businesslike view that such an absurd state of things required to be proved by much stronger evidence than that which was adduced by the defendants in the case before them. As, in our former article, we warned bankers to take professional advice before undertaking to finance exhibitions, so we may advise the promoters of exhibitions to consult their lawyers before they incur liability as the customers of banks which are willing to do the financing.

## PROGRESS OF LEGISLATION.

An extraordinary amount of legislative work, good or bad, has been accomplished during the last week. In the list of births are two Government bills, introduced by Mr. Ritchie on February 26—viz. the Public Health (London) Law Amendment and the Public Health (London) Law Consolidation Bills; a bill brought in by Lord Herschell in the House of Lords to codify the law relating to the sale of goods; one by Mr. Tomlinson to remove doubts as to the powers of public bodies in reference to provisional order bills under the Railway and Canal Traffic Act, 1888; bills by Mr. Philipps to improve the position of sheriff clerks depute in Scotland; by Sir E. Grey to amend the laws respecting the branding of herrings on the coast of Northumberland; by Mr. Atkinson to relieve landed estates from payments to dowagers in proportion to the amount of decrease in the net income of such estates since the allowances to the dowagers were fixed—a bill the introduction of which was unkindly received with laughter; a bill to extend to county councils the provisions of the Stipendiary Magistrates Act, 1863; and a bill to amend the Seed Potatoes Supply (Ireland) Act, 1890.

The following bills have been read a second time:—

Factories and Workshops (Mr. Secretary Matthews).

Factories and Workshops (Sir H. James)—both referred to the Standing Committee on Trade.

Assessment of Taxes (Regulation of Remuneration).

Factories, Certificate of Birth (Fees).

Fishery Board (Scotland)—Lords.

London County Council General Powers.

London Overhead Wires—subject to an instruction to the committee to which it is referred to consider how it can be amended in accordance with the Public Health Acts Amendment Act, 1890.

The last two, though nominally private bills, are really of a public character.

Smoke Nuisance Abatement (Metropolis)—Lords.

Army Schools.

Penal Servitude.

Technical Instruction.

Corn Sales.

Conveyancing and Law of Property Act, 1881, Amendment Bill.

Metropolitan Water Companies' Charges and Metropolis Water Supply Bills.

Bills which have been forwarded beyond second reading are—

Tithe Rent-Charge Recovery—which has passed through the committee of the House of Lords.

Museums and Gymnasiums.

Registration of Electors Acts Amendment—read a third time.

Electors Registration Acceleration—committed *pro formâ* and Government amendments inserted.

Pollen Fisheries (Ireland)—read a third time.

Marriages of Nonconformists (Attendance of Registrars) and Local Authorities (Scotland) Loans—which are safely in committee.

Bills thrown out:—

Justices of the Peace Qualification Amendment—Lords.

Parochial Boards (Scotland).

The following bills have been withdrawn:—

Rating of Machinery—introduced by Mr. Knatchbull-Hugessen, Sir B. Samuelson, and others.

Parliamentary Elections.

Parliamentary Voters Qualification.

The debate on the second reading of Mr. H. S. Wright's Rating of Machinery Bill stands adjourned.

# Unreported Cases.

## COUNTY COURTS.

### BILLS OF SALE AMENDMENT ACT, 1882, s. 9.

At the Marylebone County Court, last week, his Honour Judge Stonor delivered judgment in the case of *Brajg* v. *Hoeffler* (*Jolliffe, claimant*) as follows: This is a perfectly honest bill of sale to secure the payment of the sum of 81*l.* 11*s.* 1*d.*, due to the claimant for work and labour, together with interest for the same at the moderate rate of 5 per cent. per annum. It is, however, contended that it is not in accordance with the form contained in the schedule to the Bills of Sales Amendment Act, 1882, and therefore void under section 9 of that Act. By the instrument in question, dated November 18 last, the mortgagor assigns to the mortgagee the chattels described in the schedule thereto by way of security for the payment on May 18 next of the said principal sum and interest, and 'the mortgagor further agrees (1) that he will duly pay to the mortgagee the said principal sum and interest on the said May 18 next; and further (2) that if the said principal sum, or any part thereof, shall remain due and unpaid after the said May 18, the mortgagor will pay the mortgagee interest thereon, or on as much thereof as shall for the time being remain due, by equal half-yearly payments, on May 18 and November in every year; and further (3) that the mortgagee will not require of the mortgagor payment of the said principal moneys or any part thereof, except on the happening of one or other of the events, on the happening of which the said chattels are, by virtue of these presents, made liable to seizure or to be taken possession of by the mortgagee; or on the three months' previous notice in writing to be given by the mortgagee to the mortgagor of intention to demand payment of the said principal moneys.' It is contended that the second of these covenants or agreements is not in accordance with the form in the schedule, because the rate of interest to be paid after default is not specified. Now, the word 'interest' must be either regarded as signifying interest at the rate previously mentioned, or as signifying interest at the rate which the rules of equity prescribe in respect of mortgage debts after default, and which, in either case, would be 5 per cent. per

annum, and I do not think that this provision ought to be regarded as not in accordance with the form in the schedule, or as anything more than surplusage. It is also contended that the third of these covenants or agreements is not in accordance with the form in the schedule, and this is to my mind a serious objection. In the first place, it is objectionable in point of form. For it is *primâ facie* only an agreement by the *mortgagor* that the mortgagee will not require payment of the mortgage debt without demand, and without three months' previous notice of his intention to make such demand; but I think that the mortgagee, having executed the deed, must be considered to have entered into this agreement, and, but for its being prefaced by the words 'and further' with the previous agreements by the mortgagor, there would be no difficulty, and the mortgagee would be clearly bound by it. Again, the word 'the' prefixed to the words 'three months' previous notice in writing' is clearly incorrect, as it points to some provision not contained in the antecedent part of the instrument, and otherwise is perfectly senseless. I am inclined to adopt the latter view; but there remains a great difficulty in the substance of this agreement dependent on the question—viz. whether it extends to the payment of principal and interest agreed to be made on May 18 next, or only to any payment after default on that day. If the first, it seems to fall within the rule that a 'bill of sale is void if it contain a power to seize upon the grantor making default in payment of the sum and interest secured after the demand in writing,' there being of course an implied power in the present case to seize upon nonpayment (see Mr. Probyn's valuable treatise on the 'Statutory Form of a Bill of Sale,' p. 42, and the numerous authorities there cited). If, on the other hand, the agreement (3) does not extend to payment on May 18, but only to payment after default, then the whole clause is a nullity, because the mortgagee will always have the power to require payment without demand and without notice after default shall have been made on May 18, it being 'an event on the happening of which the said chattels are made liable to seizure' by virtue of the instrument in question, under the alternative contained in the agreement which I am now considering. I have great difficulty in coming to any conclusion on the point whether or not the payment on May 18 is contemplated by the clause. The inclination of my opinion is that it is, and that the bill of sale is consequently void on that account; but, if it is not, the clause must still, in my opinion, render the bill of sale void for ambiguity and uncertainty. I have come to this conclusion with great regret. It is a great hardship on the claimant that a clause evidently inserted for the benefit of the mortgagor, if operative, and which possibly is wholly inoperative, should avoid a perfectly fair and honest bill of sale. In the event of an appeal being brought I shall give the execution creditor his costs, but not otherwise. The costs of the high bailiff and hearing fee must, in any case, be paid by the claimant. The claimant to elect to appeal or not within a week, and judgment to be entered accordingly.—E. Pollock for the claimant; R. Minton-Senhouse for the execution creditor.

ACTION BY A SOLICITOR FOR EXPENSES AS A WITNESS.

At the Sheffield County Court, on February 25, his Honour Judge Ellison gave a decision in the case of *Howlett* v. *Clarke*. The plaintiff was Mr. England Howlett, a solicitor, of Kirton-in-Lindsey, and the defendant, Walter Clarke, certificated bailiff, Silver Street Head, Sheffield. Some time ago Mr Howlett wanted a clerk in his office, and a man named Fielding applied for the post, and in his statement gave the name of Mr. Clarke as a person with whom he had been engaged. This proved to be false, and Mr. Clarke prosecuted Fielding, calling as his chief witness the present plaintiff. Mr. Clarke refused to pay Mr. Howlett any expenses or conduct-money, and the present action was taken to obtain the sum of 1*l.* 14*s.*—His Honour, in giving judgment, said this was a claim for expenses or allowance to a witness in a criminal prosecution in which the defendant was informant. Such a claim as that could only arise by contract, and there was no express contract here. That was clear. It appeared that the plaintiff was served with a subpœna signed by one of the Sheffield magistrates. His Honour had no evidence before him that the informant had anything to do with the issue of the subpœna. He had simply put the person in the position that he refused to attend at his peril. It might be that he might refuse to attend successfully. He was told that under the Act only a low scale of costs were allowed; and unless a certain Act of Parliament had been repealed—and his Honour did not know that it had been—he would run no risk unless he had been paid his full costs. He proposed, therefore, to nonsuit the plaintiff.—Mr. A. Howe (on behalf of Mr. A. Muir Wilson) was for the plaintiff; and Mr. A. Neal for the defendant.

## POLICE CASE.

UNQUALIFIED VETERINARY SURGEONS.

On Thursday, February 19, Mr. Charles Lambert, farrier, of Pond Place, Chelsea, appeared before Mr. de Rutzen, at Westminster, to a summons obtained at the instance of the Royal College of Veterinary Surgeons, Red Lion Square, London, charging that 'he, not being on the register of veterinary surgeons, and not holding at the time of the Veterinary Surgeons Act, 1881, the veterinary certificate of the Highland and Agricultural Society of Scotland, did at Pond Place, Chelsea, unlawfully use and take an addition and description stating that he was specially qualified to practise a branch of veterinary surgery.'—Mr. Colam, in opening the case, said the prosecution was instituted under section 17 of the Veterinary Surgeons Act of 1881, which set out, as in the summons, the qualification of a practitioner of veterinary surgery or of any branch thereof. The facts were very simple: the defendant was not on the register of veterinary surgeons, nor was he on the register of the Highland and Agricultural Society; he carried on business as a farrier, and it was to decide the legality of his use of the word 'veterinary' that these proceedings were brought. The words in the section of the Act of Parliament had a very wide interpretation, and he (Mr. Colam) thought the defendant had committed the offence they were intended to meet. Outside his premises at Chelsea defendant had a board displayed: his name appeared on the first line, on the next were the words, in large letters, 'South Kensington Veterinary,' and on a third line underneath was painted 'Shoeing Establishment.' The word 'veterinary' was employed to catch the eye, and obviously suggested that the person using it undertook a branch of veterinary science. The public were easily deceived by such a notification by a person carrying on a business of this sort, and, accordingly, the defendant was written to, as far back as July of last year, requesting him to discontinue the use of the word; he replied on note-paper headed in the same way as his notice board, that for six years he had used a similar board with the words 'Veterinary Shoeing Forge' on it, and that as a farrier he was constantly working under the orders of veterinary surgeons. The board remained up from that time down to the month of December. On December 27 Mr. Thatcher, solicitor to the college, wrote to him threatening a prosecution unless the word 'Veterinary' was removed, and no notice being taken of his communication the present proceedings were at length instituted.—Mr. De Rutzen: You would not say that a man who

calls himself a veterinary shoeing smith was representing himself to be a 'veterinary surgeon?'—Mr. Colam: We say that he has no right to use the word 'veterinary' at all. It is wholly redundant or it has a meaning—the meaning that the person using it is qualified. Many veterinary surgeons carry on forges as a part of their business, and great injury can be done to the hoofs of horses by unqualified and therefore unskilled persons. I go to the extent of saying that a person not qualified to practise the veterinary art has no right to put up a notice that he keeps a veterinary shoeing forge.—Mr. De Rutzen: Very well, I will hear the evidence.—Mr. Charles Davis, clerk in the office of Mr. Thatcher, solicitor to the Royal College of Veterinary Surgeons, proved that the defendant exhibited the board complained of in December last and since.—Mr. Colam: Are the words 'South Kensington Veterinary' in one line?—Witness: Yes.—Mr. Colam: And are large letters used?—Witness: Yes, very large. The words, 'Shoeing Establishment,' underneath, are in the same sized letters.—Do you produce the register of the college?—Yes, and the defendant's name does not appear on it.—Mr. Dutton said he had no question to ask.—Mr. William Hunting, F.R.C.V.S., was the next witness. In answer to counsel he said it was very common in some country towns for veterinary surgeons to have a shoeing forge as a branch of their business, and of course it followed that their use of the word 'veterinary' was perfectly legitimate.—Mr. Colam: In such cases is the use of the words 'veterinary shoeing forge,' or 'veterinary forge' very common?—Witness: I cannot say it is very common, but it is likely enough used to designate that part of the premises where the branch is carried on.—Mr. Colam: What is the practice as far as your knowledge goes?—Witness: Not to do so.—Mr. Colam: In your judgment, does the use of the word 'veterinary,' as employed by the defendant, imply that he is qualified to practise veterinary surgery?—Witness: I know of no other signification which it could convey. The word was never used in this country until the Veterinary College was established by a French veterinarian—Mr. Bell. It was used in connection with the doctoring of animals to mark the distinction between a qualified person and a farrier, the latter designation being previously employed.—Mr. De Rutzen: We may take it that a veterinary forge is very often attached to a country veterinary surgeon's premises, but did you ever know an instance in which it was not very plainly described outside that the proprietor was a veterinary surgeon?—Witness: His name would generally be up as a veterinary surgeon, and the forge would only be distinguished as a mere branch of the business.—The Magistrate: Can you tell me one single instance of a veterinary surgeon possessing a forge who does not plainly designate himself, 'Mr. ——, Veterinary Surgeon'?—Witness: No, I think it is the rule to do so.—The Magistrate: You don't know any exception?—Witness: I don't remember one just now.—The Magistrate: Then does not the use of the words 'Veterinary Shoeing Establishment' point to a distinction? Only to-day I saw outside a shop the words 'Hygienic Boot Establishment.' I confess I did not quite understand the meaning of it, but you would say that 'veterinary,' used in the same sense as 'hygienic'—a mere advertisement—could not be legitimately employed?—Witness: Yes; 'hygienic' has a general application, and has been used for years, whereas 'veterinary' has a specific definition. If I may say so, it is a word we 'coined' ourselves.—Another professional gentleman was put in the box, but counsel said that, as there had been no cross-examination for the defendant, it would be unnecessary to examine an additional witness.—Mr. Dutton, on behalf of Mr. Lambert, said he had no witnesses to call, but he contended that his client had not brought himself within the terms of the Act, by representing himself as a person specially qualified. He used the word 'veterinary' on his notice board only to signify that he shoed under veterinary surgeons' instructions. It was a case analogous to a doctor who carried on a chemist's business. A shoeing forge might be an adjunct to some veterinary surgeons' businesses, but they had no monopoly of the trade, and a shoeing smith might say he was a veterinary shoeing-smith without implying that he was a veterinary surgeon. Section 16 of the Act clearly defined what was a false representation, and had reference to a person who was unqualified putting initials or letters after his name.—Mr. De Rutzen: 'Or otherwise stating or implying' that he is qualified.—Mr. Dutton said the defendant for eight years had used a similar board to the one now in use.—Mr. De Rutzen: What is an ordinary interpretation of the words used? A veterinary shoeing establishment to my mind means a place where a man shoes on something like veterinary principles. I look in the dictionary to see the meaning of the word 'veterinary,' and find that it is given as one 'who practises the art of treating the diseases of domestic animals.' Therefore, coming to the conclusion that the defendant does hold himself out to the public as shoeing on veterinary principles, I think that he comes within the meaning of the words of the section, 'a practitioner of veterinary surgery, or of any branch thereof.' But I will willingly grant a case on the point if he is not prepared to discontinue the use of the word.—Mr. Colam: That is all we ask for.—Mr. De Rutzen: I should be quite prepared to inflict a fine, but I don't want to do so, for I have never heard of a case of this kind before.—Mr. Dutton: After the expression of your view, sir, I am not going to allow my client to go to the expense of a case. Under the circumstances he will follow my advice and discontinue the use of the word.—Mr. De Rutzen: He has had the benefit of the use of it for some years, and I don't suppose he will be much the loser now; I will adjourn the case if it is desired, and then, if defendant does what is required, no more need be heard of it.—Mr. Colam: I should prefer a nominal fine, sir.—Mr. Dutton: Say a fine of sixpence. I quite understand what the college require.—Mr. De Rutzen: Very well.—Mr. Colam: And we do not ask for costs.—The proceedings then terminated.—Mr. Colam, barrister, prosecuted, and Mr. T. D. Dutton, solicitor, appeared for the defendant.

## POLICE AND ASSIZE COURTS.

IN the House of Commons on March 3, in answer to Sir R. Fowler, Mr. Matthews said: With regard to sessions and assize Courts in England, I am glad to inform my hon. friend that as the result of correspondence during the last year there are twenty-six additional places in which the accommodation may now be regarded as satisfactory, bringing up the total number of such places to 145. There are forty-two places in which improvement is desirable, and correspondence is still going on with hopes that a satisfactory result will shortly be arrived at. There are two cases in which the local authority have failed to comply with the requirements of the Secretary of State. I hope my hon. friend will not ask me to name them publicly, as I trust the force of example may still influence them in the right direction. With regard to police Courts, I am not able to give complete explanations within the limits of an answer; but I can assure my hon. friend that substantial progress is being made, especially in the metropolis.

In answer to Sir R. Fowler, Mr. A. J. Balfour said: The question of the accommodation of persons awaiting trial at police and assize Courts in Ireland was fully investigated by the Irish Government in 1887 and 1888, and everything possible under the existing law was done

to remedy any defects that were brought to light. No complaints have recently been made except as regards Green Street Court House, Dublin. In that case, however, the complaint is against the building generally.

In answer to Sir R. Fowler, the Lord Advocate said: As my hon. friend is possibly aware, a report was made to the Secretary for Scotland by a departmental committee appointed to inquire into this matter. Following upon this report communications were addressed to the responsible authorities of those Court houses specially named in the report as requiring alterations. In certain cases the Secretary for Scotland has been informed that the necessary alterations have already been carried out.

## CURIOSITIES OF THE LAW AND LAWYERS.

UNDER the above title a collection of scraps of legal jokes and jokelets was published some time ago by Mr. Croake James. A new and enlarged edition has now been published (Sampson Low, Marston, Searle & Rivington), from which we take the following extracts:—

A tenant of Lord Halkeston, a judge of the Scotch Court of Session, once waited on him with a woeful countenance, and said: 'My lord, I am come to inform your lordship of a sad misfortune. My cow has gored one of your lordship's cows, and I fear it cannot live.' 'Well, then, of course, you must pay for it.' 'Indeed, my lord, it was not my fault, and you know I am but a very poor man.' 'I can't help that. The law says you must pay for it. I am not to lose my cow, am I?' 'Well, my lord, if it must be so, I cannot say more. But I forgot what I was saying. It was my mistake entirely. I should have said that it was your lordship's cow that gored mine.' 'Oh, is that it? That's quite a different affair. Go along, and don't trouble me just now. I am very busy. Be off, I say!'

Judge Willis about 1780 sentenced a boy at Lancaster to be hanged, with the hope of reforming him by frightening him, and he ordered him for execution next morning. The judge awoke in the middle of the night, and was so affected by the notion that he might himself die in the course of the night, and the boy be hanged though he did not mean that he should suffer, that he got out of his bed and went to the lodgings of the high sheriff, and left a reprieve for the boy, or what was to be considered equivalent to it, and then, returning to his bed, spent the rest of the night very comfortably.

At the Old Bailey it was customary to sentence the whole of the prisoners found guilty at the sessions at one time. It fell to Baron Graham's lot to perform this duty, and he accordingly went over the list with due solemnity, but omitted one person brought up for sentence—Mr. John Jones. The judge was on the point of finishing the sentences when the officer reminded his lordship of this omission. Whereupon the judge said gravely, 'Oh! I am sure I beg Mr. Jones's pardon,' and then sentenced him to transportation for life.

Sir George Rose had a friend who had been appointed to a judgeship in one of the colonies, and who, long afterwards, was describing the agonies he endured in the sea passage when he first went out. Sir George listened with great commiseration to the recital of these woes, and said, 'It's a great mercy you did not throw up your appointment.'

A young French advocate, in the course of his address to the Court, flourished about his hand in such a manner as to show off a magnificent diamond ring. He was young, good-looking, and pleading for a lady of quality, who demanded a separation from her husband. The husband, who happened to be present, interrupted him in the middle of a period, and, turning to the judges, exclaimed theatrically: 'My lords, you will appreciate the zeal which Monsieur M. is displaying against me, and the sincerity of his argument, when you are informed that the diamond ring he wears is the very one which I placed on my wife's finger on the day of that union he is so anxious to dissolve.' The Court, said M. Berryer, who relates the story, was struck, and rose immediately. The cause was lost, and the advocate never had another. To add to the poignancy of the catastrophe, the husband's insinuation had no foundation in fact.

George IV. asked Dr. Gregory what was the longest *sederunt* after dinner that he had ever heard of on credible authority. The doctor answered, 'The longest I know of was at the house of a learned Scottish judge, Lord Newton. A gentleman called at his house in York Place, Edinburgh, at a late hour, and was informed that his lordship was at dinner. Next day the same gentleman called at an early hour, and being again informed that the judge was at dinner, expressed surprise that the dinner of that day should be so much earlier than the dinner of the day before. "It is the very same dinner," replied the servant; "his lordship has not yet risen from table."'

*Man of the World.*

## THE FACTORY BILLS.

THE ponderous and voluminous report of the Lords' Committee on Sweating is at last bearing fruit. For a while not a few persons despaired of seeing any practical result arise from so many disclosures and so much dissertation. The evils of the sweating system, which the *Lancet* was the first to bring to public notice, were admitted on all sides, but doubts were expressed as to the possibility of dealing with such questions by legislative enactment. We then sketched out what improvements to the existing laws would beneficially affect the condition of the workers who toil in sweating dens. Parliament, however, adjourned, and it seemed as if nothing was to be done. But our hopes were not abandoned, they were only deferred, and now at last we are rewarded with a deluge of bills on the question which, in a great measure, we have made our own. The principal difficulty to-day is to sort and to select the best suggestions from these many projects. In the House of Lords we have the Sanitation of Factories Bill, introduced by Lord Thring, who was an active member of the sweating committee; and the Factories and Workshops Bill, presented by Lord Dunraven, who was the chairman of that committee. In the House of Commons Sir Henry James and Mr. Sydney Buxton have each bills dealing with the same question; while Mr. Matthews, on behalf of the Government, has introduced a fifth bill, on which should be grafted, it is suggested, the best clauses of all the other bills. It will, however, we fear, be necessary not merely to add new clauses to the Government bill, but there is also need to extract some of the proposals it contains. For instance, on all sides there is a consensus of opinion that it is the application rather than the law itself which is most at fault. If inspectors were more numerous and more active, if the authorities entrusted with the duty of applying the law were not themselves interested in eluding its provisions, the grievances which have been so loudly denounced would not have arisen—at least, in their present aggravated form. The greatest of all necessities is the creation of an army of inspectors who will be perfectly free from local influences and local corruption. But the Government bill proposes to do away with certifying factory surgeons, who number in all about twelve hundred. An increase of inspectorships in other directions will not compensate this very severe loss. We trust, however,

this clause (No. 19) in the bill will be left out. In this respect, as on all other points, advantage should be taken of the present favourable disposition of Parliament to arrange matters in as large and broad a spirit as possible.

*The Lancet.*

## THE SHEFFIELD DISTRICT INCORPORATED LAW SOCIETY.

THE sixteenth annual general meeting of this society was held on Thursday, February 26. Present: Mr. Joseph Binney in the chair, and Messrs. Allen, Ashington, J. C. Auty, Bagshawe, C. Barker, Bennett, A. J. Binney, J. Binney, Bowman, Brailsford, Bramley, G. E. Branson, Bromley, Chambers, W. E. Clegg, Cole, Esam, Foster, Greaves, F. L. Harrop (Rotherham), Howe, Kesteven, A. E. Maxfield, Neal, D. M. Nicholson, Parker, Pickford (Rotherham), Porrett, Pye-Smith, C. H. Smith, W. Smith, W. F. Smith, Tasker, Taylor, Van Wart, Vickers, Wells (Eckington), J. B. Wheat, A. M. Wilson, and Willis (Rotherham).

The report presented by the committee was received, confirmed, and adopted.

The report stated that the number of members is now 151.

*Legislation of the Session* (53 & 54 *Vict.*).

Though the past session of Parliament is popularly spoken of as a barren one, the Acts which have been passed of interest to the profession are neither few nor unimportant. Among the most important are:—

*The Intestates' Estates Act, c.* 29.

This Act, which came into operation on September 1 last, provides that the whole estate of an intestate dying without issue, if under 500*l.* (net), shall belong to the widow; if over, that the first 500*l.* and interest, until payment, at 4 per cent. from the death (to be charged on the realty and personalty in proportion to their net values) shall belong to her, and in addition she will have the same share in the residue as she would have had before in the whole estate. There are provisions by which the net value of the realty and personalty are to be ascertained. It appears very doubtful if this Act applies in the case of a partial intestacy.

This Act will prove beneficial in the case of small estates, in which intestacies mostly occur, and where the neglect of the deceased to make his will often worked hardly on the widow. It makes a breach in the long-lasting Statute of Distributions of 1679.

*Partnership Act, c.* 39.

A very carefully drawn Act of fifty sections, to declare and amend the law of partnership. It repeals and re-enacts, with slight alterations, Bovill's Act, and embodies the result of a great number of decisions, in which, up to now, partnership law was almost entirely to be found. Perhaps the most important alteration in the law is that contained in section 23, which gives a creditor of a partner the power to obtain a charging order on that partner's share in the partnership property, and to have a receiver thereof appointed, instead of allowing the creditors, as formerly, to issue a writ of execution against the share. The rules of equity and of common law applicable to partnership are to continue in force, except so far as they are inconsistent with the express provisions of the Act (section 46).

It is mainly based on Sir Frederick Pollock's work on the subject, and deserves particular attention. It is, in fact, a code explaining the law of partnership. It came into operation on January 1, 1891.

*Supreme Court of Judicature Act, c.* 44.

From October 24, 1890, motions for new trials, or to set aside verdicts, findings, or judgments, are to be heard before not less than three judges of the Court of Appeal, instead of a Divisional Court. Motions for judgment in such causes shall be heard (if possible) by the judge before whom the trial took place. This does not apply to criminal or bankruptcy matters. Section 5 contains a very wide provision as to costs, which seems to have excited the dismay of the president of the Incorporated Law Society; but it is made subject to the Judicature Act and the Rules, and its object is probably to remove all doubt whatever as to the jurisdiction of the Court to award costs in all cases not specially comprised within rule 1 of Order LXV.

*Companies (Memorandum of Association) Act, c.* 62; *Companies (Winding-up) Act, c.* 63; *Directors' Liability Act, c.* 64.

These three Acts, which make important changes in company law, may conveniently be considered together. The object of the first of them, which came into operation on August 18 last, is to enable a company to alter its objects in certain respects or to substitute a memorandum and articles of association for a deed of settlement. The alteration must be confirmed on petition by the Court, which will have regard to the rights and interests of creditors, debenture-holders, and members.

The second of these Acts extends still further the principle of officialism which now enters so largely into the law, assimilating the procedure in the winding up of a company to the procedure in bankruptcy. Its effect will be that the official receiver will, in nearly all small cases, be the liquidator of a company being wound up. In the case of provincial companies, whose paid-up capital does not exceed 10,000*l.*, the winding-up will take place under the supervision of the local County Court. Under this Act, anyone who has taken any part in the promotion or formation of a company, or has been a director or officer of the company, may be examined in Court, and damages may be summarily assessed against him by the Court. Moneys received by liquidators of companies being wound up by order of the Court must, unless otherwise ordered by the Board of Trade, be paid into an account at the Bank of England. Very lengthy rules have been issued under the Act, and the authorities are construing it as applying to companies in course of winding up, as well as those where the winding-up commenced after its coming into operation on January 1, 1891.

The Directors' Liability Act is really meant to alter the law as laid down by the House of Lords in *Derry* v. *Peek*, but the bill underwent so many changes in becoming law, and its provisions seem so ambiguous, that it remains to be seen what alteration it has effected. If it causes directors to be more careful what statements are inserted in company prospectuses it will certainly achieve a useful end. It operates from its passing on August 18, 1890.

*Settled Land Act, c.* 69.

This Act, brought in by Lord Herschell, and largely due to the exertions of the Incorporated Law Society, supplies what have been discovered to be omissions in the Settled Land Acts of 1882 and 1884, and deserves very careful study. Amongst other alterations it effects are—that a tenant-for-life may make the necessary conveyance for giving effect to a contract entered into by his predecessor (section 6); that a notice to the trustees of an intention to lease is not necessary when the term does not exceed twenty-one years (section 7 (i.)); that in a mining lease the rent may be made to vary according to the price of the minerals gotten (section 8 (i.)). It also

gives the tenant-for-life power to raise money on mortgage for the purpose of discharging an encumbrance on the settled land (section 11), and enables him to sell to or purchase from the trustees (section 12). Section 13 extends the improvements authorised to be made out of capital money to bridges, and making additions to or alterations in buildings reasonably necessary or proper to enable them to be let, &c.; and section 14 enables capital money in Court to be paid out to the trustees. Section 15 alters the law as laid down in decisions, and enacts that capital money may be applied in payment of authorised improvements, although no scheme was before the execution thereof submitted for approval to the trustees or the Court—a most important and beneficial provision. Two more classes of persons are added to those who are deemed to be trustees for the purposes of the Acts (section 16); and the powers of the Conveyancing Act with reference to the appointment and retirement of trustees are to apply to trustees for the purposes of these Acts (section 17). This last section is retrospective.

This Act, which is a further proof of the strong objection of the Legislature to the tying up of land, commenced as from its passing on August 18, 1890.

*Bankruptcy Act, c.* 71.

A portion of our law that is always being altered and patched up has not been let alone this session. The bankruptcy law has received a further amendment in the shape of an Act of thirty-one sections, which came into operation on January 1 last. Its effect may be shortly stated to be that it makes the bankrupt's position more penal than before; makes it more difficult to carry through a scheme of arrangement, and more difficult for the bankrupt to obtain his discharge; extends the period allowed to a trustee for disclaimer to twelve months, and that the execution creditor and the landlord both suffer by it, while the general creditor is correspondingly a gainer. Restrictions are also placed on voting by proxy. The landlord can now only distrain for six months' rent after adjudication (section 28). The provisions in the Bankruptcy Act, 1883, relating to compositions and schemes of arrangements are repealed, and others substituted. Numerous rules have been already issued under the Act.

Its promoters hope that its rather stringent provisions may render men more cautious in their commercial dealings.

BILLS IN PARLIAMENT IN 1890.

*The Land Transfer Bill.*

This bill has not been reintroduced this year, and though arrangements for opposing it were discussed at the meeting of the Associated Provincial Law Societies, in March last, they were rendered unnecessary on account of its non-introduction. It can, however, by no means be regarded as finally dropped.

*The Public Trustee Bill.*

The committee considered this bill, and passed a resolution strongly disapproving of it, and the secretary communicated their resolution to the local members of Parliament, requesting them to oppose the bill on its second reading. It had eventually to be dropped.

The Government had given notice of their intention to bring in a Public Trustee Bill during the present session. Several private members have also introduced a bill having the same object.

*Remuneration of Private Trustees.*

A communication was received from the Manchester Incorporated Law Association, accompanied by a report on the above subject, but the secretary was desired to write in reply, and say that, 'in the opinion of your committee, no statutory provision should be made for the payment of private trustees.'

*Registration at Wakefield.*

The committee considered the question of registering, at Wakefield, wills or letters of administration affecting leasehold estate only, and passed a resolution, which has already been communicated to members, that it was unnecessary to register them.

*Stamps on Contracts for Sale.*

The committee, in view of the desirability of assuring a uniform practice in such cases, reaffirmed the resolution passed on December 14, 1877, that the vendor's solicitor should furnish to the purchaser, or his solicitor, a duplicate of the contract, duly stamped, without any cost to the purchaser.

*Status of Solicitors.*

A communication from the Liverpool Law Society as to improving the status of solicitors, and in particular rendering them eligible for numerous appointments, which are at present only open to barristers, was considered by the committee, and a resolution was passed that the society would join the Liverpool Law Society in taking any steps which might be thought advisable in the matter.

*Solicitor-Mortgagees.*

In connection with this subject attention is directed to the case of *Ex parte Liquorish, in re Wallis*, 59 Law J. Rep. Q. B. 500; L. R. 25 Q. B. Div. 176, in which the Court of Appeal appears to have decided that a solicitor-mortgagee may charge profit costs in connection with mortgage security if there is an express contract to that effect, thus somewhat modifying the harshness of the rule apparently laid down in *Field* v. *Hopkins*, W. N. Jan. 25, 1890, and *In re Roberts*, L. R. 43 Chanc. Div. 52, noticed in the last report. A recent case has just been decided on the same lines—*Stone* v. *Liquorish*, L. T. Feb. 7, 1891—in which it was stated that, prior to the decision in *In re Wallis*, six out of the seven taxing-masters always allowed profit costs, but since three of the six had discontinued to do so. It is understood, however, that the Incorporated Law Society are only waiting the advent of a favourable test-case in order to have the question thoroughly settled.

*Stamps on Transfers of Mortgages.*

The Board of Inland Revenue, on August 15 and September 1 last issued somewhat ambiguous circulars on this subject. They afterwards replied to individual inquirers that they do not claim stamp duty on a transfer of the current interest on a mortgage. As it had, since the year 1870, been generally understood in this district that duty was payable on accruing as well as accrued interest, and penalties had been imposed on several of our members who had not stamped deeds in accordance with this custom, the committee thought it ought not to be left to a letter to determine these matters, and that the Incorporated Law Society should endeavour to obtain a clause in the Customs and Inland Revenue Act of 1891, setting this entirely at rest, and they were written to accordingly. A reply was received that the council thought it hardly necessary to take any action in the matter.

In answer to an inquiry from the committee, the Board of Inland Revenue, on December 8, wrote, stating definitely, that an 'arrear of interest' on which, as stated in their circular of September 1, stamp duty has to be paid, means an arrear due at and prior to the last day fixed for payment of interest, and does not include the current interest between that day and the date of transfer.

*Residuary Accounts.*

The committee have had under consideration the inconvenience caused by section 21, subsection 2, of the Customs and Inland Revenue Act, 1888, under which legacies payable out of a mixed fund, under the usual trust for sale, have to be apportioned for duty purposes between the realty and personalty in a residuary account.

The secretary wrote to Mr. Williamson, who replied that the Incorporated Law Society would take up the matter if the committee would formulate some definite scheme. The committee are now taking steps to do this, and would be glad if any member who has a suggestion to make would communicate it to the secretary.

The inconvenience that this enactment would be sure to cause was pointed out in the Committee's Report of 1888, p. 11.

*Succession Accounts on Sales.*

The question of including succession accounts, when retained by the vendor in an acknowledgment of right of production, particularly with regard to recent legislation, was brought before the committee at their meeting on January 29, 1891.

The following resolution, unanimously passed by the committee of the society in 1877, was read: 'The committee recommend that the vendor should covenant to produce succession duty accounts, when he retains them, on the ground that they relate to other property. That in such case he should furnish, at his own expense, a full copy of so much of the account as relates to the property sold. That where the account relates exclusively to the property sold, the vendor should hand it over to the purchaser.' And the committee saw no reason to alter that resolution. As the committee have been informed that several firms in Sheffield do not carry out the recommendation, it has been thought well to again refer to the subject.

*Sheffield Stamp Office.*

The committee passed a resolution that it is desirable that there should be a stamp office in Sheffield similar to the one existing in Manchester and the one just granted to Leeds, and a sub-committee was appointed to endeavour to obtain the same. The Chamber of Commerce have also decided to present a report on the subject, and it is hoped that the Chamber of Commerce, the Cutlers' Company, and the corporation of Sheffield will co-operate with your society in obtaining this desirable object.

## LAW AND PROFESSIONAL NOTES.

By T. F. UTTLEY, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### THE CARRIAGE OF THEATRICAL PROPERTY.

AT the Manchester Assizes which lately opened, Mr. Justice Lawrance commented on the lightness of the calendar. In the civil Court a case of some interest was decided with reference to the carriage of theatrical properties by railway companies. The plaintiffs in this case, the Bolton Theatre and Entertainments Company (Lim.), claimed from the North-Eastern Railway Company damages for the loss and destruction of scenery, and also for consequential damages. The defendants pleaded protection under the provisions of the Carriers Act. According to the statement of counsel, the plaintiff company were the proprietors of two touring theatrical companies, who played 'The Harbour Lights.' One of the companies had been performing at Bishop Auckland early in 1890, and from thence they went to Scarborough. At the close of the engagement at Scarborough the scenery was taken to the railway station for removal to Spennymoor, and on the way thither the scenery by some means caught fire, and the truck covering it was placed under an engine-pump, and so the fire was extinguished, but the scenery was found to have been entirely destroyed. They claimed damages for the loss of the scenery, and consequential damages were asked for on account of the loss sustained through their not being able to carry on their performances. Counsel said that the Carriers Act provided that railway companies should not be held responsible for packages containing paintings, engravings, or pictures of the value of more than 10*l.*, unless such value was declared at the time of sending. He, however, submitted that this scenery was not such a 'painting' as was contemplated by the framers of the Act. The judge: Take the case of a signboard forwarded by railway. Counsel replied it might be contended that signboards were pictures. The judge remarked that if by a painting was meant a thing painted, the scenery in question was a painting, and the railway company's defence ought to succeed. But if one had a house painted it did not necessarily constitute such painting a work of high art. Would it be argued that the statute did not contemplate a distinction between pictures of high art and pictures of low degree? For the defendant company it was argued that under the Carriers Act, unless the person who forwarded goods of the nature of those for which damages were now claimed made a declaration of the value of such goods at the time of sending, the company could not be held responsible. Notices to that effect were posted in the stations of the company, and those notices had always been held to be good in law. Under those provisions, when such a declaration was made, a higher charge for conveyance followed, and he suggested that the declaration was not made in this case in order that a lower rate of pay for carriage might be taken advantage of. As to the question of whether these scenes were or were not paintings, counsel submitted that they clearly were. They were not the very highest works of art, but, on the other hand, stage scenery had been, and still was, painted by men who stood the very highest in their profession. It was ridiculous to contend that a painting was not a work of art because of its size. If damages of this kind were brought to affect a railway company where would they end? He submitted that on the question of consequential damages the jury had no option in law but to find for the defendant company. The judge said one question for the jury to determine was, whether the items of scenery which were valued at over 10*l.* were pictures or not. If pictures, they came under the provisions of the Act, and the company were not liable. As to the question of consequential damages, the jury would have to consider whether the company had received proper notice that the pictures or paintings were property that it was necessary for the plaintiffs to be in possession of for carrying on their performances, and whether the plaintiffs were hindered or delayed in their performances by not receiving their goods. The jury found for the plaintiffs, with damages, both on the claim for the loss of the property and on the claim for consequential loss.

### PARCHMENT *v.* PAPER.

A curious point came lately before the Vice-Chancellor of the Chancery of Lancashire, in *The Case of the Manchester and Liverpool Permanent Benefit Building Society and Kilvert's Purchase.* Counsel for the purchaser said his client, by contract dated November, 1890, purchased certain property from the society, and he now asked whether a good title had been shown to the hereditaments purchased in accordance with the conditions of sale, and to whom to pay the money. The society was registered under the Act of 1874, and put up certain property for sale last November, completion being arranged for in January. A few days

prior to completion, however, the purchaser discovered, quite accidentally, that the society had entered into an ordinary dissolution deed in 1884. If that deed had been properly carried out the whole of the funds and property of the society would have been vested in a liquidator and committee of inspection who would have had power to act. Under the Building Societies Act it was provided that the deed should be registered. It appeared, however, that the deed was written on parchment and not on paper, and the registrar refused to register it. They found that the society was stated to be still in liquidation, but the deed was not in any way disclosed. His client was a willing purchaser, the purchase being believed to be of value, and the only question was whether he could have a satisfactory title made under the circumstances. The Treasury rule said that the deed should be written on paper. The Vice-Chancellor said he did not think anybody could enforce that unless it was by Act of Parliament. Supposing the deed of conveyance was good, the purchaser had the property. Counsel replied that the conveyance had not been executed. We do not know whom to take it from, although we have got what we believe to be a good property. The society is in liquidation, and it is hard to say where the legal estate in a building society is. Under the Act of 1874 there are no trustees as there used to be in the old days. Notwithstanding the action of the registrar, and the incidents connected with it, the society was still in liquidation, and therefore the directors had no power to give a good title. Counsel for the society, however, said it was not dissolved. The question was, whether the instrument itself or registration was the act of dissolution. Dissolution could be carried out with the consent of three-fourths of the members of the society, holding not less than a certain number of shares, that consent being testified to by their signatures to the instrument of dissolution. They had got the signatures, but that only testified to the consent of the individual shareholders, and did not operate in itself. Some other act was required, and that was the registration of the instrument. Until the deed was registered there was really no dissolution at all. The Vice-Chancellor said three things were required before they arrived at a dissolution. First, there must be consent from the required number of persons; secondly, that consent must be testified by their signatures to the instrument of dissolution; and, thirdly, it was provided that there 'shall be' registration, not 'may be.' If any one of those three things failed, there was no dissolution; and if there was no dissolution, the society was in existence. There must be in this case a declaration that under the existing contract the present directors were entitled, under their rules, to give a title, fix a sale, receive money for the purchase, and give a discharge for it. This is a very valuable decision and contribution to the existing law on building societies, and the point as to registration is of considerable moment.

INSURANCE COMPANIES AND LIFE POLICIES.

A question as to the surrender of life policies was lately before the same Court in the case of *In re Findlow*. Counsel stated that it was a petition under the Married Women's Property Act to obtain the appointment of a trustee for the purpose of obtaining the surrender value of a life insurance policy from the Edinburgh Insurance Society, and dealing with it for the benefit of the children of the marriage. The Vice-Chancellor expressed his surprise at the small amount offered by the insurance society, and said the public ought to know how these things were dealt with. Here was a person who had been insured for fifteen years and had paid 385*l.* in premiums. The premium appeared to have been 25*l.* 13*s.* 4*d.* per annum, and that in fifteen years would amount to 385*l.*, and yet the total amount offered by the society was 174*l.* He could only say that in certain other offices the sum of 174*l.* for the surrender value of a policy on which 385*l.* had been paid would be considered very small. A trustee was then appointed, and instructed to present to the Court every six months an account showing how the money had been expended. Commenting on this decision in a local paper, the manager of the company considers that it contains reflections upon this company totally undeserved. He points out that the policy in question was effected in 1875 under the provisions of the Married Women's Property Act, 1870, for the benefit of the wife and children of the assured. The Act protects such policies against the claims of creditors by making them the subject of a trust, and thus debars the assured from dealing with their policies by way of assignment, surrender, or otherwise, at their own hand. A trustee, however, may be appointed by the Court, and such trustee is empowered to discharge the policy. The Married Women's Property Act, 1882, has placed matters on a simpler footing, but its provisions do not apply to policies effected under the previous Act. The half-yearly premium under this policy, due in March, 1890, was not paid, but the company, in accordance with their rules for preventing the lapsing of policies, kept the assurance in force, holding the premium as a debt. The same thing occurred in September following, so that at the date of the application to the Court there were two half-yearly premiums in arrear, amounting to 25*l.* 13*s.* 4*d.* In November last application was made to the company to quote the amount of paid-up policy that would be allowed if the premiums were entirely discontinued. The answer was given that the company would allow a paid-up policy for 42*0l.* 16*s.*, after providing for the arrears of premium, and that in order to effect this it would be necessary to have a trustee appointed by the Court in the terms of the Act. An appeal was made that the application to the Court should be dispensed with in order to save expense, and the company replied in effect that the granting of a paid-up policy would necessitate the appointment of a trustee, but that if the policy was to be surrendered for its cash value, and the company thus finally discharged, the directors would entertain an application for such payment on an indemnity being given by two responsible persons. The surrender value quoted was 174*l.* 0*s.* 10*d.*, after allowing for the unpaid premiums. At a later date it was again expressly pointed out that the necessity for an appointment by the Court applied only to the case of a paid-up policy being taken, and that the company were still prepared to pay the surrender value without the discharge of a trustee if a sufficient indemnity were offered. Without further notice the company received intimation by a letter that an application was to be made to the Chancery Court of Lancashire for the appointment of a trustee, but that it would not be necessary for the company to be represented.

LIQUIDATORS AND THE WINDING-UP ACT, 1890.

A case of great importance to liquidators was *In re Wood & Wright (Lim.)*, which company was in liquidation, the liquidation having been commenced by voluntary resolution; and an order had been made appointing a voluntary winding-up under the supervision of the Court. The liquidators were about to pay a further dividend in the pound when they received an intimation from an official of the Board of Trade calling upon them to hand over the balance in their hands after January 1 of this year. The question was whether the liquidators would be justified in handing this over. The question also arose whether the Companies (Winding-up) Act applied to a voluntary winding-up which was continued under the supervision of the Court. Counsel pointed out there were as yet no Palatine orders which prescribed any time. The orders were not yet made, but the forms were

made before the Lord Chancellor's secretary or some other authority in London, and therefore the Act was effective. Under such circumstances under the statute the practice of the High Court is applicable to this Court. It was then asked whether the money would have to be paid into the Companies' Liquidation Account at the Bank of England, or whether a special account would have to be opened. The Vice-Chancellor said he thought it ought to be paid into the Companies' Liquidation Account. The result would be that a percentage would have to be paid to get it out again. The Vice-Chancellor said he was of opinion that the winding-up, being a voluntary winding-up under the supervision of the Court, was a winding-up within the meaning of section 15 of the Companies (Winding-up) Act, and that the money must be paid into the account which the Board of Trade directed. On application to the Bank of England the liquidators would obtain a receiving mandate, and then they would get directions as to what was to be done. If they did not get those directions within a fortnight, then they could apply to that Court for liberty to apply to the Board of Trade for power to do anything they liked with the money that was proper.

### A MARRIAGE AT SEA.

Is the captain of a ship capable of performing a legal marriage? Such is the nut which Mr. Clark Russell in his latest novel, 'A Marriage at Sea,' offers to be cracked. The captain in this case seemed apparently to have perfect faith in his powers to tie the marriage knot, and perhaps his faith was not so misplaced either, for though there is no statutory provision for marriage on board merchant vessels, yet the requirements of the Merchant Shipping Act, 1854, s. 282, providing for their proper registration in the diocesan registry of London, assumes that they may take place. So, too, though there do not appear to be any statutable provision for marriages entered into on board Her Majesty's ships of war. Yet the Queen's regulations and the Admiralty instructions assume that such marriages may legally take place, as Article 21 provides for the making and preserving of authentic records of such marriages. Since 1849 records of such marriages have been duly forwarded for entry in the London Diocesan Registry.

THE QUEEN'S BENCH DIVISION.—Mr. Cobb asked the First Lord of the Treasury whether he would ascertain from the Lord Chancellor whether he was aware that dissatisfaction and regret existed among the members of the legal profession and the public as to the manner in which one of the judges of the Queen's Bench was able to perform his duties, and that attention was being called to this subject in the legal newspapers; and whether any change was contemplated at an early date in the constitution of the bench in that division.—Mr. W. H. Smith: The Lord Chancellor thinks that it would be going altogether beyond any province assigned to him by law if he were to assume such a disciplinary attitude towards Her Majesty's judges as appears to be suggested by the hon. member's question. If there is any matter of fact within his jurisdiction in relation to the Supreme Court as to which the hon. member desires information, the Lord Chancellor would be very happy to give it; but in this case the question states neither any fact nor any person in relation to whom such information is desired.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means: it is first-rate, and has been of the *utmost service* to me.' Post free, 4d. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## LAW STUDENTS SOCIETIES.

DEBATING.—The ordinary weekly meeting of this society was held at the Law Institution, Chancery Lane, on Tuesday, March 3, Mr. Marshall in the chair. The subject for discussion: 'That this society disapproves of the Religious Disabilities Removal Bill,' was opened by Mr. J. Cornelius Wheeler.—Mr. H. Foden Pattinson opposed.—The debate having been declared open, the following gentlemen spoke: In the affirmative—Messrs. Hinchliff, Harcourt, Alder, and Thirlby; in the negative—Messrs. Archer-White, Nimmo, Watson, and Baldwin.—Mr. Wheeler replied.—On the motion being put to the meeting, it was lost by a majority of two. There was a large number of members present.

LIVERPOOL.—The next meeting of this association will be held at the Law Library, on Monday, March 9. The chair will be taken at 5.30 P.M. by C. Collins, Esq., solicitor. Subject for discussion: 'A. is the legal personal representative of B., who on May 17, 1887, shot himself while temporarily insane. On April 17, 1886, B. had insured his life for 1,000*l.* with an insurance company, the policy containing the following clause: "In case the assured die by the hand of justice or in personal combat, and also in case of suicide his representatives shall be entitled to half the amount provided his membership shall have reached two years." Two annual payments of premium have been made by B. Can A. recover from the insurance company?' 1 Sm. L. C. 405. Affirmative—Mr. C. H. Sweny; negative—Mr. F. Cuthbert Smith.

## NOTICES FOR THE WEEK.

### ROTA OF REGISTRARS.

MONDAY, March 9.—Court of Appeal No. 2: Mr. Pemberton. Mr. Justice Chitty: Mr. Jackson. Mr. Justice North: Mr. Leach. Mr. Justice Stirling: Mr. Farmer. Mr. Justice Kekewich: Mr. Carrington. Mr. Justice Romer: Mr. Beal.

Tuesday, March 10.—Court of Appeal No. 2: Mr. Ward. Mr. Justice Chitty: Mr. Clowes. Mr. Justice North: Mr. Godfrey. Mr. Justice Stirling: Mr. Rolt. Mr. Justice Kekewich: Mr. Lavie. Mr. Justice Romer: Mr. Pugh.

Wednesday, March 11.—Court of Appeal No. 2: Mr. Pemberton. Mr. Justice Chitty: Mr. Jackson. Mr. Justice North: Mr. Leach. Mr. Justice Stirling: Mr. Farmer. Mr. Justice Kekewich: Mr. Carrington. Mr. Justice Romer: Mr. Beal.

Thursday, March 12.—Court of Appeal No. 2: Mr. Ward. Mr. Justice Chitty: Mr. Clowes. Mr. Justice North: Mr. Godfrey. Mr. Justice Stirling: Mr. Rolt. Mr. Justice Kekewich: Mr. Lavie. Mr. Justice Romer: Mr. Pugh.

Friday, March 13.—Court of Appeal No. 2: Mr. Pemberton. Mr. Justice Chitty: Mr. Jackson. Mr. Justice North: Mr. Leach. Mr. Justice Stirling: Mr. Farmer. Mr. Justice Kekewich: Mr. Carrington. Mr. Justice Romer: Mr. Beal.

Saturday, March 14.—Court of Appeal No. 2: Mr. Ward. Mr. Justice Chitty: Mr. Clowes. Mr. Justice North: Mr. Godfrey. Mr. Justice Stirling: Mr. Rolt. Mr. Justice Kekewich: Mr. Lavie. Mr. Justice Romer: Mr. Pugh.

UNITED LAW SOCIETY.—March 2, being the first meeting in the month, was devoted to business. Mr. C. W. Williams was in the chair. At the next meeting, on the 9th, Mr. H. W. Marcus will read a paper giving his experiences during his recent visit to Canada, which will be followed by a discussion.

## CALENDAR OF THE COUNTY COURTS.

FROM MARCH 9 TO MARCH 14.

| No. of Circuit | His Honour | March 9 | March 10 | March 11 | March 12 | March 13 | March 14 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Birkenhead | — | Warrington | Leigh | — |
| 8 | Judge Heywood | — | Manchester | Manchester | Salford | Salford | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | Middlesbrough | Stockton-on-Tees | Darlington | Leyburn | Stokesley | Northallerton |
| 19 | Judge Barber | — | Alfreton | Derby | Bakewell | Buxton | — |
| 22 | Judge Harington | — | Solihull | Bromsgrove | Shipston-on-Stour | Evesham | — |
| 26 | Judge Jordan | Longton | Rugeley | Hanley | Hanley | Tunstall | Stone |
| 47 | Judge Powell | — | Lambeth | Greenwich | Lambeth | Lambeth | — |
| 54 | Judge Metcalfe | Bristol | Bristol | Bristol | Bristol | Bristol | — |
| 55 | Judge Machonochie | Fordingbridge | Dorchester | Bridport | Weymouth | Blandford | — |
| 58 | Judge Edge | East Stonehouse | East Stonehouse | East Stonehouse | East Stonehouse | East Stonehouse | Tavistock |

## OBITUARY.

WE have to record the death of one of the oldest members of the Colonial Service, Sir BENJAMIN CHILLEY CAMPBELL PINE, K.C.M.G., which occurred at his residence in Wimpole Street, Cavendish Square, towards the close of last week, in the seventy-eighth year of his age. He was the son of the late Mr. Benjamin C. Pine, of Tunbridge Wells, and was born in the year 1813. He was educated at Trinity College, Cambridge, where he took the usual degrees, and was called to the bar at Gray's Inn in 1841. He was appointed in the following year Queen's Advocate at Sierra Leone and Acting-Governor there in 1848. In 1849 he was appointed Lieutenant-Governor of Natal, from which post he was transferred in 1856 to that of Governor and Commander-in-Chief of the Gold Coast Settlements. In 1859 he was made Lieutenant-Governor of St. Christopher's, and subsequently held at different dates the Governorships of Western Australia, the Virgin Islands, and the Leeward Isles. He held the Governorship of Natal from 1873 till 1875, when he retired on a well-earned pension. He was elected a bencher of his Inn in 1880, and served as Treasurer in 1885. Sir Benjamin was twice married; he was knighted in 1855, and made a Knight Commander of the Order of St. Michael and St. George in 1871.

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, BOWEN, L.J., and FRY, L.J.

THURSDAY, FEBRUARY 26.

*Pinto and another* v. *Badman* (application of defendants for judgment or new trial on appeal from verdict and judgment on counterclaim at trial before Day, J., with a special jury in Middlesex, and motion by order).—Allowed.

FRIDAY, FEBRUARY 27.

No sitting.

SATURDAY, FEBRUARY 28.

No sitting.

MONDAY, MARCH 2.

*Brandon* v. *M'Henry* (appeal of plaintiffs from part of order of Wills, J., and Wright, J., dated January 26, setting aside execution under judgment entered July 15, 1885).—Dismissed.

*Davey* v. *Thompson* (appeal of plaintiff from order of Wills, J., and Williams, J., dated February 11, setting aside judgment and execution and giving unconditional leave to defend).—Dismissed.

TUESDAY, MARCH 3.

*Clink* v. *Radford & Co.* (appeal of defendants from judgment of Pollock, B., dated November 5, at trial with a jury in Middlesex).—Dismissed.

WEDNESDAY, MARCH 4.

*Shepherd* v. *Berger* (Q. B. *Crown Side*) (appeal of plaintiff from judgment of Day, J., and Lawrance, J., dated November 4, on appeal from Mayor's Court).—Allowed.

*Moir* v. *Martin and others* (appeal of defendants Puleston, Brown & Co. from judgment of Grantham, J., dated November 4, at trial without a jury in Middlesex).—Dismissed.

*Hendry* v. *Von Weissenfeld* (appeal of defendant from judgment of Charles, J., dated November 7, at trial without a jury in Middlesex).—Dismissed.

*Lessing* v. *Horsley* (appeal of defendants from judgment of Lawrance, J., dated November 12, at trial without a jury in Middlesex).—Part heard.

## APPEAL COURT II.

Before LINDLEY, L.J., LOPES, L.J., and KAY, L.J.

THURSDAY, FEBRUARY 26.

*Cox* v. *Bennett* (appeal of defendant, L. Midwinter, from order of Kekewich, J., dated January 21, for retention of costs by trustees of real estate; *Cur. adv. vult.* February 25).—Dismissed.

*Coutts & Co.* v. *The Irish Exhibition in London* (appeal of plaintiffs from judgment of Kekewich, J., dated October 28, 1890).—Allowed.

FRIDAY, FEBRUARY 27.

*In re Bridgewater Navigation Company (Lim.) and Companies Acts* (appeal of T. H. Birch from order of North, J., dated December 3, 1890, declaring rights of shareholders and notice of contention by representative of preference shareholders).—Part heard.

SATURDAY, FEBRUARY 28.

*Phelps, James & Co.* v. *Hill* (application of plaintiffs for judgment or new trial on appeal from verdict and judgment at trial before Mathew, J., in Middlesex; heard January 23).—Refused.

*In re Bridgewater Navigation Company (Lim.) and Companies Acts.—Cur. adv. vult.*

Before LINDLEY, L.J., and KAY, L.J.,

MONDAY, MARCH 2.

*Whitwood Chemical Company (Lim.)* v. *Hardman* (appeal of defendant from order of Kekewich, J., dated February 6, restraining defendant giving less than his whole time to plaintiffs' business).—Allowed.

*Doherty* v. *Doherty and Perkins* (appeal of co-respondent from order of Butt, J., dated February 10, affirming refusal to order petitioner to file further affidavit of documents).—Allowed.

*Day* v. *Gregory*. *Gregory* v. *Day* (appeal of plaintiff A. A. Day from order of North, J., dated February 20, refusing application to strike out counter-claim).—Allowed, plaintiff undertaking to amend.

Before LINDLEY, L.J., LOPES, L.J., and KAY, L.J.

TUESDAY, MARCH 3.

*Kilpin* v. *Knill and another* (application of defendants for judgment or new trial on appeal from verdict and judgment, dated January 26, at trial before Lawrance, J., with a common jury in Middlesex).—Dismissed.

*Oakley* v. *Symes* (application of plaintiff for judgment or new trial on appeal from verdict and judgment, dated January 29, at trial before Wright, J., with a common jury in Middlesex).—Dismissed.

*Druce* v. *Levy & Co.* (application of plaintiff for judgment or new trial on appeal from verdict and judgment on counter-claims at trial before the Lord Chief Justice with special jury in Middlesex).—Dismissed.

*Jamieson* v. *Brittan and Wife* (application of plaintiff in person for new trial on appeal from verdict and judgment, dated January 22, at trial before Grantham, J., with a common jury in Middlesex).—Dismissed.

*Warton* v. *Parrott* (application of plaintiff for judgment or new trial on appeal from verdict and judgment at trial before Stephen, J., with a special jury in Middlesex).—New trial as to question of liability.

WEDNESDAY, MARCH 4.

*S. A. Hampson* v. *W. Guy and others* (application of defendants for new trial on appeal from verdict and judgment dated January 15, at trial before Butt, J., and a special jury).—Part heard.

A SOLICITOR CHARGED WITH ATTEMPTING TO RESCUE A PRISONER.—At the Greenwich Police Court on Wednesday, John Underdown, forty-four, labourer, 114 Hudson Road, Plumstead Common, was charged with being drunk and disorderly at the Greenwich Market, and John Henry West, twenty-nine, solicitor, of 67 Lee Road, Blackheath, was charged with attempting to rescue Underdown from the custody of P.C. Bragg.—On the previous night P.C. Bragg had to take Underdown into custody for being drunk. He became violent, and West attempted to rescue him, and P.C. Perks then took West into custody. He was subsequently bailed out, and on his name being called over at the Court he failed to appear, and Mr. Kennedy directed that the police should summon him. Underdown was fined 10*s.* or seven days in default.

RENTS COLLECTED AND DISTRAINTS LEVIED TO RECOVER SAME, by Messrs. HENRY C. WOOD (Surveyor to the Parish of Tooting) and HENRY KIRBY (Wood & Kirby), Certificated Brokers, 1 Great James Street, Bedford Row, W.C. No charge made to Landlords if Rent over 20*l.* Troublesome tenants got rid of. Possession also taken under Bills of Sale, Mortgages, &c. Bailiffs to the Parish of St. Dunstan in the West and City of London (Farringdon Ward). Money paid over same day received. Bankers: City Bank, Holborn Viaduct. References, if desired, to clients of many years' standing. Prompt and personal attention given.—ADVT.

## HONOURS AND APPOINTMENTS.

MR. WILLIAM LENN WEST, LL.B., of 15 Lincoln's Inn Fields, W.C., has been appointed a Commissioner to administer Oaths. Mr. West was admitted in 1884.

Mr. Edward Owen Langham, LL.M., B.A., of the firm of Langham & Son, of Eastbourne, has been appointed Clerk to the Justices for the Uckfield Petty Sessional Division. Mr. Langham was admitted in 1879.

Mr. Edwin Sidney Hartland, F.S.A., of Gloucester, has been appointed Registrar of the County Court and District Registrar of the High Court. Mr. Hartland was admitted in 1870.

Mr. George Porter, Blackburn, has been appointed a Commissioner for Oaths. Mr. Porter was admitted in 1884.

Mr. Henry Green, of Howden, has been appointed Clerk to the Rural Sanitary Authority and High Bailiff of the County Court. Mr. Green was admitted in 1867.

Mr. Edgar Kempson, of the firm of Knight, Saunders & Kempson, has been appointed Clerk to the Managers of the District School of the Farnham, Alton, and Hartley Wintney Unions. Mr. Kempson was admitted in 1886.

Mr. Rowland Benjamin Cliff, Blackburn, has been appointed a Commissioner for Oaths. Mr. Cliff was admitted in 1884.

Mr. Robert Nevill, of Tamworth, has been appointed a Commissioner for Oaths. Mr. Nevill was admitted in 1881.

Mr. Stephen Herbert Belk, of West Hartlepool, has been appointed Solicitor to the Hartlepool Port and Harbour Commissioners, Clerk to the Justices for the Borough of Hartlepool, and Clerk to the Justices for the West Hartlepool Division of the County of Durham. Mr. Belk was admitted in 1874.

Mr. William J. Read, of Blackpool, has been appointed a Commissioner to administer Oaths. Mr. Read was admitted in 1885.

## BIRTHS.

On Feb. 26, at Burleigh House, Scarborough, the wife of Hugh Richard Soulsby, of the Inner Temple, Barrister-at-Law, of a daughter.

On March 2, at Northampton, the wife of Rowland M. Estcourt, Barrister-at-Law, District Auditor to the Local Government Board, of a daughter.

## MARRIAGES.

On Feb. 21, at St. George's, Hanover Square, Edward John Quintius Maggs, of Hanover Square, W., Solicitor, youngest son of Thomas Charles Maggs, of Brighton, to Josephine Eliza, youngest daughter of Thomas Rought Jones, of Market Drayton, Shropshire.

On Feb. 25, at Worcester, Cape Colony, South Africa, Alphonse Pierre Nicolas du Toit, of the Transvaal, Judge of the Supreme Court, and of the Middle Temple, London, to Bessie, second daughter of George Spafford, of Wilderspool Hall, Urmston, near Manchester.

On Feb. 27, at St. Saviour's, St. George's Square, S.W., F. A. Ormiston Bowra, only son of the late Frederick and Emily Bowra, to Clara (Dolly), only daughter of the late Richard G. Dar, Barrister-at-Law, of 85 St. George's Road, S.W.

On Feb. 28, at All Souls' Church, Manchester, Samuel Herbert Linley, of Stone, Staffordshire, Solicitor, to Edith Mary, only surviving daughter of the late Dr. Arthur Neville and Anne Hawthorne, of Eccleshall, Staffordshire.

## DEATHS.

On Feb. 7, at St. Michael's, Barbados, after a lingering illness, George Williams Carrington, of the firm of Messrs. Carrington and Sealy, Solicitors, Bridgtown, in his 50th year.

On Feb. 20, at Stanford House, Beach Street, Deal (suddenly from acute bronchitis), Thomas Cave Hall, solicitor, aged 82 years.

On Feb. 25, at Broughton-in-Furness, Jane Muncaster, for upwards of forty years a faithful friend and servant in the family of the late Clement Millward, Q.C., of Alloe Holt, Hants.

On Feb. 26, at his residence, Fern Bank, 6 Grove Hill, Dulwich, William Henry Townsend, Barrister-at-Law, M.A., Oxon.

On March 2, at Belgrave House, Chiswick, in his 75th year, Thomas John Angell, Solicitor (late of Maida Hill), the dearly-loved husband of Eliza Angell.

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# The Law Journal.

*SATURDAY, MARCH* 14, 1891.


## 'OBITER DICTA.'

THE Lord Chancellor has again this week come to the aid of the Court of Appeal. Lord Justice Lopes being still an absentee from Court II., his place has been taken by Lord Justice Bowen, and the Lord Chancellor has been sitting in Court I. with the Master of the Rolls and Lord Justice Fry.

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So far as the Queen's Bench Division is concerned, the Hilary Sittings may be considered as practically at an end. It is announced that no more special jury actions will be taken this side of Easter, and the scarcity of judges is becoming painfully apparent. On Saturday there was no Court sitting in that division, and on Monday the assistance of Mr. Justice Jeune had to be invoked to sit with Mr. Justice Cave as a Divisional Court. On Tuesday, owing to the absence of the latter judge, no Court sat; while on Wednesday Mr. Justice Grantham, who has just returned from circuit, was the sole representative of the common law bench.

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PRIOR to the Act of Settlement, the commissions of the judges of the land were *durante bene placito* (see Stephen's 'Commentaries,' 11th edit. vol. ii. p. 481), but by that Act (12 & 13 Wm. III. c. 2) they were directed to be made out *quamdiu se bene gesserint*, and it was also directed that on the address of both Houses of Parliament it might be lawful to remove them. Afterwards by 1 Geo. III. c. 23, after reciting that 'His Majesty had been graciously pleased to declare from the throne that he looked upon the independence and integrity of judges as essential to the impartial administration of justice, &c., and had recommended to the consideration of Parliament to make further provision, &c., and that,' in return for this paternal goodness, and in the justest sense of His Majesty's 'tender concern for the religious laws and liberties' of his people, Parliament 'had taken this important work into their consideration, and had resolved to enable His Majesty to effectuate the wise, just, and generous purposes of His Royal Heart,' it was enacted that the commissions should be during good behaviour, subject to power of the Crown to remove on Parliamentary addresses as before, notwithstanding the demise of His Majesty, his heirs, and successors. The next alteration was that effected by the Judicature Act, 1873, which by section 9 enacted that 'all the judges of the High Court and Court of Appeal should hold their offices *for life*,' subject to removal as before. This was repealed by the Judicature Act, 1875, which substitutes for it the enactment now in force of section 5, that 'all the judges' of the Supreme Court, '*with the exception of the Lord Chancellor*,' shall hold their offices as such judges respectively *during good behaviour*, subject to a power of removal by Her Majesty on an address presented to Her Majesty by both Houses of Parliament.'

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. . . 'LONGA decem tulerunt fastidia menses.' After nine months' consideration and reconsideration the Lords have at last given judgment in the *Vagliano Case*. It was generally expected that the decisions of the Courts below would be reversed, and that their lordships would not be unanimous. Six judges against two have held that the loss on the bills of exchange so ingeniously forged by the convict Glyka must be borne by Messrs. Vagliano. In a question of such importance, it is too early to discuss in detail the conclusions arrived at by the noble and learned lords. We are disposed to think that the majority of the profession regard the decision with disapprobation, and the effect of this protracted litigation can hardly be considered satisfactory when we find that, taking all the trials together, there is actually a majority of judges in favour of the respondent Vagliano: viz. Mr. Justice Charles, five out of the six members of the Court of Appeal, and two law lords, as against Lord Esher and six law lords.

IT is clear, from a perusal of the judgments, that all the judges were by no means influenced by the same considerations. The three elements which form the basis of the decision were: (1) Negligence generally on the part of Vagliano, and a conduct of his business which facilitated the frauds; (2) the doctrine of *estoppel*; and (3) the language of the Bills of Exchange Act, 1882, s. 7, subs. 3. To these, perhaps, may be added, as Lord Bramwell suggested, a dislike of the case of *Robarts* v. *Tucker* (20 Law J. Rep. Q. B. 270). Lord Selborne and Lord Macnaghten relied mainly on the first ground; the second was emphasised by the Lord Chancellor, who spoke of Vagliano by his letters of advice to the bank and acceptance, giving the bills as against himself, 'qualities which in their inception they did not possess,' 'a genuineness' which did not otherwise belong to them. Lord Herschell took great pains to show that the persons named as payees on the forged bills were 'fictitious' persons within s. 7, subs. 3 of the Act, notwithstanding that they were the names of well-known existing persons, who were actual correspondents of Vagliano. Lord Selborne expressly declined to take this view, of which Lord Bramwell's criticism is characteristically trenchant and vigorous. But Lord Selborne did expressly say that *Robarts* v. *Tucker*, in which a banker who had paid a bill on which the indorsements were forged had to lose his money, was not to be extended; and Lord Macnaghten devoted a considerable part of his concise and luminous judgment to distinguishing the case before the House from *Robarts* v. *Tucker*.

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LORD BRAMWELL'S judgment was in his pithiest and most amusing style. He applied with great force what Mr. Grote calls the 'cross-examining *elenchus* of Socrates' to Lord Herschell's verbal dialectic, on which he remarks, 'That beats me.' He concludes his judgment with what looks like an afterthought—a farewell Parthian shaft of sarcasm against his colleagues. He remarked that the headnote of his and Lord Field's opinion might be expressed in the most abstract form—viz. 'A banker cannot charge his customer with the amount of a bill paid to a person who had no right of action against the customer'—whereas the opinions of the majority would have to be in a strictly concrete form, dealing with the facts of the particular case. The criticism is just—but not conclusive; logic and symmetry are not final *criteria* of truth. But it certainly is more satisfactory to be able to apply some definite principle, such as that enunciated by the learned lords.

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IN the case of *Ex parte Bellencoutre* (reported in our Notes of Cases for last week at p. 39) Mr. Justice Cave and Mr. Justice Wills delivered judgment in favour of the Crown for the extradition of a French notary, who was charged with *abus de confiance* according to the term of French law—that is, with the fraudulent misappropriation of money which had been deposited with him in his character of notary. Out of no less than nineteen instances of misappropriation stated to be criminal under French law, the Court was, however, able to find only four cases that were criminal under the provisions of sections 75 and 76 of the Larceny Law Amendment Act, 1861 (24 & 25 Vict. c. 96). The unsatisfactory state of the law of England, as compared with that of France, on this subject was alluded to in no ambiguous terms by the learned judges. As regards misappropriation of money, the authorities, of which *Regina* v. *Newman*, 51 Law J. Rep. M. C. 87; L. R. 8 Q. B. Div. 706, is a recent example, show that under section 75 an agent entrusted with money to invest is liable to conviction only when there is a direction in writing as to the application of the money: while under section 76, which applies to the case of money where there is no direction in writing, he is liable to conviction only when the money is entrusted for 'safe custody.' The result is, that the case of an agent entrusted with money for investment without any direction in writing is not within either section, unless, indeed, it can be brought within section 76 by evidence that the money was entrusted for safe custody till the time when it was to be invested (see *Regina* v. *Fullagar*, 14 Cox C. C. 70). The French law, as we understand, does not require a direction in writing such as is required by section 75 to constitute the offence of misappropriation of money entrusted for investment. As regards four of the charges, the Court, as we have stated, held that there was a *primâ facie* case of an offence under section 76, but as regards the other charges, which were not brought within the provisions of section 76, the absence of a direction in writing as to the application of the money prevented the commission of any offence according to English law under the provisions of section 75.

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IN connection with the recent so-called 'abduction' of a wife by her husband, it may be well to point out that it is the law of this country that a husband has the right to all his wife's time, and to direct her manner of life and her associates, and, if she refuses to submit to his orders, he can legally confine her to his house, from which she cannot be released by *habeas corpus*. (See 'Chitty on Contracts,' 12th edit. p. 241, citing *In re Cochrane*, 8 Dowl. P. C. 631, decided in 1840; and an earlier case of *Winsmore* v. *Greenbank* (1746), Willes, 577, in which an action by a husband against a third person for 'harbouring' his wife was held to lie.) No doubt the Legislature in 1884, by the Matrimonial Causes Act (47 & 48 Vict. c. 68), interposed to prevent the enforcement by imprisonment of a decree for restitution of conjugal rights, but the power of the Court to make the decree still survives, with results affecting property as provided in the Act. The Married Women's Property Act is concerned with property alone, and the municipal rights of a married woman are merged in those of her husband, as was pointed out by Lord Chief Justice Cockburn in *Regina* v. *Adwald*, 41 Law J. Rep. Q. B. 173. In *Regina* v. *Mead*, 2 Ken. 279—a case in which John Wilkes endeavoured to obtain repossession of his wife by *habeas corpus*—Lord Mansfield held good a return to the writ that Mrs. Wilkes was living apart under a separation deed, but laid down the law that, where a husband has not waived his right by such a deed, '*he has a right to seize his wife wherever he finds her.*'

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FROM the answer given by the Home Secretary on Monday night to Mr. Cobb's question with reference to the Inflammable Liquids Bill, it appears that the measure is not to be withdrawn in deference to the opposition which it has called forth from the trade. The object of the bill is to place certain restrictions upon

persons dealing in inflammable liquids, and to provide for their storage upon registered or licensed premises. Mr. Matthews stated that large concessions had been made in the bill to the convenience of traders, and that it had been introduced after repeated conferences with the trade, and in consequence of strong representations from local authorities, from the Admiralty, the Board of Trade, the Thames Conservators, the London County Council, and other public bodies, that amended legislation was urgently needed in the interests of public safety. Such representations must surely form a strong case in favour of the principle of the bill, and the Home Secretary expressed his willingness to consider any proposal for amendments in detail, where it was shown that the provisions were of too restrictive a character.

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IN the case of *Regina* v. *The Assessment Committee of St. Mary Abbot's, Kensington*, 60 Law J. Rep. M. C. 52, the Court of Appeal had to determine the question whether an assessment committee has a right to refuse to hear a person who has been sent by a ratepayer to appear as his agent in support of an objection to a valuation list. The Court held that an assessment committee has no such right, and granted a *mandamus* to compel the defendants to hear the agent. The question turned mainly upon section 19 of the Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), which by section 19 provides that the assessment committee shall hold meetings for hearing objections to the valuation lists, and 'may at such meeting hear and determine such objections.' The ground of the decision was that, as the statute was silent upon the point, the committee, in the words of Lord Justice Fry, 'had no power to limit the common-law right of a person to appear before them by an agent.'

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*In re Baker*, reported in the *Times* of Saturday last, raises a question of the very greatest importance in connection with the personal liability of an official receiver in bankruptcy on the covenants of a lease not disclaimed by him. The case was this. Mr. Baker became a bankrupt in 1884, and the predecessor of the present official receiver became official trustee of his estate. Amongst the assets was a twenty-one years' lease, which commenced in 1882 and was determinable at the option of the lessee at the end of the first seven or fourteen years. The bankrupt's wife paid the rent, and the official trustee neither disclaimed the lease nor determined it at the end of the first seven years. The amount of the assets was 1½*d.* in the pound. In June, 1890, Mr. Wreford, the present receiver, signified his wish to disclaim, but the landlord's solicitor would not assent to this, and claimed damages for breach of the covenant to repair. The official receiver then applied to Mr. Justice Cave for extension of time to disclaim, which was granted; and the order of Mr. Justice Cave was confirmed by the Court of Appeal. 'In this case,' said Lord Esher, 'it is clear that the landlord has suffered no prejudice; he has had his rent paid for the whole time, and paid by one who was a stranger to the lease, not by the bankrupt or out of the estate, which would not pay either rent or repairs. . . . It would be the harshest measure of justice, amounting even to injustice, to hold the official receiver personally liable for the rent and repairs for the whole term of fourteen years;' and no doubt it would have been. It appears, moreover, that notwithstanding the extreme length of the time during which, no disclaimer being applied for, the official receiver was legally the tenant, section 55 of the Bankruptcy Act allows the Court to free from all personal liability 'as from the date when the property vested in him.' Without disclaimer, and without extension of time to disclaim in, the personal liability of the official receiver would have been undoubted. See *Titterton* v. *Cooper*, 51 Law J. Rep. Q. B. 472.

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THE report of the Sheffield District Law Society, which we published last week (*ante*, p. 168), contains two curiously conflicting expressions of opinion on the subject of the remuneration of trustees. Commenting on the Public Trustee Bill, the committee say that they passed a resolution strongly disapproving of it, and that the secretary communicated the resolution to the local members of Parliament requesting them to oppose the bill on its second reading. The bill, it is added, 'had eventually to be dropped.' But, as to the remuneration of private trustees, we read in the same report that 'a communication was received from the Manchester Law Association' in respect thereto, but that the secretary was desired to say that, in the opinion of the committee, 'no statutory provision should be made.' Now, the Public Trustee Bill (which has been reintroduced, and may be reasonably expected to pass) may be detrimental to the best interests of the profession and the public or it may not. But it is perfectly plain that those who are opposed to it will do well to welcome rather than oppose any measure for the remuneration of private trustees. It is the long and arduous services of trustees without payment which have given rise to difficulties in obtaining trustees, and consequently laid a foundation for the Public Trustee Bill. Remove these difficulties by following the Colonial system of remunerating trustees, and one of the chief reasons for the Public Trustee Bill will cease to exist. We hope that the question of adequate remuneration of trustees and executors will be taken up by the law societies generally.

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A FARRIER, if he advertises himself in any way as a 'veterinary,' is liable to penalties under the Veterinary Surgeons Act, 1881, s. 17, for 'unlawfully using and taking an addition and description stating that he is specially qualified to practise a branch of veterinary surgery.' So it was held by Mr. De Rutzen in a case we reported last week (*ante*, p. 165), with the result that the offending farrier was fined sixpence, the maximum penalty being 20*l.*, and the summons having been obtained at the instance of the Royal College of Veterinary Surgeons. We think the decision, which is of very great importance, indisputably correct. It is material to point out that by section 17, subsection 2, of the Veterinary Surgeons Act, which follows the language of the Medical Act and the Dentists Act *in pari materia*, a person who is not registered as a veterinary surgeon is not entitled 'to recover in any Court any fee or charge for performing any veterinary operation or for giving any veterinary attendance or advice, or for acting in any manner as a veterinary surgeon or veterinary practitioner, or for practising in any case

veterinary surgery, or any branch thereof.' Shoeing *simpliciter* is, of course, not a veterinary operation, but it may be performed in such a manner, and under such difficulties, as to become so; and there is no doubt that many country farriers habitually give advice on matters quite unconnected with farriery. Such persons will now have to be careful.

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NEVER in the history of this country has the final Court of Appeal which is provided by the House of Lords been so strong both in numbers and in quality as it is at the present day. No less than eight peers—Lord Halsbury, Lord Selborne, Lord Herschell, Lord Bramwell, Lord Macnaghten, Lord Watson, Lord Morris, and Lord Field—delivered judgment in *Vagliano* v. *The Bank of England*, three of these noble lords being Lords of Appeal in ordinary, so created under the powers of the Appellate Jurisdiction Act. In addition to this galaxy of talent, the services of Lord Hannen, who, it is presumed, took no part in the judgment in the *Vagliano Case*, as not having heard the arguments, are also available. What a contrast does our highest legal tribunal now offer to the days when the late Lord Westbury 'held up his hands in respectful amazement' at the decision in the *Brownlow Case*, 23 Law J. Rep. Chanc. 348, and even to what it was in the days when, by a majority of one only in a House of three members, *Ricket* v. *The Metropolitan Railway Company*, 36 Law J Rep. Q. B. 205, and *Brand* v. *The Hammersmith Railway Company*, 38 Law J. Rep. Q. B. 265, were successively decided in the teeth of the emphatic dissent of Lord Westbury and Lord Cairns respectively, and in reversal of the judgments of majorities of the judges!

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THE attempts made in the House of Lords last week and in the House of Commons on Tuesday night to disturb the existing status of country J.P.'s were, we think, very wisely, as well as successfully, opposed by the Government. No system is perfect, and no alteration in the qualification or mode of selection would prevent eccentric or unsatisfactory men being occasionally placed on the commission. But, taken as a whole, the administration of justice in county Petty Sessional Courts is remarkably pure and efficient. For this result the clerks to justices are largely responsible, and when the subject was debated at the Nottingham meeting last year there was an overwhelming majority in favour of the present system being maintained.

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THE Hampshire County Council have done honour to themselves as well as to Mr. G. A. Webb by appointing him Clerk of the Peace and Clerk to the Council in the room of the late Mr. Earle. The unfailing courtesy and kindness of Mr. Webb during the many years he has been an active official at Winchester have secured for him the respect and good will not only of the magistrates and county councillors, but also of the barristers, solicitors, reporters, and witnesses whose duties have taken them to assizes and quarter sessions. It is a good omen for the county council *régime* that in this case ability and industry have proved passports to promotion.

## COMPENSATION UNDER LANDS CLAUSES AND RAILWAY CLAUSES ACTS.

THE metropolis, especially its north-west side, is at present more than commonly threatened with important railway schemes which, if carried, must seriously interfere with existing interests. Under these circumstances reference to some of the leading cases on compensation under the Lands Clauses Consolidation Act, 1845, and the Railway Clauses Consolidation Act, 1845, may be useful.

It may be premised (*a*) that where there is a case for compensation the proper remedy is by application under the Lands Clauses Act, and not by way of injunction (*The Duke of Bedford* v. *Dawson*, 44 Law J. Rep. Chanc. 549; L. R. 20 Eq. 353; *Wigram* v. *Fryer*, 56 Law J. Rep. Chanc. 1,008; L. R. 36 C. D. 96); (*b*) that where railways or other undertakings make a proper use of statutable powers given to them they are free from action or injunction on the part of the neighbouring owners, although the latter may have suffered annoyance to such an extent as would but for such powers have entitled them to an injunction (*The London and Brighton Railway Company* v. *Truman*, 55 Law J. Rep. Chanc. 354; L. R. 11 App. Cas. 61); (*c*) that, as observed by Chief Justice Earle in *Chamberlain* v. *The West End of London and Crystal Palace Railway Company*, 32 Law J. Rep. Q. B. 113; 2 B. & S. 639, 'the party claiming compensation must bring forward his claim in unity as far as he can foresee the damages which will arise, estimating them as having as much permanency as the railway;' and (*d*) that, if there is a wrong done which is not authorised by powers conferred by the Legislature, the common-law right of action exists for it (*The Imperial Gaslight and Coke Company* v. *Broadbent*, 7 H. L. 612). An early authority for proposition (*b*) is *Rex* v. *Pease*, 4 B. & Ad. 30, where the defendants were empowered by Parliament to make a railway (part of which ran parallel and near to a highroad) and also to use locomotive engines, and 'the Court held that the unqualified authority of the Legislature legalised what would otherwise have been a nuisance, and saved the defendants harmless from an indictment' (2 Law J. Rep. M. C. 26; L. R. 3 Q. B. Div. 736). A reason assigned in *Rex* v. *Pease* (p. 41) is that 'there is nothing unreasonable or inconsistent in supposing that the Legislature intended that the part of the public which should use the highway should sustain some inconvenience for the sake of the greater good to be obtained by other parts of the public in the more speedy travelling and conveyance of merchandise along the new railroad.' The *ratio decidendi* of *Rex* v. *Pease* was applied in *Vaughan* v. *The Taff Vale Railway Company*, 29 Law J. Rep. Exch. 247; 5 H. & N. 679, to the case of an injury to private property resulting from a spark caused by a locomotive engine running on a railway, the company having been, by section 86 of the Railway Clauses Act, authorised to use locomotive engines. On the other hand, in *Jones* v. *The Festiniog Railway Company*, 37 Law J. Rep. Q. B. 214; L. R. 3 Q. B. Div. 733, where the company had no statutory power to use such engines, they were held, in accordance with proposition (*d*), liable at common law for similarly caused damages, and this notwithstanding that negligence was negatived.

To cases connected with railways, the clauses of the Railway Clauses Act are, generally speaking, applicable as well as those of the Lands Clauses Act. To other

cases, such as *The Duke of Buccleuch* v. *The Metropolitan Board of Works*, 41 Law J. Rep. Exch. 137; L. R. 5 H. L. 418 (1872), *The Metropolitan Board of Works* v. *McCarthy*, 43 Law J. Rep. C. P. 335; L. R. 7 H. L. 243 (1874), *Cowper-Essex* v. *The Local Board for Acton*, 58 Law J. Rep. Q. B. 594; 14 App. Cas. 153 (1889), only the latter Act applies.

The Lands Clauses Act at least presupposes that some land or interest in land is taken or interfered with by the undertaking; and it is self-evident that compensation is only to be given in respect of lands which are not taken. Otherwise the promoters would have 'to arrange for compensation for permanent damage or injury to lands which did not continue to belong to the landowner, but which had been taken by themselves' (*Stone* v. *The Corporation of Yeovil*, 46 Law J. Rep. C. P. 137; 2 C. P. Div. 113). But in *The Hammersmith and City of London Railway Company* v. *Brand*, 38 Law J. Rep. Q. B. 265; L. R. 4 H. L. 171 (1869)—to which reference will again be made—Lord Cairns urged, but without success, that the Railway Clauses Act applied *where no land was taken*.

It seems plain that to warrant compensation under the Acts (i.) the damage must be 'substantial' and neither 'remote nor indefinite,' and (ii.) it must relate to land or its incidents. Thus, Lord Chancellor Selborne, in *The Caledonian Railway Company* v. *Walker's Trustees*, 7 App. Cas. 283-84, 'Scotch,' assigns as the true ground of the failure of the claim in *Ricket* v. *The Metropolitan Railway Company*, 36 Law J. Rep. Q. B. 205; L. R. 2 H. L. 175 (1867)—a case of alleged interference by the temporary obstruction of a way with the trade of a publichouse—that 'the damage was too remote and indefinite.' Lord Chelmsford, however, in *McCarthy's Case*, 43 Law J. Rep. C. P. 385; L. R. 7 H. L. 255, observes that the question in the special case in *Ricket's Case* related to loss of trade. As Lord Westbury remarks in *Ricket's Case*, L. R. 2 H. L. 203, 'many persons, such as the proprietors of stage-coaches, stage-waggons, and the owners of posting inns, may be ruined by the user of the railway by the public, but they have no claim to compensation. Compensation is given by the statute only to individuals who, in respect of the ownership or occupancy of [qy. immediately adjacent] lands or tenements, sustain loss in or through the construction of the railway or the execution of the incidental works.' So a claim for compensation on account of the inconvenience caused by a level crossing of a railway over a highway, even when close to the claimant's property, has been disallowed (*Caledonian Railway Company* v. *Ogilvy*, 2 Macq. 229). This case has, however, been criticised (see *Walker's Trustees Case*, 7 App. Cas. 302, 305, 'Scotch,' and *The Cowper-Essex Case*, 58 Law J. Rep. Q. B. 594; 14 App. Cas. 156).

With regard to the question, What is a sufficient interest in or right connected with land, it may be observed that compensation is allowed for interference with easements or with public rights when the claimant has special interest in such rights. Thus compensation was allowed for interference with a right of way (*Glover* v. *The North Staffordshire Railway Company*, 20 Law J. Rep. Q. B. 376; 16 Q. B. Rep. 212, and see *Ford* v. *Metropolitan and Metropolitan District Railways*, 55 Law J. Rep. Q. B. 296; L. R. 17 Q. B. Div. 12); with light (*Eagle* v. *The Charing Cross Railway Company*, 36 Law J. Rep. C. P. 297; L. R. 2 C. P. 638); with access to the river frontage of the Thames (*The Duke of Buccleuch's Case*); with access to a draw dock communicating with the Thames (*McCarthy's Case*); and for inconvenient alteration of streets immediately adjoining premises owned by the claimant (*Walker's Trustees Case*). So, too, Lord Chancellor Cairns spoke, in *M'Carthy's Case* (L. R. 7 H. L. p 253), with approval of *Beckett* v. *The Midland Railway Company* (L. R. 3 C. P. 82), where 'there was in front of the premises in question one single highway, the farther half, or the farther third portion of which, was taken off and blocked up by the execution of the defendant company's works.' It was there held that that was an injury which 'permanently and injuriously affected the premises in question.' The narrowing of the road was from 50 ft. to 33 ft. (p. 258). Lord Chelmsford also held *Beckett's Case* to have been rightly decided (*ib.* 259). In *Fleming* v. *The Newport Railway Company* (8 App. Cas. 265) it appears to have been considered (p. 281) that the claimant had not any *right* to the street in question. In *Wadham* v. *The North-Eastern Railway Company* (54 Law J. Rep. Q. B. 343; 14 Q. B. Div. 747; on app. 55 Law J. Rep. Q. B. 272; 16 Q. B. Div. 227) compensation was allowed for the depreciation (caused by stopping up a road) of premises used as an hotel, and which the arbitrator considered specially suitable for that purpose; but he stated that in assessing the compensation he did not 'take into account the depreciation in the value of the license, or the loss in the trade then being carried on in the premises.'

(*To be continued.*)

## CONTRIBUTION BETWEEN TRUSTEES.

Probably the case of *Blyth* v. *Fladgate* and the two actions connected with it (60 Law J. Rep. Chanc. 66) have by this time been sufficiently discussed as regards the general principles applied by Mr. Justice Stirling in his considered judgment. The words of his lordship on p. 76, 'I come, therefore, to the conclusion that Smith, having been guilty of negligence as solicitor to Wm. Blyth, cannot claim from him any contribution in respect of the liabilities imposed by the judgment in *Blyth* v. *Smith*,' may be considered as the text upon which this article is founded. The facts very shortly were that Smith, Morgan, and Wm. Blyth, as trustees, were held liable, jointly and severally, to make good the loss of trust funds caused by an improper investment thereof. William Blyth was also a beneficiary under the settlement on the trusts of which the funds were held, and Smith acted as solicitor in the matter. Smith claimed contribution from Wm. Blyth of a proportion of the sums necessary to replace the trust fund pursuant to the judgment before referred to, and to be recouped out of Wm. Blyth's share under the settlement. Wm. Blyth counter-claimed against Smith and partners for damages sustained by him owing to the negligence of Smith's firm, as solicitors to him and his co-trustees in the matter. The result of Smith's claim we have given above. The rule as to contribution between co-trustees is given thus in Mr. Lewin's treatise on 'Trusts' (8th edit.), p. 909: 'Though, as respects the remedy of the *cestui que trust*, each trustee is individually responsible for the whole amount of the loss, whether he was the principal in the breach of trust, or was merely a consenting party, yet, as between the trustees themselves, the loss may be thrown upon the party on whom, as recipient of the money or

otherwise, the responsibility ought in equity to fall, or, if he be dead, upon his estate. . . . If all the trustees be equally guilty, then (unless the transaction was vitiated by not only constructive but such actual fraud that the Court will hold itself entirely aloof) an *apportionment* or *contribution* amongst the trustees may be compelled.' In *Lockhart* v. *Reilly*, 25 Law J. Rep. Chanc. 697; 1 De G. & J. 464, Lord Cranworth held that as between one trustee, J., and the estate of a deceased co-trustee who had had the management of the trust as solicitor, and had caused most of the evil by his negligence, the costs which the deceased trustee's estate and J. were ordered to pay in an action against them for breach of trust, and also all charges and expenses properly incurred by J., as trustee, should be borne by the deceased solicitor-trustee's estate. That case and the recent one were similar, as in each case the Court, having discovered that the solicitor-trustee had brought about the loss by his negligence, made him (or his estate) primarily liable. It must not be supposed from these decisions that one trustee who has remained inactive can always throw the whole liability on to his active co-trustee. If anyone ever supposed that, his supposition was dispelled by the judgment of the majority of the Court of Appeal in *Bahin* v. *Hughes*, 55 Law J. Rep. Chanc. 472; L. R. 31 Chanc. Div. 390. In that case one trustee who had not taken any active part in the execution of the trust sought to make one of the active trustees indemnify him; but the Court pointed out that the authorities only went the length of deciding that a trustee would be held secondarily liable 'who had an independent right of indemnity from his co-trustee who had acted as solicitor for the trust, and raised an independent case of right to indemnity.' Lord Justice Fry pointed out that the Court should be very jealous against raising the idea of there being any implied liability on the part of one trustee to indemnify his co-trustee; for, 'if any such right existed, it would act as an opiate to the consciences of the co-trustees, and instead of the *cestuis que trust* having the protection of several acting trustees to look to, all that the trustees would do would be to look to their co-trustees for indemnity, and so neglect the performance of their duties.' Lord Justice Cotton stated that 'it is obvious that where one of two or more trustees has got hold of the fund and made use of it, he will be liable to indemnify his co-trustees. . . . So far as the cases have gone in the Court at present, it seems that it must be where the one has personally got the benefit of the breach of trust, or where there is such a relationship between him and his co-trustee as justifies the Court in holding him solely liable for the breach.' Lord Justice Bowen, having pleaded less experience in matters of equity, could not repress doubts as to whether the actively guilty trustee had not incurred obligations to her co-trustee, but declined to differ from the other lords justices. The law does not recognise such a capacity as that of a sleeping trustee, and, if anyone prefers to remain dormant and leave the execution of the trust to his more wakeful trustees, he must run the risk of being held liable for their misdoings. The position of a trustee should be useful, and not merely ornamental. From the authorities to which we have referred, the following propositions seem deducible—namely, that where a breach of trust has been committed, all the trustees are liable to their *cestuis que trust*, and also are equally liable as between themselves, unless any one of them has an independent right to an indemnity from his co-trustee or co-trustees, as he would have if the latter acted professionally for the trust, and caused the breach of trust by his negligence.

## LEGISLATIVE PROGRESS.

IN the House of Lords the Clergy Discipline (Immorality) Bill has been read a second time, the Fishery Board (Scotland) Bill has passed through committee, and the report of amendments to the East India Offices Bill has been agreed to.

The following resolution has been agreed to in both Houses: 'That all bills of the present session to confirm provisional orders made by the Board of Trade under the Railway and Canal Traffic Act, 1888, containing the classification of merchandise traffic and the schedule of maximum rates and charges applicable thereto, be referred to a joint committee of Lords and Commons.'

In the Commons the City and South London Railway Bill and a great number of Railway Companies (Rates and Charges) Provisional Order Bills were during the past week read a second time, and the South Kensington and Paddington Subway Bill was referred to a select committee of nine members, five to be nominated by the House and four by the committee of selection.

The Seed Potatoes (Supply) Ireland Act (1890) Amendment Bill and the Museums and Gymnasiums Bill were read a third time.

The Technical Instruction Bill passed through committee.

The Penal Servitude Bill was sent to the grand committee on law.

The Electoral Registration (Acceleration) Bill was read a second time, and the order for its further consideration in committee discharged.

The Teachers Registration Bill was read a second time, and referred to the select committee on the Teachers Registration and Organisation Bill.

The Army Annual Bill was read a second time, and a new bill introduced to abolish the property qualification required by persons acting as justices of the peace.

The Small Holdings Bill and the Possession of Game Bill have been read a second time.

The following new bills have been introduced: A bill to amend the General Pavement (Metropolis) Act, 1817, and a bill to amend the Commissioners for Oaths Act, 1889.

# Correspondence.

## HUSBAND AND WIFE.

SIR,—The following case, which has occurred in actual practice, will, I venture to think, be of some interest to your readers, as it shows one of the advantages of being a married woman. The facts are as follows:—

A wife, having no separate estate and living with her husband, removed (whilst he was absent at his place of employment) his household furniture from his house to the house of her son-in-law S. The husband, on discovering this, ordered her to bring them back, and, on her refusal, threatened her with proceedings. She repeats the offence on two subsequent days, the husband each time forbidding her and repeating his warning. On the last day she deserts him for the house of a daughter's husband, S., where she takes up her abode.

Both she and S. refuse to return the goods when demanded by the husband.

The justices refused to convict her of larceny. Now what are the rights of the husband?

On searching the Married Women's Property Act, 1882, it will be found to contain nothing expressly enabling a husband to sue his wife for torts affecting his property. Our attention, however, is attracted to sections 1 (2), 12, and 17; but upon construing these sections it is submitted that—

Section 1 (2) contemplates actions by strangers against the wife and *vice versâ* only.

Section 12 (giving a wife, *inter alia*, civil remedies against her husband and third parties) does not give the husband any similar remedies against his wife.

On section 17 (giving the Court jurisdiction to decide disputes between husband and wife, &c., as to property and to make orders) the question suggests itself, What order can a judge in the case put make? Has it not been held that a personal order cannot be made against a married woman? It would seem, therefore, that she could not be attached, *e.g.*, for not obeying an order made in an action of *detinue* (if, indeed, such order could be obtained), nor could execution issue, as she has no separate estate.

Nor would an action of *detinue* succeed against S., in whose house the goods lie, as he would take proceedings to compel husband and wife to interplead, and in the result no judgment could be obtained against the wife, as she has no separate estate.

The self-remedy by recapture would expose the husband to an action of trespass for entering the house of S., and the latter would be justified in forcibly resisting such entry for the purpose of removing the goods.

The law would seem, then, to be shortly this, that—

1. It is doubtful whether a husband has any civil remedy against his wife for torts committed by her affecting his property. (See Married Women's Property Act, 1882, ss. 1 (2), 12, 17.)

2. Even if he has, he could not succeed (unless she had separate estate upon which execution could issue), even by attachment.

3. That, admitting the Act gives him such a right to sue, an action by husband against a third party—*e.g.* S. —say in *detinue*, would be defeated by S. taking steps to bring wife in on interpleader, for if wife had no separate estate the action would fail.

4. Section 17 of the Act is useless where the question of property is raised by the husband as against the wife and she has no separate estate, as there is no means of putting in force (if made) any 'order' under that section.

G. N. G.

March 10.

# Unreported Cases.

## COUNTY COURTS.

### ACTION FOR ASSAULT IN A CHURCH.

*Phillips* v. *Stuart and others* was an action for damages for assault, in the Clerkenwell County Court, which was tried before his Honour Judge Eddis and a jury on March 3. The defendants were the Rev. E. A. Stuart, vicar of St. James's Church, Holloway, the churchwardens, the beadle, and one of the sidesmen.—The plaintiff, in his evidence, stated that for a long time past he had attended this church and had sat in one particular seat in a side gallery. On the morning of February 8, about twenty minutes to eleven, he was there as usual, when the beadle came to him and said the vicar wanted to see him. Plaintiff declined to leave his seat. A churchwarden said, 'You must go and sit in the body of the church.' He answered, 'This is a free seat, and I shall remain.' A Mr. Brewis then said, 'We are the churchwardens, and we insist upon your removal.' They then called up the beadle, who dragged him along to the end of the gallery to a policeman, who caught hold of his wrists. He was pinioned and was conveyed to the vestry. After that he was ejected and remained outside during the service, as the constable refused to let him re-enter. He returned in the evening, but the constable still declined to allow him inside, and the officer had been on guard at the door ever since. Cross-examined, the plaintiff admitted that he was in the habit of publishing handbills under the name of 'Diogenes II.,' and said it was true that he had commenced an action against his father. On Sunday, the 1st ult., he forbade the banns in eight cases directly they were published, and he did so because the beadle had annoyed him. There was a collection in the church nearly every Sunday, and he had complained that it was an imposition.—The judge said that plaintiff's conduct amounted to brawling.—For the defence, Police-constable Tinson said he searched the plaintiff, because it was believed he had bullets upon him. He put his hand on something hard, which he thought was bullets, but which turned out to be acid drops. (Laughter.) No more force than was necessary was used.—The jury stopped the case and gave a verdict for the defendants, and the foreman said the jury regretted that the plaintiff should have been advised to bring such an action.

## ASSIZE CASE.

### STAGE SCENERY—PAINTING.

At Manchester, on February 27 and 28, the case of *The Bolton Theatre and Entertainments Company (Lim.)* v. *The North-Eastern Railway Company* was tried before Mr. Justice Day and a special jury. The action was brought to recover damages for non-delivery and loss of certain scenery. On February 9, 1890, the plaintiffs handed to the defendants at Scarborough the scenery of a play called 'The Harbour Lights,' to be carried by their railway to Spennymoor, in Durham, for the purpose of being used on the following day. According to the plaintiffs, when the scenery was delivered back it was considerably damaged by fire and water, and by reason of this damage they were prevented from performing the play on February 10, 11, and 12, for which they claimed 20*l.* a night. The defence was that no notice was given of the nature of the goods or of the purposes for which they were required, and they further pleaded the Carriers Acts (11 Geo. IV. and 1 Wm. IV. c. 68), and said that, as the goods were carried in a parcel and were of more than the value of 10*l.*, the plaintiffs were not entitled to recover, on the ground that the scenery was 'a painting' within the meaning of the Act.—His lordship said that *primâ facie* a painting was a thing painted.—Mr. Wheeler replied that if the railway company considered that these articles came within the technical meaning of 'paintings,' they treated them in a very unceremonious manner, as they simply piled them on two trucks, and when they caught fire placed them in a siding and pumped on them. —Mr. Elliston, the manager of the plaintiff company, stated that he was very familiar with theatrical scenery. The backcloth, which was the first item claimed for, was painted in distemper, and represented a seaside village. In itself it was not a complete picture, but required other pieces to make up a scene. Another backcloth simply represented an horizon. The value

of all the scenery injured was, in his opinion, about 150*l.* After the fire it could not be used. No witnesses were called for the defendant company.—Mr. Gully, in addressing the jury, submitted that, in order to render the defendants liable for the injury to the scenery, which, he submitted, came within the term 'paintings' as employed in the Carriers Acts, it must have been proved that the plaintiffs had, at the time they delivered them to be carried, declared their value.—The learned judge said that the jury must say whether, in their opinion, this scenery was included in the terms 'picture' or 'painting.' If it was, the company would not be liable in respect of the packages, which exceeded 10*l.* in value. With regard to the consequential damages, they must say whether or not, in their opinion, the railway company had notice that the plaintiff company would be damaged by any delay of, or injury to, their scenery.—The jury found for the plaintiffs, and awarded them 120*l.* for the damaged scenery and 40*l.* for the consequential damage.—Mr. Wheeler, Q.C., and Mr. C. A. Russell appeared for the plaintiffs; and Mr. Gully, Q.C., and Mr. Lankester for the defendants.

## THE EFFICIENCY OF THE BENCH.

THE following correspondence has passed between Mr. Cobb, M.P., and the First Lord of the Treasury:—

House of Commons: March 2, 1891.

My dear Sir,—I am anxious that I should not misunderstand the meaning of the reply which you were good enough to give to the question I put to you on Thursday night with reference to one of the judges of the Queen's Bench Division.

I asked you whether the Lord Chancellor was aware that dissatisfaction and regret existed amongst members of the legal profession upon the subject referred to. You did not answer that question, although I put it pointedly a second time, but you repeated what you had already told me on the previous Monday (although I did not ask it), that no communication had been made to the Lord Chancellor.

I feel sure that neither the Lord Chancellor nor either of the law officers will deny that they are aware that dissatisfaction and regret exist among members of the legal profession as to the manner in which one of the judges, owing to an infirmity which every one deplores, is able to perform his duties. It is notorious that this dissatisfaction exists, and the Lord Chancellor must be aware of it, and also of the name of the judge, which has more than once been mentioned in legal and other newspapers. Having had the privilege of knowing the judge in question some years ago, and having received from him much personal courtesy and kindness, and feeling that it would be invidious and out of order to mention any name in the questions which I put to you in the House, I carefully refrained from doing so, but, as on Thursday you distinctly asked me to name the judge, I feel that it would be sacrificing the interests of the public to a sentimental, although a genuine, feeling, if, in answer to your challenge, I hesitated to say that the judge referred to is Mr. Justice Stephen.

I apprehend that one of the most important duties of a Governm nt is to jealously watch, in the interests of the public, the proper and efficient administration of justice by those who have in their hands the decision of questions of grave moment, and even of life and death. Surely, if it has become notorious that grave dissatisfaction exists among those in the legal profession who have the best opportunity of forming an opinion as to the manner in which a judge is able to perform his official duties, it is incumbent upon the Government to take steps for ascertaining if there is substantial cause for that dissatisfaction, and then to act in the interests of the public in such a way as may seem to be necessary.

It seems incredible that a responsible Government should ask me, as a private member (as I understood you to ask me on Thursday), to put down on the notice paper some specific statement as to the cause of dissatisfaction, and to name the judge referred to, although the causes and the name of the judge were then, and are now, perfectly well known to the Government, and especially to its legal members.

If the Government feel themselves in a difficulty it is for them to deal with it, knowing well, as they do, that they have, and that I have not, the power to investigate the alleged grievance and to apply the remedy.

I should have preferred that some member of the House, with more authority than I shall ever have, should have undertaken the unenviable task of bringing this matter forward. I waited hoping that this might be so. I have now brought it pointedly under the notice of the Government, and if they allow this scandal to continue litigants and the public will know upon whom the responsibility rests.

I am sure that you will agree with me that in such a personal and painful matter it is better that I should write to you instead of putting down any notice on the paper.

Yours very truly,
HENRY P. COBB.

To the Right Hon. W. H. Smith.

10 Downing Street, Whitehall: March 6, 1891.

My dear Sir,—I have read your letter with reference to Mr. Justice Stephen with care, and I observe that while you throw the whole responsibility on the Government for the continuance of a condition of affairs which you describe as 'notorious' and creating 'a general dissatisfaction,' you do not advance a single specific allegation as to a failure of justice on which it would be possible to take action.

The only course of action open to the Government in the case of a judge whose conduct merits removal is by address to the Crown in both Houses of Parliament.

The Constitution has very properly made the judges absolutely independent of the Government of the day, which, so far as they are concerned, possesses no paternal or disciplinary authority; and any member of Parliament is equally entitled to move an address with any member of the Government.

But this power, which you possess in common with ourselves, should obviously only be exercised with abundant specific proof of the necessity in the public interest of that course.

I am not in possession of evidence of that character on which I could feel it to be my duty to proceed.

Believe me, yours very faithfully,
W. H. SMITH.

Henry P. Cobb, Esq., M.P.

House of Commons: March 9, 1891.

My dear Sir,—I thank you for your letter of March 6. I have no right to expect that you should accept my statement that the painful circumstances alluded to are 'notorious,' but, surely, you will accept as evidence of notoriety the statements of newspapers like the *Times*, the *Daily News*, and the *Law Times*. In a leading article on March 6 the *Times* writes in reference to this case: 'It is certainly impossible to be any longer oblivious of what, wherever lawyers are gathered together, has for many days been the subject of their talk.' And, again, in the same article the *Times* writes: 'Should things which have been the subject of wonder and regret for some time continue, a question which fortunately we have seldom had to consider must be solved.'

It is, in my opinion, for the Government, which is responsible to the country for the proper administration of justice, to solve this question, and not for a private member of Parliament. You cannot seriously mean that the course you point out as being open to the Government of moving an address to the Crown in both Houses of Parliament is left to be originated by a private member like myself, while the Government looks on and does nothing. Nor is it my duty to collect and bring before you specific proof of an evil which is notorious. The Lord Chancellor and the law officers are well aware of the sources from which they can obtain abundant and direct evidence, and surely it is their duty to make full inquiry now that the subject has been brought so publicly forward.

I have so far almost alone performed, most unwillingly, a very unpleasant duty, and I am sure that the members of the bar and other members of the profession (and especially those in the House of Commons) will not from any mistaken idea of professional etiquette forget that they have duties to perform to the public, out of whose pockets the judicial system of the country is maintained, and who are entitled to demand that justice shall be efficiently administered.

Yours very truly,
HENRY P. COBB.

To the Right Hon. W. H. Smith, M.P.,
First Lord of the Treasury, &c.

## UNIVERSITY JURISDICTION IN OXFORD.

A DEBATE took place in the Oxford City Council on March 4, when it was reported that the Vice-Chancellor had been communicated with on the subject of a proposed conference between the city and the university on the matter of the jurisdiction of their respective Courts, and that the question had been referred by the Vice-Chancellor to the Hebdomadal Council, whose definite reply was now awaited.

Councillor Carver moved: 'That recent events have emphasised the necessity of limiting or ending the jurisdiction of the Vice-Chancellor's Court over Oxford citizens, and that in any conference between the university and city the members appointed by the council, or any committee of it, shall direct their efforts to this end. In the event of such conference not being speedily arranged, the Parliamentary committee be authorised to take any steps necessary in their judgment to effect this purpose.'

Councillor Salter, in seconding this, said there were other questions besides the jurisdiction of the Vice-Chancellor's Court that were to be found in obsolete charters, such as the power of veto over public entertainments. The whole of these powers should be vested in one authority.

Councillor Hall thought a mistake had been made in introducing the subject at a time when they had agreed to submit the whole matter to a conference.

The Warden of Merton said he would only remind them that this jurisdiction had existed for centuries, and both the university and city had grown up under it, and he thought it was sufficient ground for caution in their action.

The Vice-Chancellor felt as strongly as they did how desirable it was to bring this matter to a speedy and final issue. Early next term the university would be in a position to enter into the conference, and he hoped the question would be settled in a way satisfactory to both corporations.

Alderman Wilson (Exeter College) said the proctorial jurisdiction had for its aim the protection of the decency of the streets, and he should be rather in favour of extending that protection and giving to the civic magistrates the same power exercised by them in most of the decent towns on the Continent.

Alderman Carr, who could go back to the time when the mayor went before the vice-chancellor with a rope round his neck, and promised to submit to the laws of the university, thought that if the matter was dealt with in a fair spirit and without anger, the university would see the desirability of bringing the jurisdiction to an end.

The proposition was carried by thirty-nine votes to fifteen, all the university members present voting against it.

## HOW TO SELECT A LIFE OFFICE.

THIS is the title of a pamphlet from the pen of Mr. G. M. Dent, F.S.S., of which a second edition has just been published. It takes the form of a cleverly written dialogue between a well-informed insurance broker and certain individuals named Mr. Prejudice, Mr. About-to-Insure, Mr. Already Insured, and others, in which the broker clearly lays before his clients all the different systems of insurance, and points out the advantages or otherwise of insuring in this or that particular class of office. In his preface the writer says that some years ago he had occasion to effect a second insurance on his own life, and, being desirous of obtaining the very best value for his money, he determined to analyse the relative merits of all the life insurance companies doing business in the United Kingdom. As a preliminary he obtained prospectuses from over eighty offices, and waded through the material parts of the whole collection only to find how impossible it was to select *the* best office in a given case from such data. In consequence of this difficulty, he obtained a set of Government Blue-books on insurance, and set to work as a statistician to digest the information contained therein and to present it in a form which would be of some assistance to the helpless uninitiated. The result of his investigation into this difficult subject is given in these pages in as interesting and intelligible a manner as possible, and we cannot imagine that Mr. About-to-Insure could have any better guide to forming a sound opinion upon the many and important questions which must be considered before arriving at the conclusion that he has found the best office to insure in. At the end of the pamphlet are given two tables. Table I. shows in a concentrated form the more essential points to be considered in the selection of a life office. The facts and comparative figures in this table are extracted or calculated from returns made by each office to the Board of Trade according to the provisions of the Life Assurance Companies Act, 1870. The principles employed in determining the order of merit of the offices thus analysed are: primarily, according to their relative financial strength as measured by the tables of mortality used, and rates of interest assumed in the valuation of liabilities. Secondly, by assigning to each office, using the same method of valuation, its position in a particular group, according to the economy displayed in the management.

The second table shows the different results to policyholders produced by the payment of the same money to the various offices referred to. Both these tables are explained with great lucidity by Mr. Dent's friend, the insurance broker; and although, of course, the names of the various offices whose returns are thus tabulated and compared are not given, we presume that anyone interested could easily identify any particular office which, from the data given in these tables, appeared to offer the advantages which he was seeking to obtain from an insurance upon his life.

The pamphlet is published by Mr. John Heywood, of London and Manchester. In order to illustrate what widely different results can be obtained in different

offices we append a table showing the actual amounts paid upon eleven policies for 5,000*l.* each, effected on a life which dropped in December, 1890, in as many first-class offices:—

| Office | When effected | Annual Premium | Bonus additions | Amount paid in 1891 |
|---|---|---|---|---|
| | | £ s. d. | £ s. d. | £ s. d. |
| No. 1 | 1858 | 251 9 2 | 6,452 17 0 | 11,452 17 0 |
| „ 2 | „ | 252 14 2 | 3,870 10 0 | 8,870 10 0 |
| „ 3 | „ | 254 15 10 | 2,804 0 0 | 7,804 0 0 |
| „ 4 | „ | 253 6 8 | 2,690 0 0 | 7,690 0 0 |
| „ 5 | „ | 248 19 2 | 2,335 16 0 | 7,335 16 0 |
| „ 6 | „ | 248 19 2 | 2,238 13 8 | 7,238 13 8 |
| „ 7 | „ | 251 17 6 | 1,687 19 0 | 6,687 19 0 |
| „ 8 | 1861 | 275 4 2 | 4,022 0 0 | 9,022 0 0 |
| „ 9 | „ | 272 1 8 | 2,945 19 11 | 7,945 19 11 |
| „ 10 | „ | 271 9 2 | 2,218 14 0 | 7,218 14 0 |
| „ 11 | „ | 275 4 2 | 2,050 0 0 | 7,050 0 0 |

## ADVOCACY IN THE HIGH COURT OF MADRAS.

AMENDED RULES FOR THE QUALIFICATION AND ADMISSION OF PERSONS AS ADVOCATES OF THE HIGH COURT OF JUDICATURE AT MADRAS.

IN supersession of all existing rules for the qualification and admission of proper persons to be advocates of the High Court of Judicature at Madras, the High Court, in the exercise of the authority conferred by sections 9 and 10 of the Letters Patent (amended), has made and passed the following rules, and is pleased to direct that they shall come into force on February 4, 1891.

Provided that any person who on January 1, 1891, was actually serving as an apprentice to an advocate of the High Court, and who, on or before January 31, 1892, shall make application for admission in accordance with the rules now in force, shall be entitled to have his application dealt with as though those rules were still in force, anything in the rules now made to the contrary notwithstanding.

1. Subject to the conditions hereinafter stated, any person who is entitled to practise as a barrister in England or Ireland, or as an advocate in the principal Courts of Scotland, any person duly admitted and on the roll of advocates of the High Court of Calcutta, Bombay, or Allahabad, and any person who, having been admitted to the degree of Master of Laws in the University of Madras, has studied for eighteen months with an advocate of the High Court of Madras, may be admitted as an advocate of this Court.

2. In the case of a person entitled to practise as a barrister in England or Ireland or as an advocate in Scotland, the applicant must produce a certificate showing that he is so entitled to practise, together with satisfactory testimonials to his good character and ability.

3. In the case of an advocate duly admitted and on the roll of advocates of the High Court of Calcutta, Bombay, or Allahabad, the applicant shall produce a certificate of such admission and enrolment and also a certificate of character and ability signed by a judge of the Court of which he is an advocate or by the advocate-general of the same Presidency.

4. The application referred to in the two preceding rules shall be made by letter to the registrar, and shall show the date when the applicant was called to the bar and the number of terms kept by him. If it shall appear that any applicant has been called to the bar without keeping the full number of terms, he shall not be admitted as an advocate unless he shall satisfy the Court that he had sufficient cause for failing to keep the full number of terms.

Every application for admission under these rules shall be brought and moved before a bench of which the Chief Justice is a member.

ARTHUR COLLINS. *Chief Justice.*
T. MUTTUSAMI AIYAR.
G. A. PARKER.
FRANK WILKINSON. *Judges.*
H. H. SHEPHARD.
J. W. HANDLEY.

High Court of Judicature, Appellate Side, Madras, February 2, 1891.

H. W. FOSTER, *Registrar.*

## ADDITIONAL CAUSE LIST.

HIGH COURT OF JUSTICE.—QUEEN'S BENCH DIVISION.

*Hilary Sittings*, 1891.

### ADDENDA TO THE CROWN PAPER.

Cumberland (Cockermouth)—Towerson *v.* Jackson
Northamptonshire (Wellingboro')—Austin and another *v.* Goodman and another
Southampton—Regina *v.* Freshwater, &c. Railway Co.
Dorsetshire—Smith *v.* Davy
London—Vestry of Fulham *v.* Flew
Surrey (Southwark)—Hughes *v.* North Metropolitan Tramways Co.
Middlesex (Westminster) — London and Westminster Loan Co. *v.* Tabraham
London—Spaul *v.* Baker
Glamorganshire (Cardiff)—Hacquoil & Co. *v.* Tapson & Co.
Kent—Regina *v.* Lyddon
Birkenhead—Elliott *v.* Osborne
Staffordshire (Wolverhampton)—Norton & Co. *v.* Dalby
Surrey (Croydon)—Hood *v.* Fletcher
Surrey (Southwark)—Minshaw *v.* London Metallic Capsule Co.
Warwickshire (Coventry)—Sidney *v.* Taylor
Yorkshire (Sheffield)—In re Estate of C. H. Hill, dec.
Yorkshire (West Riding)—Regina *v.* Goole Local Board
England—Regina *v.* Keeper of H.M.'s Prison at Holloway (Bellencontre)
Cardiganshire (Lampetre)—Hughes *v.* Gilbert
England—In re Hearson, *habeas corpus*
Somersetshire (Axbridge)—Seaton *v.* Hole
Hampshire—Regina *v.* Judge of County Court of Southampton and Fisher & Son (Lim.)
Montgomeryshire—Regina *v.* Bayard
Middlesex (Whitechapel) — Ward and Wife *v.* North Metropolitan Tramways Co.
Hertfordshire (Bishop's Stortford)—Gibbons *v.* Procter
Metropolitan Police District — City and South London Railway *v.* London County Council
Glamorganshire (Swansea)—Ystradgynlais, &c. Colliery Co. *v.* Hughes & Co.
Metropolitan Police District—London County Council *v.* Candler & Son
Northumberland—Gibson *v.* Lawson
Metropolitan Police District—Smith *v.* Francis
London—Loader *v.* London and India Docks, &c. Committee
Glamorganshire (Swansea)—Hayes and others *v.* Kneeshaw, Lupton & Co.
South Shields—Kennedy *v.* Cowie
Hampshire (Portsmouth)—Dyson and another *v.* Dyson and another
Cheshire (Stockport)—Cowen *v.* Southern
Kent (Gravesend)—Regina *v.* Huggins, Esq. and another, Justices, &c. and Humphreys
Sussex—Smith *v.* Fovargue
Middlesex (Whitechapel)—Davies *v.* North Metropolitan Tramways Co.
Plymouth—Curran *v.* Treleaven
Cheshire (Congleton and Sandbach)—Parrott *v.* Perry (Perry & Son, garnishees)
Middlesex (Clerkenwell)—Crestman *v.* Stephens
Glamorganshire (Merthyr Tydfil)—Harman *v.* Rees, Powell and others
Gloucestershire (Bristol)—Ball *v.* Baker
Lancashire (Liverpool)—Nelson & Co. *v.* M'Leod & Co.
London—Regina *v.* Read and others
London—White *v.* Bird
Lancashire—Fecitt *v.* Walsh
London—Barnes *v.* Gibb & Co.
Middlesex (Clerkenwell)—France *v.* Dutton (Dutton, claimant)
Staffordshire (Burslem)—Mellor *v.* Willett & Co.
Lancashire (Liverpool)—Boumphrey *v.* Houghton & Co.
Metropolitan Police District—Cohen *v.* Lakeman
Yorkshire (West Riding)—Regina *v.* Wilkinson, Esq. and others, Justices, &c. and others (ex parte Leeds Union)
London—Regina *v.* Judge of City of London Court and Hirschman
Lancashire (Oldham)—Central Mill Co. *v.* Mortimer
Yorkshire (West Riding)—Mayor, &c. of Sheffield *v.* Wortley Union and others
Cumberland (Cockermouth)—Atkinson *v.* Flimby Colliery Co.
Brecon—Nott and another *v.* Davies

## CALENDAR OF THE COUNTY COURTS.

FROM MARCH 16 TO MARCH 21.

| No. of Circuit | His Honour | March 16 | March 17 | March 18 | March 19 | March 20 | March 21 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Runcorn | — | — | Birkenhead | — |
| 8 | Judge Heywood | — | Salford | Salford | Salford | Salford | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | Middlesbrough | Stockton-on-Tees | — | — | — | — |
| 19 | Judge Barber | Ilkeston | Burton | Derby | — | — | — |
| 22 | Judge Harington | Stratford-on-Avon | Coventry | Warwick | Rugby | Daventry | Southam |
| 26 | Judge Jordan | Buralem | Tamworth | — | — | — | — |
| 47 | Judge Powell | — | Lambeth | Woolwich | Lambeth | Greenwich | — |
| 55 | Judge Machonochie | Poole | Lymington | Bournemouth | Wimborne | Wareham | — |
| 58 | Judge Edge | Totnes | Kingsbridge | Crediton | — | — | — |

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, BOWEN, L.J., and FRY, L.J.

THURSDAY, MARCH 5.

*Lessing* v. *Horsley* (appeal of defendants from judgment of Lawrance, J., dated November 12, at trial without a jury in Middlesex).—Dismissed.

*Stogdon* v. *Lee* (appeal of defendant from judgment of Day, J., dated July 4, at trial without a jury in Middlesex). *Stogdon* v. *Lee* (notice of contention by plaintiff in person). *Stogdon* v. *Lee* (appeal of defendant from order of Mathew, J., and Grantham, J., dated November 5, refusing to limit receivership by excluding income and arrears) (to come with the final appeal by order).—Allowed.

FRIDAY, MARCH 6.

*In re W. Baker; ex parte R. Axford* (appeal of R. Axford from order of Cave, J., dated February 9, extending time for disclaimer by trustee). *In re W. Baker; ex parte Official Receiver* (cross appeal of official receiver on appeal of R. Axford to vary order of Cave, J., by directing payment of costs to official receiver occasioned by Axford's opposition).—Dismissed.

*In re Cameron and others; ex parte Debtors and others* (appeal of debtors and others from order of Mr. Registrar Giffard, dated February 21, refusing to rescind receiving order).—Part heard.

SATURDAY, MARCH 7.

*Evans* v. *Newfoundland Railway Company and others* (appeal of plaintiff from judgment of Smith, J., dated November 22, at trial without a jury in Middlesex).—Part heard.

MONDAY, MARCH 9.

*Evans* v. *Newfoundland Railway Company and others.*—*Cur. adv. vult.*

Before the LORD CHANCELLOR, the MASTER OF THE ROLLS, and FRY, L.J.

TUESDAY, MARCH 10.

*Thomas* v. *Kempthorne* (application of plaintiffs for judgment or new trial on appeal from verdict and judgment at trial before the Lord Chief Justice without a jury in Middlesex).—Dismissed.

WEDNESDAY, MARCH 11.

*In re Kent County Council and the Council of the Borough of Sandwich and the Local Government Act*, 1888 (Q. B. *Crown Side*) (appeal of Kent County Council from decision of Stephen, J., and Williams, J., dated January 31, on questions submitted under Local Government Act, 1888, s. 29). *In re Kent County Council and the Council of the Borough of Dover and Local Government Act*, 1888 (Q.B. *Crown Side*) (appeal of Kent County Council from like decision as in previous case).—*Cur. adv. vult.* on preliminary objection.

*Reeve and another* v. *Gibson* (appeal of plaintiff from order of Wills, J., and Williams, J., dated February 11, allowing costs in copyright action, damages under 10*l.*).—Dismissed.

*Hammond & Co.* v. *Schofield and another* (appeal of plaintiff from order of Wills, J., and Williams, J., dated February 17, discharging order to set aside judgment and amend).—Dismissed.

## APPEAL COURT II.

Before LINDLEY, L.J., LOPES, L.J., and KAY, L.J.

THURSDAY, MARCH 5.

*S. A. Hampson* v. *W. Guy and others* (application of defendants for new trial on appeal from verdict and judgment dated January 15, at trial before Butt, J., and a special jury).—Part heard.

FRIDAY, MARCH 6.

*S. A. Hampson* v. *W. Guy and others.*—Part heard.

SATURDAY, MARCH 7.

*S. A. Hampson* v. *W. Guy and others.*—Stand over.

Before LINDLEY, L.J., BOWEN, L.J., and KAY, L.J.

MONDAY, MARCH 9.

*Royal Albert Hall Corporation* v. *Dowager Countess of Winchilsea and another* (application of defendants for judgment or new trial on appeal from verdict and judgment at trial before Stephen, J., in Middlesex; heard February 18).—Dismissed as to Lady Winchilsea, allowed as to Mr. S. Finch Hatton.

*Lorck* v. *Keun and others* (application of defendant L. Cloete for judgment or new trial on appeal from verdict and judgment at trial before Mathew, J., in Middlesex; heard February 23).—Dismissed.

Before LINDLEY, L.J., LOPES, L.J., and KAY, L.J.

*In re Bridgwater Navigation Company (Lim.) and Companies Acts* (appeal of T. H. Birch from order of North, J., dated December 3, 1890, declaring rights of shareholders; *Cur. adv. vult.* February 27).—Allowed.

*Winby* v. *Manchester, Bury, Rochdale, and Oldham Steam Trams Company* (application of defendants for security for costs of plaintiff's appeal from judgment of the Vice-Chancellor, dated December 15).—Allowed.

Before LINDLEY, L.J., BOWEN, L.J., and KAY, L.J.

TUESDAY, MARCH 10.

*Indigo Co. (Lim.)* v. *Ogilvy, Gillanders & Co. and Others* (appeal of plaintiffs from order of North, J., dated Feb. 13, refusing liberty to amend writ of summons by adding parties).—*Cur. adv. vult.*

WEDNESDAY, MARCH 11.

*Mayor, &c. of Wolverhampton* v. *Bilston Township Commissioners* (appeal of defendants from judgment of North, J., dated Dec. 10, 1890).—Part heard.

*In re Anne Flint, deceased; Allen* v. *Isaacson* (appeal of plaintiff from order of North, J., dated Jan. 12, 1891, on originating summons).—Dismissed.

*In re Blantern, deceased; Lowe* v. *Cooke* (appeal of plaintiffs from order of Stirling, J., dated Jan. 22, varying Chief Clerk's certificate).—Allowed.

*Roberts* v. *Cooper* (appeal of Leila Elkins and others (representatives of C. Lamb, deceased) from order of Kekewich, J., dated Jan. 24, 1891).—Part heard.

IRISH SOLICITORS.—The chief objects of a bill introduced by Mr. O'Neill, M.P., are stated by him as being to give to the Council of the Irish Incorporated Law Society more complete control over the educational course connected with the entrance into the solicitor's profession in Ireland, and also to give to the society the custody of the Roll of Irish Solicitors.

UNITED LAW SOCIETY.—The usual weekly meeting was held on Monday at the Inner Temple Lecture Hall, Mr. Commin in the chair.—Mr. H. W. Marus gave an interesting account of his recent visit to Canada, and his impressions of political and social life in the Dominion. He concluded by moving a resolution to the effect 'That this house views with profound satisfaction the determination of the people of Canada to preserve their national life and independent existence as an integral part of the British Empire.'—A discussion followed, in which Messrs. J. L. V. S. Williams, D. M'Millan, C. Kains-Jackson, C. Herbert-Smith, H. H. Blazeby, W. F. Symonds, and W. S. Sherrington took part.—The motion was carried *nem. con.*—The subject for debate on Monday next will be the case of *Simmons* v. *The London Joint-Stock Bank.*

STIPENDIARY MAGISTRATES.—A proposal has been made by Mr. Lloyd Morgan, M.P., that county councils should be enabled to provide for the appointment of stipendiary magistrates. Whenever any county council by a majority of its members thinks it expedient that a stipendiary magistrate or magistrates be appointed to execute the office of justice of the peace within the county, it is empowered by Mr. Morgan's bill to make a bye-law or minute fixing the amount of salary to be paid. On receiving this bye-law or minute the Home Secretary is to appoint from among barristers of at least five years' standing a person or persons to be police magistrate or magistrates, and a justice or justices of the peace for the county during Her Majesty's pleasure. Whenever a stipendiary magistrate sits his decision on any question of fact or law is to determine the matter then before the Court, irrespective of the opinion of any other justice of the peace who may be sitting at the time.

RENTS COLLECTED AND DISTRAINTS LEVIED TO RECOVER SAME, by Messrs. HENRY C. WOOD (Surveyor to the Parish of Tooting) and HENRY KIRBY (Wood & Kirby), Certificated Brokers, 1 Great James Street, Bedford Row, W.C. No charge made to Landlords if Rent over 20*l*. Troublesome tenants got rid of. Possession also taken under Bills of Sale, Mortgages, &c. Bailiffs to the Parish of St. Dunstan in the West and City of London (Farringdon Ward). Money paid over same day received. Bankers: City Bank, Holborn Viaduct. References, if desired, to clients of many years' standing. Prompt and personal attention given.—ADVT.

## NOTICES FOR THE WEEK.

ROTA OF REGISTRARS.

MONDAY, March 16.—Court of Appeal No. 2: Mr. Jackson. Mr. Justice Chitty: Mr. Lavie. Mr. Justice North: Mr. Rolt. Mr. Justice Stirling: Mr. Ward. Mr. Justice Kekewich: Mr. Pugh. Mr. Justice Romer: Mr. Godfrey.

Tuesday, March 17.—Court of Appeal No. 2: Mr. Clowes. Mr. Justice Chitty: Mr. Carrington. Mr. Justice North: Mr. Farmer. Mr. Justice Stirling: Mr. Pemberton. Mr. Justice Kekewich: Mr. Beal. Mr. Justice Romer: Mr. Leach.

Wednesday, March 18.—Court of Appeal No. 2: Mr. Jackson. Mr. Justice Chitty: Mr. Lavie. Mr. Justice North: Mr. Rolt. Mr. Justice Stirling: Mr. Ward. Mr. Justice Kekewich: Mr. Pugh. Mr. Justice Romer: Mr. Godfrey.

Thursday, March 19.—Court of Appeal No. 2: Mr. Clowes. Mr. Justice Chitty: Mr. Carrington. Mr. Justice North: Mr. Farmer. Mr. Justice Stirling: Mr. Pemberton. Mr. Justice Kekewich: Mr. Beal. Mr. Justice Romer: Mr. Leach.

Friday, March 20.—Court of Appeal No. 2: Mr. Jackson. Mr. Justice Chitty: Mr. Lavie. Mr. Justice North: Mr. Rolt. Mr. Justice Stirling: Mr. Ward. Mr. Justice Kekewich: Mr. Pugh. Mr. Justice Romer: Mr. Godfrey.

Saturday, March 21.—Court of Appeal No. 2: Mr. Clowes. Mr. Justice Chitty: Mr. Carrington. Mr. Justice North: Mr. Farmer. Mr. Justice Stirling: Mr. Pemberton. Mr. Justice Kekewich: Mr. Beal. Mr. Justice Romer: Mr. Leach.

THE annual general meeting of the bar will be held (subject to the permission of the masters of the bench) in the Old Dining Hall, Lincoln's Inn, on Saturday, March 21, at 2.30 P.M.

BOY MESSENGERS.—Some correspondence has passed between the directors of the Boy Messengers Company (Lim.) and the Postmaster-General. The directors, after recapitulating the communications that have passed between the Post Office and the company, state the position as follows: 'We are authoritatively told by you that it is illegal, and an infringement of the law, and a direct contravention of the Telegraph Acts, to work the Electric Call System; at the same time you, for months past, have permitted a company who you have informed us do not hold a license, to work the system, and yet you threaten us with penalties should this company do likewise. At the same time you practically, on one ground or another, decline every proposal that we put forward.' The following reply was received on March 10 from the Post Office: 'I am directed to inform you that the Postmaster-General does not assent to the accuracy of the account, given in your letter of the 7th inst., of the communications which have from time to time passed between the Postmaster-General and the Boy Messengers Company (Lim.). I am also directed to reiterate the statement, which has already been repeatedly made to you, that the introduction and use of the Electric Call System without the license or permission of the Postmaster-General is illegal, and, further, that the carriage of letters by the messengers of a company such as the Boy Messengers (Lim.) is illegal. The Postmaster-General desires me to add that, having informed the company of the state of the law, he declines to pledge himself to any course of action at the instance of the company.' The directors, in reply, deny that their recital of the circumstances, which was taken from the actual correspondence, was inaccurate.

## LAW STUDENTS SOCIETIES.

DEBATING. — The ordinary weekly meeting of this society was held at the Law Institution, Chancery Lane, on Tuesday, March 10; Mr. Pattinson in the chair. The subject for discussion, 'That the case of *In re Watson*, 59 Law J. Rep. Q. B. 394; L. R. 25 Q. B. Div. 27, was wrongly decided,' was opened by Mr. Parker, followed by Mr. Marchant; Mr. Harcourt and Mr. Willson opposed.—The debate having been declared open, the following gentlemen spoke: in the affirmative, Mr. Jones; in the negative, Messrs. Blagden, Hitchins, and Addington Willis. —Mr. Parker replied.—On the motion being put to the meeting it was lost by a majority of seven. There was a large number of members and visitors present. The subject for discussion at the next meeting of the society on Tuesday, March 17, is: 'That legislation is urgently needed to place further restrictions on gambling.'

LIVERPOOL.—At a meeting of this association on Monday, March 9—Mr. C. Collins in the chair—a debate was held on the following subject for discussion: 'A. is the legal personal representative of B., who on May 28, 1887, shot himself while temporarily insane. On April 17, 1886, B. had insured his life for 1,000*l.* with an insurance company, the policy containing the following clause: "In case the assured die by the hand of justice or in personal combat, and also in case of suicide, his representatives shall be entitled to half the amount provided his membership shall have reached two years." Two annual payments of premium have been made by B. Can A. recover from the insurance company?'—Mr. Sweny opened in the affirmative, which was also supported by Messrs. Glover, Nevins, Bielby, and Tonge.—Mr. Smith opened in the negative, which was also supported by Messrs. Martin, Rodgers, and Lockwood.—The question was decided in the affirmative by a majority of thirteen.

LEEDS.—A meeting was held on Monday evening at the Law Institution, Albion Place, at which Mr. A. W. Bairstow, barrister, presided.—At the conclusion of the private business of the society the following point was discussed: 'A., an *employé*, is injured by neglect on the part of his employer, B., to fence machinery in pursuance of the Factory and Workshops Act, 1878. A. does not avail himself of the penalty provided by the Act. Does the neglect by B. of the statutory duty of fencing give A. in such a case a right to damages at common law?'—Mr. Cecil P. Lankester supported the affirmative, and showed the common-law rights to be, in his opinion, very strong. —Mr. Ernest H. Foster replied in the negative, quoting several authorities, and relying principally on the case of *Atkinson* v. *The Newcastle Waterworks Company*.—A discussion followed.—The chairman summed up the arguments on both sides in a clear and interesting speech, and then put the question to the vote, when it was decided in favour of the negative by six votes to five.—A vote of thanks to Mr. Bairstow concluded the meeting.

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THE BAR MUSICAL SOCIETY.—The next smoking concert of this society will take place at the Drill Hall, Lincoln's Inn, on Friday, March 20, at 8.30 P.M. In addition to glees and part-songs by the vocal section of the society, we understand that the orchestra, which has this season been revived, will take part in the performance. In addition to the support which the society has throughout received from the benchers of Lincoln's Inn, further assistance is now being given by the benchers of the Inner Temple, who have kindly placed their Lecture Hall in King's Bench Walk at the disposal of the orchestra for the five o'clock Friday practices.

THE NEW LAW COURTS IN BIRMINGHAM.—The new Law Courts in Corporation Street, Birmingham, are now so nearly complete as to permit of arrangements for their formal opening. The first stone of the Courts was laid on March 23, 1887, by Her Majesty, who visited Birmingham especially for that purpose in the mayoralty of Sir Thomas (then Alderman) Martineau. Hopes had been entertained that the Prince of Wales might be induced to visit Birmingham in order formally to open the new buildings, and thus complete the work of the Queen. It is now known that his Royal Highness has complied with the request made to him, and that, accompanied by the Princess, he will go to Birmingham in the course of the ensuing summer for the purpose of opening the Victoria Courts. The Mayor (Alderman Clayton) will probably be in a position to make a communication on the subject to the council at its meeting on April 7, and the date of opening the Courts may be arranged by that time. The last visit of the Prince of Wales was on November 28 and 29, 1885, when his Royal Highness opened the Jaffray Hospital and the Corporation Art Gallery. The last visit of the Princess of Wales was on November 3, 1874, in company with the Prince of Wales, during the mayoralty of Mr. Joseph Chamberlain.

EAST INDIA (FACTORY ACT).—A Parliamentary paper has just been published containing copies of despatches from the Secretary of State in Council to the Government of India, dated May 15 and July 3, 1890, relating to the amendment of the Indian Factory Act, 1879. On the former date the Secretary of State forwarded a copy of correspondence with the Blackburn Chamber of Commerce on the subject. The following is the general instruction sent in this letter: 'The general principle of all factory legislation, as already adopted in this country and in India, is that life and limb must be protected, and that the health of all women, young persons, and children must, so far as possible, be assured. To this principle Her Majesty's Government have recently, in the Berlin Conference, declared their adhesion, thus recommending it for adoption by the other Powers of Europe. How far this general principle has been already applied in India is a matter for your consideration. As regards any additional factory legislation in India, due regard must be had to the circumstances of that country, which are in many respects different from those of any European nation. But the same general principle is nevertheless applicable, and the object of any such legislation must be to secure without fail, for the various classes of operatives in India, an amount of protection for life and limb, and an amount of security for the health of women, young persons, and children, not inferior to that which is afforded by the law of England.' On the latter date the Secretary of State forwards the proceedings of the Berlin Conference and Mr. Howarth's question in the House of Commons (May 12) on the extension of the Factory Act to the native States, together with the reply of the Government. He adds, on this latter subject: 'Any law passed by the Indian Legislature would be applicable to British India only; but there are factories, and gold and coal mines in native States, and we may hope that the numbers of such industries will increase. It is probable that the rulers of such States may be willing to follow the example of the British Government in the matter; and when the new law is passed and in working order, your Excellency might see fit to advise some of the chief native States upon the subject.'

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means: it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & CO., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

SOLICITORS' BENEVOLENT ASSOCIATION.—The usual monthly meeting of the board of directors of this association was held at the Law Institution, Chancery Lane, London, on Wednesday, the 11th inst., Mr. John Hunter in the chair. The other directors present were Messrs. H. Holland Burne (Bath), H. Morten Cotton, Robert Cunliffe, Edwin Hedger, J. H. Kays, Grinham Keen, R. Pennington, Henry Roscoe, Sidney Smith, R. W. Tweedie, E. W. Williamson, Frederic T. Woolbert, and J. T. Scott (secretary). A sum of 360*l.* was distributed in grants of relief, six new members were admitted to the association, and other general business was transacted.

MAGISTRATES' CLERKS AS SOLICITORS.—On February 27 Mr. Channing asked the Secretary of State for the Home Department whether his attention had been called to the statement made recently at the Liverpool Assizes by Mr. Justice Wills, to the effect that the practice of magistrates' clerks acting as prosecuting solicitors in cases where they had a direct interest in the number of convictions was an 'abominable system.'—Mr. Matthews: Yes, sir. I have seen the statement of the learned judge. The practice condemned by him is that of clerks to the justices acting as prosecuting solicitors in the cases of persons as to whose committal they have at an earlier stage advised the justices. If they afterwards prosecute at sessions or assizes, and thereby earn the allowance for costs, it may be alleged that they have an interest in obtaining as many committals as possible. But their salaries as clerks to the justices are not affected by the number of convictions. The practice is, no doubt, theoretically indefensible, and I will consult the Attorney-General on the question whether it produces any practical evils calling for legislation.

IMPORTATION OF GAME BIRDS.—Under the Game Act of 1831 a penalty may be imposed on dealers in game who buy, sell, or have in their possession birds of game after ten days after the expiration of the season for killing them; and on other persons who buy or sell such birds after that time, or who possess them, except for breeding purposes, after forty days. Some time since the question was raised whether this prohibition applied to birds imported from abroad. Considering that the decision of the Courts as to its not so applying 'is practically to permit the sale of game at all times, as the origin of the game is difficult of proof,' Sir J. Dorington, M.P., has introduced a bill to make the prohibition apply to imported game. However, he would 'restrict its operation to such kinds of game birds as breed and are found wild in the United Kingdom, thus excluding from its operations the Norwegian and Canadian and other game birds which are imported in large quantities.' His bill accordingly declares that the enactment of 1831 shall apply only to certain named birds, but shall apply to them whether they have been imported from abroad or not. The birds named are—pheasant (*phasianus*)—English (*Colchicus*), Chinese or ring-necked (*torquatus*), Japanese (*versicolor*), and the hybrids thereof; partridge (*perdrix*)—grey (*cinerea*), red-legged (*rubria*); grouse (*tetral*)—red (*Scoticus*), black (*tetrix*); ptarmigan (*lagopus*); capercailzie (*tetrao urogallus*); bustard (*otis*)—great (*tarda*), little (*tetrax*).

JURYMEN'S FEES.—Prior to opening an inquest at Guy's Hospital, on March 9, Mr. S. F. Langham, coroner for the City and Southwark, said he wished to speak to the jury on a matter which had appeared in the public Press, and which had reference to the County Council's proposal to do away with the shilling fee paid to jurymen who served on coroners' inquests in South London. The report—he had read it in the *Times*—was to the effect that the County Council had reason to believe that the shilling which was paid did not reach the hands of the jury. The statement pained him very much, for it cast an insinuation upon the officers in the district for which he was perfectly sure there was not the slightest grounds. Whatever the County Council did with regard to the fees, he was perfectly sure that every shilling charged for the juries had reached them. He had seen his officer hand the money to the foremen, and the foremen distribute it amongst their brother-jurymen. He thought it would be very unfair to abolish the fee, and he should regret it, as he was of opinion that juries who gave up their time and ordinary vocations ought to be remunerated. He concluded by again saying how pained he was at the statement made at the County Council, and he felt sure that, with regard to the insinuation that the juries did not get their fee, they would bear him out when he said it was entirely without foundation. The foreman of the jury said he wished most decidedly to refute the statement that they had not been paid, and the jurymen corroborated the coroner.

THE SALE OF GOODS.—An excellent principle is adopted by Lord Herschell in introducing a bill for codifying the law relating to the sale of goods. If the whole of the law of contract were codified, this bill would form a single chapter in the code. By the passing of such bills, therefore, gradual steps are being taken towards the establishment of a complete code of law. The bill, he tells us, is drafted on the same lines as the Bills of Exchange Act of 1882. It endeavours to reproduce as exactly as possible the statutory and common law rules relating to the sale of goods, leaving for introduction at a later stage any amendments that may seem desirable. The bill is almost entirely a reproduction of the common law. With the exception of the Statute of Frauds, the legislative enactments relating to the sale of goods deal only, Lord Herschell reminds us, with isolated points of not much general importance. In so far as such enactments deal solely with the law of sale, they have been reproduced in the bill, but where they relate mainly to some different subject-matter, and deal only incidentally with the law of sale, or where they affect only certain specified classes of goods, they have been covered by saving clauses. In accordance with the principle of the bill, no attempt is made to reproduce the effect of cases which, though arising out of sales, merely illustrate principles common to the whole law of simple contracts. The bill does not extend to Scotland, the law of that country on the subject differing in many important respects from that of England.

## BIRTHS.

On March 2, at Belmont, Stoke, Devonport, the wife of Foster J. Bone, Solicitor, of a son.

On March 3, at 1 Alexandra Gardens, Ventnor, the wife of Wm. T. Way Buckell, Solicitor, of a son.

On March 10, at Fondilla, Bromley, Kent, the wife of A. R. Cluer, Barrister-at-Law, of a son.

On March 11, at St. Mary's, Stapleton Hall Road, Stroud Green, the wife of Minton Slater, Solicitor, of a son.

## MARRIAGES.

On Feb. 2, at the Free Church of Scotland, Calcutta, Peter O'Kinealy, Barrister-at-Law, son of the late James P. P. O'Kinealy, M.P., of co. Cavan, to Grace, sixth daughter of E. Lewis, Esq., J.P., Maindee Hall, Newport, Mon.

On March 7, at St. James's Church, Piccadilly, Henry Francis Coghlan White, Assistant-Magistrate, Perak, Straits Settlements, to Emily Violet, third daughter of Frederick A. Ducroz, of Courtlands, East Grinstead, Sussex.

## DEATHS.

On Feb. 15, Susannah, third daughter of the late Anthony Ellis Arkell, Solicitor, Cheltenham.

On March 5, at Minchinhampton, Gloucestershire, Agnes Anne, the wife of J. W. Hume-Williams, Barrister-at-Law, in her 69th year.

On March 6, of bronchitis, Leofric Temple, Esq., Q.C., Recorder of Carlisle, in his 72nd year.

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# The Law Journal.

*SATURDAY, MARCH* 21, 1891.


## 'OBITER DICTA.'

WE understand that, at the commencement of next sittings, two of the Lords Justices of Appeal will sit to try actions in the Chancery Division. Such an arrangement, of course, implies that only one division of the Court of Appeal will be sitting, and it may be presumed that appeals from the Chancery Division will not be taken during the early part of the sittings. The plan may possibly answer sufficiently well as a temporary expedient for getting rid of the block in the Chancery Courts, but we venture to think that the appointment of another judge will be found to be ultimately necessary.

IN the Clitheroe so-called 'abduction' case, to which we referred last week (*ante*, p. 176), the Divisional Court (Cave, J., and Jeune, J.) refused to grant a *habeas corpus* or even a rule *nisi* for a *habeas corpus* to bring up the body of a wife now detained by her husband who had forcibly seized her. The motion was made on behalf of the wife's sister, the wife herself being no party to it, and the contention was that the custody and detention were so strict as to afford evidence that if the wife were a free agent, she would be able to show the Court that she was entitled to be discharged from it. The Matrimonial Causes Act, 1884, whereby imprisonment for disobedience to a decree for restitution of conjugal rights was abolished, was also relied upon. The Court, after full argument, had no hesitation in refusing the motion, being of opinion that to authorise the granting of the writ it should either have been shown that something illegal was being done or that the husband was being guilty of cruelty, and that neither of these grounds had been made out. It appeared, too, that the husband had recently obtained a decree for restitution of conjugal rights, so that the seizure by the husband was in aid of the decree, and the applicant for the motion was attempting to render it futile. Very full reference was made in the judgment of Mr. Justice Cave to *Regina* v. *Cochrane*, 8 Dowl. P. C. 631, in which all the authorities up to 1840 are collected by Mr. Justice Coleridge, and we do not think that the High Court could properly have overruled those authorities. As for the Act of 1884, it is material to point out that what that Act abolished was imprisonment by the Court in aid of its own decree, leaving quite intact the power of a husband to seize and detain the wife as defined by *Regina* v. *Cochrane* and other cases.

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THE Court of Appeal has emphatically reversed the decision of Mr. Justice Cave and Mr. Justice Jeune and set Mrs. Jackson at liberty by writ of *habeas corpus*, thus overruling the *dictum* of Lord Mansfield in *Regina* v. *Mead*, 1 Burr. 542, to the effect that a husband may seize his wife wherever he finds her, and the carefully considered judgment of Mr. Justice Coleridge (sitting alone in the Bail Court) in *In re Cochrane*, 8 Dowl. 630, to the effect that a husband is entitled to exercise a certain degree of constraint towards a wife till she should be willing to return to her conjugal duties. *Regina* v. *Leggatt*, 18 Q. B. 781, where the Court refused a *habeas* to a husband for the purpose of restoring to him his wife, who was living with her son by her own desire, is, no doubt, to some extent, in conflict with *In re Cochrane*, but not to such an extent as to make it impossible that the House of Lords, on the point of authority, should reverse the decision of the Court of Appeal.

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Is there an appeal from the Court of Appeal to the House of Lords in *Jackson's Case*? By section 3 of the Appellate Jurisdiction Act, 1876, 'an appeal shall lie to the House of Lords from any order or judgment of' (amongst other Courts) 'Her Majesty's Courts of Appeal in England.' In *Bell Cox's Case*, 60 Law J. Rep. Q. B. 80, it was held that no appeal lies from the High Court to the Court of Appeal on an order of discharge by the High Court on *habeas corpus*. But in *Jackson's Case* the High Court refused the writ, so that the question would be a new one as between the High

Court and the Court of Appeal. But assuming that the Court of Appeal has jurisdiction, as we are bound to do at present, that jurisdiction is clearly subject to review by the House of Lords, which might reverse the decision of the Court of Appeal on any one of three grounds: (1) on the ground of want of jurisdiction; (2) on the law; and (3) on the merits, if the House of Lords should see its way to taking a different view of Mr. Jackson's conduct to that taken by the Court of Appeal.

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THE judgments of the House of Lords in *Bell-Cox* v. *Hakes*, 60 Law J. Rep. Q. B. 89, which we report in our March number, will long be cited as authorities upon the procedure in *habeas corpus* and upon the construction of sections 19 and 47 of the Judicature Act, which give an appeal from the High Court to the Court of Appeal except in criminal cases. The House held unanimously that an order made upon a writ of *habeas corpus* to discharge from custody a prisoner attached under a writ *de contumace capiendo* (the prisoner was a clergyman whose imprisonment had resulted from disobedience to a monition requiring him to abstain from certain illegal practices in matters of ritual) is not a judgment in a criminal cause or matter within section 47 of the Act, whereby no appeal lies from the High Court to the Court of Appeal 'in any criminal cause or matter.' This is quite clear, and appeared so clear to the House that they did not care to have the question argued. Upon the general question whether an appeal lies from a discharge on *habeas corpus* great difference of opinion prevailed; but the majority of the House (five lords out of seven) held that no appeal lay, notwithstanding the very express words of section 19 of the Act of 1873, by which 'the Court of Appeal shall have jurisdiction and power to hear and determine appeals from *any judgment or order save as hereinafter mentioned*, of Her Majesty's High Court of Justice.' 'Probably no more important or serious question,' observed Lord Halsbury in giving judgment, 'has ever come before your lordships' House,' and Lord Bramwell and Lord Herschell delivered separate judgments. The point of authority is now of course finally settled. In point of principle we cannot help thinking that the majority were wrong and the minority right. As it is put by Lord Field, the Legislature, in section 19 of the Act of 1873, 'has reduced the generality of the word "order" to specific orders by making careful and specific exceptions. All orders not excepted, and therefore orders in *habeas*, in civil causes or matters, are thus included.' The contrary view proceeds from seeing in statutory enactments greater reasonableness and consistency than their subject-matter admits of. As a general authority upon the construction of statutes the decision is, we think, a rather unfortunate one.

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THE Parliamentary bar has been thrown into a state of great excitement by the decision of Mr. Hanbury, the chairman of the Select Committee on an electric railway extension bill, not to allow any counsel to cross-examine a witness unless he had been present at the examination-in-chief of such witness. The witness out of whose evidence the difficulty arose was an engineer, 'who had explained at great length the engineering details of the scheme of the bill and the methods of construction.' Mr. Pope, Q.C., on behalf of the Gas Light and Coke Company, rose to cross-examine the witness, when the chairman at once interfered as above stated, with the result that 'Mr. Pope, who was supported by all the leading members of the bar, entered a strong protest against the chairman's conduct, and then in a body the members of the bar refused to take any part in the proceedings, and retired from the room.' It has been since made known that Mr. Hanbury was following a Parliamentary rule laid down in 1861, but long disused. Two questions now arise: (1) Which is the procedure most beneficial to the parties promoting and the parties opposing bills—that revived by Mr. Hanbury, or that contended for by Mr. Pope and those members of the Parliamentary bar who support him? and (2) Whether it is not entirely within the discretion of the chairman of a committee to regulate the procedure as he pleases, subject only to the operation of the rule that both parties must be fully heard? Both of these questions are very serious ones. We venture to suggest that the Bar Committee is a more proper body to settle what should be the action of counsel in the matter than those members of the bar who are immediately interested in it.

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THE chairman of the County of London Sessions recently horrified his bar by announcing that 'he was prepared to sit on Good Friday, the following Saturday, Easter Monday, and the Tuesday after. He had,' observed he, 'never before had to sit on Good Friday, but he could remember cases in which judges on circuit had sat in the afternoon of that day.' The Solicitor-General at once protested against such an interference with 'arrangements which many had already made.' The chairman said 'his position was a painful one, and he was subjected to observations which made him wish to have it understood that, as far as he was concerned, he was ready to sit on those days;' but added that 'he should of course be swayed by the general feeling of the bar, and would say at once that the Court would not sit on Good Friday'—a very wise determination. The allusion to alleged Good Friday sittings of judges on circuit makes the incident one of great general importance. Our impression is, that in the pre-Judicature Act times at least one judge once sat on Good Friday, but that since the passing of that Act there has been no such sitting. For what is the law under that Act? By section 26, subject to Rules of Court, the High Court and any judge thereof may sit 'at any time and at any place.' Read by itself, no doubt (as the *Solicitors' Journal* once put it), this section might be taken to authorise a midnight sitting in mid-winter in the middle of Salisbury Plain; but it is expressly made subject to Rules of Court, and by the Rules of the Supreme Court, Order LXIII., rule 4, the Easter vacation commences on Good Friday, which therefore, we submit, is a *dies non*.

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AN important question with reference to the County Courts was raised last week in the House of Commons. Mr. Fowler asked the Attorney-General whether his attention had been called to a return recently presented to the House, from which it appeared that eleven of the County Court judges held less than 120 sittings each during the year 1889, and whether any steps would be taken to put in force sections 10 and 13 of the County Courts Act, 1888, so as to secure more frequent sittings

of the Courts, and to provide for a redistribution of judicial work among the judges. The Attorney-General stated that he was informed by the Lord Chancellor that orders were constantly made under section 10, and that every effort was made to secure that the sittings should be as full as possible, and added that in many cases where there was a small number of sittings, the time occupied in travelling was considerable. There can be no doubt that this would be an important element for consideration in any scheme for the redistribution of work amongst the County Court judges, but there is another which is certainly not less material—viz. the amount of business to be disposed of at each sitting. The work of a County Court judge is to be measured not so much by the number of days on which he sits as by the amount of work to be got through at each Court. This of necessity varies enormously—a sitting in many country towns often lasting less than an hour, while at other places the judge is occupied for seven or eight hours. These considerations are sufficient to show that the suggested redistribution would be a matter of considerable difficulty.

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IT is an inevitable result of a great measure like the Local Government Act, 1888, that a number of measures should be proposed of an ancillary character to further and develop that legislation. No body of men have been more assailed or been subjected in the discharge of their duties to a more microscopic criticism than the 'Great Unpaid,' the borough and county magistrates. And now a bill has been introduced by Mr. Lloyd Morgan, Mr. Dillwyn, Mr. Labouchere, Mr. Lockwood, and others, the evident aim of which is gradually to abolish the old-fashioned justice of the peace. The bill professes to enable any county council, by a majority of its members, if they shall think it expedient that a stipendiary magistrate or magistrates shall be appointed, to make a bye-law or minute fixing the amount of salary to the office so created. The bye-law or minute is then to be transmitted to the Home Secretary, who will proceed to the appointment of the new functionary in accordance with section 1 of the Stipendiary Magistrates Act, 1863. Stipendiary magistrates so appointed will have all the powers of magistrates under the Act, and their decisions on matters of fact and law are to override the opinions of their honorary brethren. The council will, it is to be inferred, though it is not stated, have to provide the funds whilst the patronage will rest with the Secretary of State. The bar is not likely to complain, but the ratepayer may feel that the county council is addressing him in the words of Rehoboam: 'My father chastised you with whips; but I will chastise you with scorpions.' Whether justice will be better administered is another question. Many of us think that country magistrates have deserved well of the public, and all parties during the progress of the Local Government Bill agreed in commendation of quarter sessions; and in London and the large towns stipendiary magistrates have been known to make grave blunders.

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THE decision of the Scottish Court of Justiciary last week as to the legality of the practice of dishorning cattle is the culminating-point in a strange history of judicial conflicts. In the first case on the subject, *Brady* v. *M'Argle*, 14 L. R. (Ir.) 174, the Irish Court of Exchequer in 1884 held that the operation was illegal under the Act for the Prevention of Cruelty to Animals (12 & 13 Vict. c. 92); the judges in this case were Baron Dowse and Justice Andrews. But the very next year, in *Callaghan* v. *The Society for the Prevention of Cruelty to Animals*, 16 L. R. (Ir.) 325, Chief Justice Morris and Justices Harrison and Murphy came to the contrary conclusion, and held that the act is not illegal when performed with due care and skill, and for the purpose of rendering the animals more profitable to farmers in the course of their trade. Following these cases in 1888 came the leading Scotch case of *Renton* v. *Wilson*, 15 Ct. Inst. Ca. 84, in which Lords Young, M'Laren, and Rutherford Clark decided that the practice was legal, being customary in certain counties, and justified by a reasonable purpose. Then in 1889, in *Ford* v. *Wiley*, 58 Law J. Rep. M. C. 145, Lord Chief Justice Coleridge and Mr. Justice Hawkins discussed the subject with great care, and emphatically dissented, on the evidence before them, from the views expressed by the Scotch and Irish judges. In reliance on this decision the question was again raised in Scotland in *Todrick* v. *Wilson*; and on March 13 last the Lord Justice-Clerk, and Lords M'Laren, Trayner, Welwood, and Kyllachy pronounced judgment, reviewing all the previous decisions, and unanimously resolving to abide by the view that the operation of dishorning cattle, when performed with skill and in the usual manner, for the purpose and with the effect of preventing the animals from injuring one another, is not an offence under the statute. A curious and perhaps unique feature in this history is that each Court has been unanimous; and this suggests that there may have been substantial diversity in the evidence collected in the different cases. Lord M'Laren observed that the decision in *Ford* v. *Wiley* proceeded upon the supposition that the following facts were proved: That the operation was neither necessary nor customary in England, that it was productive of no benefit to the owners of the animals, and was the cause of needless cruelty and suffering to the animals themselves; while, in his lordship's opinion, the facts in evidence before the Scotch Court pointed to very different conclusions. The case, in short, belongs to the obscure borderland between fact and law, to the region of confusion between the dictates of science and the natural inclination of humanity; and it seems desirable that the Legislature should intervene to put the question one way or the other beyond doubt.

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SIR AUGUSTUS STEPHENSON'S return 'showing the working of the regulations made in 1886 for carrying out the Prosecution of Offences Acts, 1879 and 1884, with statistics setting forth the number, nature, costs and results of the proceedings instituted by the Director of Public Prosecutions in accordance with those regulations' during 1890, has just appeared as a Parliamentary paper, and a most valuable and important return it is. It appears that during 1890 the conduct of 453 cases was undertaken by Sir Augustus as Director of Public Prosecutions, while in 667 cases application was made unsuccessfully for his interference. The detailed tabular statement of these 667 cases presents many interesting features. Very frequent are the applications, generally anonymous, to put down lotteries, and in many, under the heading 'Result of application,' we read, 'warning letter sent.' 'M—— H——,' of 'Bow

and Boulogne,' was complained of as 'sending betting circulars to boys at school through the post,' by Dr. Warre, of Eton, whereupon 'the director forwarded to Dr. Warre a report of proceedings instituted by the police for keeping betting-houses.' Applicants are frequently advised to consult their own solicitor. As to an alleged bigamy case, we find the sagacious note that 'if the police will rearrest this man (A—— J——) when they find him, director will then take up case.' 'N—— and others' were charged with conspiracy and fraud by C—— L——, but the noted result is: 'An old case. Applicant under delusions.' 'D—— W—— was charged with conspiracy, boycotting and interference with administration of justice' by his Honour Judge Metcalfe, but the result was that 'after communication with judge and personal interview with deputy chief constable,' it was found that 'evidence was not procurable to justify criminal proceedings against D—— W—— or any other person.' This interesting return should be in every law library, and in the hands of all clerks of the peace and clerks to justices. It only costs 10½*d.*

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THE Attorney-General, in answer to a question by Mr. Stansfield in the House of Commons, has replied that 'his attention had not been called' to a prospectus of a company stating that applicants for shares should be deemed absolutely to waive all rights to compensation under the Directors' Liability Act. 'The practice,' continued the law officer of the Crown, 'would rather be an avoiding than an evasion of the Act of 1890, and would not be a criminal offence,' as of course it would not. We have already expressed the opinion (see *ante*, p. 146) that this new waiver clause would be good in law to protect directors who may employ it in prospectuses. 'An Act evaded is an Act not broken,' said Mr. Justice Grove in the famous *Ramsden* v. *Lupton*, 43 Law J. Rep. Q. B. 17, in which the Bills of Sale Act of 1854 was held to have been successfully evaded by successive bills of sale of which the last only was registered, so that the obligation to register within seven days after execution became practically inoperative. But *Ramsden* v. *Lupton* was followed, though after a considerable lapse of time, by an amending enactment; we refer to section 9 of the Bills of Sale Act, 1878, which completely circumvented the money-lenders, by providing that such duplicate bills should be wholly void. And we hope that, long before the close of the present session, Mr. Warmington will have seen his way to circumventing promoters by a bill providing that the Act of 1890 is to take effect notwithstanding any stipulation to the contrary. By the same bill also occasion might be taken to nullify the waiver clause in reference to contracts within section 38 of the Companies Act, 1867.

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THE annual general meeting of the bar will be held this day (Saturday, March 21), at 2.30 P.M., in the Old Dining Hall, Lincoln's Inn, by the kind permission of the masters of the bench. It is to be hoped that there will be a full gathering. Last year's meeting (see a report of it in the LAW JOURNAL for April 26, 1890, at p. 253) was held a month later in the year. The principal subject then discussed was that of the appointment of common law barristers as revising barristers in the metropolitan districts. The construction of the 'Bar Committee,' which was formed in 1883, is fully described in the LAW JOURNAL for April 19, 1890. We take occasion to repeat that, 'though every barrister is requested to subscribe half a guinea a year, *every barrister, whether a subscriber or not, is entitled to vote at the annual election of members, and to attend the annual meetings.*'

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Is the sea 'a place or country' within the meaning of Order XI., rule 4, which provides that the affidavit or other evidence supporting an application for leave to serve a writ or notice on a defendant out of the jurisdiction must show 'in what place or country such defendant is or probably may be found?' Such was the question which a Divisional Court had to answer in *Seagrove* v. *Parks* (Notes of Cases, p. 39). The defendant was a British subject, but was on board H.M.S. Cockatrice in the Mediterranean. Mr. Justice Denman, at chambers, had refused the application on the ground that the affidavit did not show, nor could it be shown, within reasonable limits, in what 'place or country' the defendant was. In *Fowler* v. *Barstow*, 51 Law J. Rep. Chanc. 103; L. R. 20 Chanc. Div. 240, the late Master of the Rolls, in speaking of the equivalent rule under the old rules, said: 'The object of the rule was this—that if you have a British subject anywhere, you may serve him with a writ; there is no objection to it, whether he is residing in a foreign country or whether he is residing in a part of the Queen's dominions; but if he is not a British subject, and you want to serve him out of the Queen's dominions, you must not serve him with a writ, because most foreign countries would object to that.' In the case of a foreigner, the *raison d'être* of the rule, according to Sir George Jessel, might necessitate particularising in what part of the Mediterranean he was, though on a British man-of-war he would surely be within Her Majesty's dominions. The defendant in *Seagrove* v. *Parks* was a British subject, so according to Sir G. Jessel's *dictum* it was immaterial whether he was in a foreign place or a place under British jurisdiction. The Divisional Court, however, held that the 'place or country' was not sufficiently specified in the affidavit in question, and refused the application for leave to serve the writ out of the jurisdiction.

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A LIVELY correspondence has taken place between the 'Boy Messenger (Limited)' and the Postmaster-General, from which it appears that the department has taken up a thoroughly 'dog-in-the-manger' attitude. The question at issue seems to be vital to the existence of the company, whose work has already been such as to command the sympathy of the public. All those who are familiar with the ubiquitous brigade of neatly-uniformed boys will rejoice if the legal difficulties can be surmounted in such a way as to enable the enterprising company not only to continue their present operations unhindered, but to increase their utility by the establishment of what is known as the 'Electric Call System.'

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OWING to pressure on our space we are compelled to hold over a number of reviews and other matter.

## THE PARTNERSHIP ACT, 1890.—I.

THIS Act, which came into operation on January 1, 1891, is entitled 'An Act to declare and amend the law of partnership,' and these objects it proceeds to effect in exactly fifty sections. The part of the Act which is occupied with the work of *declaring* the law of partnership is very much more extensive than that which is devoted to its amendment. The Act, in fact, while altering the law on some few points and settling definitely the law on other points which were doubtful, introduces only one change of anything like first-rate importance—viz. in section 23, which deals with procedure against partnership property for a separate judgment debt, and provides that after January 1, 1891, a writ of execution shall not issue against any partnership property except on a judgment against a firm. The main operation, in fact, of the present Act is to some extent to codify the law, but, as has been pointed out by Lord Justice Lindley, it is by no means a complete code of partnership law. The mode of administering partnership assets in the event of death or bankruptcy is not to be found in the Act, neither is there anything in the Act relating to goodwill. The Act itself provides, by section 46, that existing rules of equity and of common law shall continue in force except so far as they are inconsistent with the express provisions of the Act. The same high authority, however, proceeds to point out that, though incomplete work is doubtless unsatisfactory, it by no means follows that such work is not worth executing. On the contrary, if well done, so far as it goes, it may be a great boon. His judgment upon the present Act is that, 'although imperfect, it has the merit of reducing a mass of law hitherto undigested, except by private authors, into a series of propositions authoritatively expressed and as carefully considered as any Act of Parliament is likely to be.'

The definition of partnership has from time to time furnished ample scope for the powers of text-writers, and in 'Lindley on Partnership' a vast number of definitions of more or less scientific merit are collected. This point is now definitely settled by section 5 of the present Act, where partnership is defined as the relation which subsists between persons carrying on a business in common with a view of profit. It is pointed out by Lord Justice Lindley that the definition that appeared in the bill as introduced into the Lords was inaccurate in including agreements for partnership, while the present definition possibly goes too far in the other direction, and makes the actual carrying on of business the test.

What is the test of partnership? A number of rules are stated in section 2, to which regard is to be had in determining whether a partnership does or does not exist. These rules may or may not be of importance according to the circumstances of the case, and each of the facts enumerated in the new rules (all of which are, with a very slight exception, only declaratory of the previous law) may, in some cases, be decisive of the question, while in other cases they may weigh very lightly. It would, we think, have been well if the Act had gone on to lay down specifically by far the most important principle to be applied in determining whether a partnership exists which, having regard to the provision of section 46, that the rules of equity and common law shall continue except when inconsistent with the express provisions of the Act, is unquestionably still the law. This rule is that established by *Cox* v. *Hickman*, 8 H. L. C. 268, and confirmed by *Badeley* v. *The Consolidated Bank*, 38 Chanc. Div. 238—viz. that the true contract and intention of the parties as appearing from all the facts of the case is the thing to be chiefly regarded. The slight change to which we alluded in section 2 is that the words 'nor give him the rights of a partner' are now omitted, so that the participants in profits would seem to be clearly entitled to an account—a point which was doubtful under the former law.

(*To be continued.*)

## COMPENSATION UNDER LANDS CLAUSES AND RAILWAY CLAUSES ACTS.

(*Continued from p.* 179.)

THE expression 'injuriously affected,' section 68 of the Lands Clauses Act, has led to great divergence of judicial opinion. In the words of Lord Penzance (L. R. 7 H. L. 261), 'there are many things which a man may do on his own land with impunity, though they seriously affect the comfort, convenience, and even pecuniary value which attach to the lands of his neighbour. In the language of the law, these things are *damna absque injuriâ*, and for them no action lies.' And Lord Chancellor Chelmsford adopted, in *Ricket's Case*, L. R. 2 H. L. 187, Lord Campbell's ruling *In re Penny* and *The South-Eastern Railway Company*, 26 Law J. Rep. Q. B. 225; 7 E. & B. 660, that, 'unless the particular injury would have been actionable before the company had acquired their statutory powers it is not an injury for which compensation can be claimed.' This opinion seems to have been shared by Lord Cranworth (L. R. 2 H. L. 198), by Lord Hatherley (L. R. 7 H. L. 260), and by Lord Penzance (*ib.* 261). On the other hand, Lord Westbury strenuously urged in *Ricket's Case*, p. 202, that 'injuriously affected' was only equivalent to 'damnously affected;' and in *The City of Glasgow Union Railway Company* v. *Hunter*, 2 Sc. App. 86, he adopts as the test the question, 'Does the thing done detract from the marketable value of the premises?'

In the *Duke of Buccleuch's Case*, 41 Law J. Rep. Exch. 137; L. R. 5 H. L. 460, we find Lord Chelmsford saying: 'It can hardly be doubted that, in addition to the damage sustained by the loss of the river frontage, the house must have been "injuriously affected"—*i.e. depreciated in value* by the interposition between it and the river of an embankment to be used as a public highway;' and in *McCarthy's Case*, L. R. 7 H. L. 253, Lord Chancellor Cairns was willing to adopt the test proposed by Mr. Thesiger, Q.C.—viz. that 'where by the construction of works there is a physical interference with any right, public or private, which the owners or occupiers of property are by law entitled to make use of in connection with such property, and which right gives an additional market value to such property apart from the uses to which any particular owner or occupier might put it, there is a title to compensation if by reason of such interference the property as a property is lessened in value.' Lord Chelmsford (*ib.* p. 256) also accepted this *test*, with the qualification that 'where the right which the owner of the house is entitled to exercise is one which he possesses in common with the public, there must be something peculiar to the right in its connection with the house to distinguish it from that which is enjoyed by the rest of the world.'

Certainly the phraseology employed in the Lands Clauses Act is far from consistent. Thus, there are the terms 'damage' in sections 18, 21, 120; 'compensation or damage' in section 48; 'injuriously affected' in sections 22, 63, 68; 'compensation in respect of the loss' in section 114 (by reason of the acceleration of payment of a mortgage which had been made for a fixed term); 'loss or injury,' 'injuriously affecting' in section 121 (relating to lessees); '*by reason of* the execution of the works' in sections 18, 21, 120; '*by* the execution of the undertaking' in section 22; '*by* the execution of the works' in section 68; and 'by the exercise of the powers of this or of the special Act or any Act incorporated therewith' in section 63; but it is submitted that the force of Lord Macnaghten's reasoning in the *Cowper-Essex Case* must be acknowledged when he says (58 Law J. Rep. Q. B. 594; 14 App. Cas. 176): 'I think it is impossible to read the Lands Clauses Consolidation Act without seeing that it was the intention of the Legislature that full compensation should be given in all cases where lands are taken under the powers of the Act for the purposes of a public undertaking.'

The *Cowper-Essex Case* seems to have finally decided that depreciation is the test of 'injuriously affecting,' at least for the purposes of the Lands Clauses Act. There, the local board required land for sewage works; the owner had other immediately adjoining land which had been laid out for building purposes, but which, it was proved, would be depreciated by the proximity of the sewage works, even though they might be so conducted as not to create an actionable nuisance (p. 155), and he was held entitled to compensation for the depreciation. Lord Chancellor Halsbury said (p. 161) that it had been conclusively established that 'where part of a proprietor's land is taken from him, and the future use of the part so taken may damage the remainder of the proprietor's land, then such damage may be an injurious affecting of the proprietor's other lands, though it would not be an injurious affecting of the land of neighbouring proprietors from whom nothing had been taken for the purpose of the intended works.' Lord Bramwell (p. 169) refused to read into section 49 of the Lands Clauses Act (as, it would seem, the Attorney-General had suggested ought to be done) the words 'and for which, but for these powers hereby given, an action would lie;' and Lord Macnaghten observed (p. 177) that the 'elaborate provisions' (imposed on local boards in regard to taking lands) 'designed, apparently, for the protection of private as well as public interests, would be something of a mockery if a person from whom land is taken is to be told, when he asks for compensation, that at that stage of the proceedings it is all one whether his land be required for a public garden or for a sewage farm. The *Stockport Case*, 33 Law J. Rep. Q. B. 251, and 12 W. R. 762 (1864), where Mr. Justice Crompton had sanctioned compensation for an increased rate of insurance of a cotton mill consequent on the proximity of a railway (the railway company had taken other lands of the owner of the cotton mill), was approved in the *Cowper-Essex Case*; and the latter case has been followed in *The London, Tilbury and Southend Railway Company and Trustees of Gower's Walk Schools*, L. R. 24 Q. B. Div. 326, where, (1) ancient lights and (2) other lights which could not be blocked without interference with the former, being affected by a railway building, compensation was allowed for both. There Lord Justice Lindley said (p. 332): 'The moment a case is brought within the compensation clauses, whether by reason of injurious affecting or under section 63' [of the Lands Clauses Act], 'the measure of compensation is in all respects the same. It is full compensation for all damage.'

When, however, neither land nor any interest therein is taken it would seem that, in the absence at least of special legislative provisions, compensation cannot be claimed, though, as a matter of fact, adjoining land may be seriously depreciated by the undertaking. Thus, in *Brand's Case*, 38 Law J. Rep. Q. B. 265; L. R. 4 H. L. 171, where the claimant had land immediately adjoining the proposed railway, and in respect of which, although no part of such land was taken, a jury had assessed 272*l.* as damages for vibration from the use of the railway after construction (p. 174), compensation was not allowed. It was argued (p. 181) (and see *Walker's Trustees Case*, 7 App. Cas. 279) that 'this is, in fact, a servitude imposed on the plaintiff's land, and the imposition of that servitude, which is a cause of damage, must be the subject of compensation.' Lord Cairns also urged in favour of the claimant (L. R. 4 H. L. 219), that the condition upon which alone the company were empowered to make their structural works under section 16 of the Railway Clauses Act was: 'That in the exercise of the powers—that is, of all the powers by this or the special Act granted—the company shall do as little damage as can be, and shall make full satisfaction in manner herein and in the special Act and any Act incorporated therewith provided, to all parties interested for all damage by them sustained by reason of the exercise of such powers, that is, of all the powers vested in the company.' The opinions, however, of Lords Chelmsford and Colonsay were adverse to the claim, it would seem, chiefly on the ground that in their view under the Railway Clauses Act compensation was to be limited to damage caused *by* the construction of the railway, not *by reason of* or in consequence of such construction or by the user of the railway (see pp. 206, 214); and these opinions prevailed. Lord Chelmsford had, in *Hunter's Case*, 2 Sc. App. 82, admitted the force of Baron Bramwell's remark in the *Duke of Buccleuch's Case*, L. R. 3 Exch. 328: 'It does seem strange that the taking of a piece of a man's land should let him in to prove all sorts of damage for which he could not otherwise recover;' and even in *Brand's Case* he was, to use his own words (p. 206), 'compelled very reluctantly in a case where real damage has been sustained, though not to a very large amount, to come to the conclusion that the Legislature has not provided for the case of these respondents, but has left them without remedy.' Lord Blackburn referred to the same subject in *Truman's Case*, 55 Law J. Rep. Chanc. 354; 11 App. Cas. 60: 'No doubt, when compensation is not given to those interested in the neighbouring land, this is, as against them, harsh legislation;' and so Lord Macnaghten, in the *Cowper-Essex Case*, 58 Law J. Rep. Q. B. 594; 14 App. Cas. 177, observes: 'It may be said that an adjoining lessee or owner, from whom no land is taken, might suffer in the same way, and that he would be without redress. That is true; but I cannot see why a person whose case is within the spirit and within the very letter of the Act should be deprived of the full measure of compensation because his neighbour who is not within the Act at all is perhaps hardly dealt with.' His lordship was dealing with the Lands Clauses Act only; possibly it might be thought that, comparing the phraseology of that Act and of the

Railway Clauses Act, *Brand's Case* may be shaken by the reasoning in the *Cowper-Essex Case*; but at present *Brand's Case* must be considered law. Mr. Justice Hannen had suggested in the *Duke of Buccleuch's Case*, L. R. 5 H. L. 445, as a reason for the distinction that, as the person whose land was taken 'was possessed of something without which the proposed public purpose could not be accomplished, he could have prevented the carrying out of the undertaking if he had not been deprived of his power by Act of Parliament, whereas the person whose lands are not taken had no such power, and could not have hindered the appropriation of lands not his own to any purpose not amounting to a nuisance.' But if the aid of the Legislature is to be invoked in order to carry out works on lands, and such works, whether in their construction or in their user must involve substantial damage to immediately adjoining premises, is it not reasonable that Parliament should of its own accord protect the owners of such adjoining premises and see that they are properly indemnified? On this point reference may be made to section 20 of the Gasworks Clauses Act (10 Vict. c. 15) and 53 & 54 Vict. c. ccxlvii. s. 4—London Streets Removal of Gates.

The general course of procedure under the Lands Clauses Act has been, first, to ascertain the amount of compensation, and then, by separate proceeding, to determine the question (if any) of liability (*The Brierley Hill Local Board* v. *Pearsall*, 54 Law J. Rep. Q. B. 25; 9 App. Cas. 595). In *Oliver's Claim*, L. R. 24 Q. B. Div., it was argued (p. 509) that the question between the parties tried (before a judge and jury) under section 41 of 31 & 32 Vict. c. 110, must mean the whole question of right to compensation as well as the amount; but the Court of Appeal decided that this section applied only to the amount, so that this liability must still be determined by separate proceeding. It may therefore be conjectured that the section will rarely be of practical utility.

## LEGISLATIVE PROGRESS.

THE record of Parliamentary work of the past week has been varied and considerable.

In the Lords the following bills have been read a third time and passed:—

The East India Officers.

The Tithe Rent Charge Recovery.

The Seed Potatoes Supply (Ireland) Act, 1890, Amendment.

The following bills have passed through committee:—

The Clergy Discipline Immorality.

The Pollen Fisheries (Ireland).

The Registration of Electors Acts Amendment.

The Registration of Certain Writs (Scotland).

Bills read a second time were: The Technical Instruction Bill and the Sale of Goods Bill. The latter is to be referred to a sub-committee of the standing committee.

In the House of Commons the Technical Instruction Bill was considered as amended, and read a third time.

Two bills passed through committee, viz.:—

The Army (Annual).

The Public Bodies (Provisional Orders).

The House has gone into committee on the following bills:—

The Possession of Game.

Assessment of Taxes (Regulation of Remuneration).

The Electoral Disabilities Removal.

The undermentioned bills have passed the second reading:—

Consolidated Fund (No. 1).

Law Agents (Scotland).

Savings Banks.

Custody of Children.

Liquor Traffic Local Veto (Wales).

Solicitors and Apprentices (Ireland).

The following bills were read a third time:—

Army (Annual).

Public Bodies (Provisional Orders).

Private bills of great public interest which have passed the second reading were the Southwark and Vauxhall Water Bill and the Manchester, Sheffield and Lincolnshire Railway (Extension to London) Bill.

The following new bills were introduced:—

To Amend the Merchandise Marks Act, 1887 (Baron De Worms).

To Amend the Law relating to the Disability of Married Women in Local Elections.

To Facilitate the Recovery of Rent Charges, &c., owing to Charities.

To Amend the Law of Scotland as regards Presumption of Life (Lord Advocate).

To Regulate the Charges of Returning Officers at Parliamentary Elections in Scotland (Lord Advocate).

To Amend the Law relating to the Means of Compelling Persons to Maintain their Destitute Parents.

To Amend certain Provisions of the Law with respect to Money Charged on or Payable out of the Consolidated Fund and with respect to Public Accounts.

The Registration of Electors (Acceleration) Bill was withdrawn.

The order for the Kensington Subway Bill was discharged; and a great number of railway bills were referred to the joint committee of Lords and Commons.

# Correspondence.

## HUSBAND AND WIFE.

SIR,—If 'G. N. G.' will refer to the *St. James's Gazette* of July 31, 1888, he will find an instructive poem on the rights of a married woman. C. J.

Croydon: March 13.

## BAR COMMITTEE.

### EIGHTH ANNUAL STATEMENT OF THE BAR COMMITTEE.

ON the second Saturday in Trinity Sittings, 1890, the following members of the committee retired by rotation: Mr. W. F. Robinson, Q.C., Mr. Montague Crackanthorpe, Q.C., Mr. W. C. Gully, Q.C., M.P., Mr. John Rigby, Q.C., Mr. F. A. Bosanquet, Q.C., Mr. Frank Lockwood, Q.C., M.P., Mr. A. M. Channell, Q.C., Mr. W. Rann Kennedy, Q.C., Mr. H. Bargrave Deane, Mr. J. W. Dunning, Mr. William Graham, Mr. W. English Harrison, Mr. W. A. Meek, Mr. J. H. Etherington Smith, Mr. R. S. Wright, and Mr. Alfred Young.

To fill the vacancies caused by the retirement of the above-named members, twenty-three candidates were duly nominated, and at a poll held during the week ending the first Saturday in Trinity Sittings, the following received

the largest number of votes, and were duly declared elected by the chairman: Mr. W. F. Robinson, Q.C., Mr. Montague Crackanthorpe, Q.C., Mr. W. C. Gully, Q.C., M.P., Mr. John Rigby, Q.C., Mr. F. A. Bosanquet, Q.C., Mr. Frank Lockwood, Q.C., M.P., Mr. A. M. Channell, Q.C., Mr. W. Rann Kennedy, Q.C., Mr. H. Bargrave Deane, Mr. H. F. Dickens, Mr. J. W. Dunning, Mr. W. English Harrison, Mr. W. A. Meek, Mr. A. J. Ram, Mr. W. C. Smyly, Q.C., and Mr. Joseph Walton. Seven hundred and fifty-one voting-papers were received. The total number of votes was 5,926; 1,623 votes were given to candidates practising in the Chancery Division, 4,303 to candidates practising in the Common Law Divisions. The smallest number of voters who could have returned a candidate was sixty-five.

The committee appointed Mr. William Graham an additional member of the committee under regulation 14, and Mr. Yate Lee a member in the place of Mr. Justice Romer.

At the first meeting of the committee after the election, the Right Honourable Sir Henry James was reappointed chairman, Mr. W. F. Robinson, Q.C., vice-chairman, Mr. E. P. Wolstenholme, treasurer, and Mr. Lofthouse, hon. secretary.

During the past year the bar committee have had their attention directed to numerous subjects affecting the profession, and amongst others the following:—

The call of solicitors to the bar.
Sittings of the Queen's Bench Division.
Chancery business.
Circuits.
Retainers.
Counsel's fees.
Public Trustee Bill.
Rules under the Act.
Winding up of Companies Bill.
Rules under the Act.
Court of Appeal in Criminal Cases Bill.
Supreme Court of Judicature Amendment Bill.
Rules under the Act.
Settled Land Bill.
Rules under the Lunacy Act, 1890.
Rules under the Friendly Societies Act, 1885.
Rules under the Bankruptcy Act, 1890.
Interrogatories and inspection in common law actions.
Supervision of bills introduced into Parliament.
The Royal Courts of Justice.

*The Call of Solicitors to the Bar.*

Representations were made by the committee to the masters of the bench of the four Inns of Court that in the case of solicitors seeking call to the bar under the new regulations it was desirable, in the interests of the profession, that in addition to the names and present addresses of such solicitors, information should be published to the members of the bar, as to the place or places where such solicitors have practised since their admission, with dates, the name of the firm or firms of which they have been members, and what appointments for profit or otherwise they have held, or do hold. The committee understand that the desired particulars will be given in future. Where information has been given to the committee that any such solicitor should be called to the bar, the committee have brought the matter before the benchers.

*Chancery Business.*

At the request of the Incorporated Law Society a committee has been appointed, consisting of the chairman, the vice-chairman, Sir Horace Davey, Q.C., Messrs. Crackanthorpe, Forbes, Rigby, Romer, Cozens-Hardy, Renshaw, Hall, Farwell, Chadwyck-Healey, Queen's Counsel, and Messrs. Ingle Joyce, Leigh Clare, Methold, Sturges, and Joseph Walton, to confer with a committee of solicitors, appointed by the Incorporated Law Society, upon the best mode of facilitating the despatch of business in the Chancery Division of the High Court. It was the unanimous opinion of the joint committee that the present number of judges attached to the Chancery Division is insufficient to dispose of the important work of that Division, more especially in regard to witness actions. At the commencement of Hilary Sittings, 1890, the total number of causes in the Chancery list was 573, and at the commencement of Hilary Sittings, 1891, 667, being an increase of ninety-four during the year. Owing to the fact that Chancery actions invariably involve substantial issues, and to no cause being allowed to stand over by consent, unless reasons, approved by the judge, are given in writing for the postponement, it rarely happens that the list falls to pieces as not unfrequently happens in the Queen's Bench Division. It, therefore, appeared to the joint committee that, before any suggestions could usefully be made as to the despatch of business, the appointment of an additional judge was necessary. A deputation, consisting of Sir Henry James, Mr. Robinson, Q.C., Mr. Farwell, Q.C., and the hon. secretary, and the president, vice-president, Mr. Rawle, and Mr. Munton, waited on the Lord Chancellor in order to lay the views of the joint committee before his lordship. His lordship promised to bring the matter to the attention of the Government.

*Retainers.*

A copy of the Rules of Practice relating to the retainers of counsel adopted by the Council of the Incorporated Law Society of June 13, 1890, and approved by the Attorney-General on June 17, 1890, having been sent to the committee by the Law Society at the request of the Attorney-General, the committee published a report on the same, a copy of which has been sent to each of the subscribers. The committee entered their decided protest against the assumption that it is in the power of the council of the society to frame rules of practice as to retainers of counsel which will bind the bar, even though approved by Her Majesty's Attorney-General. While fully recognising the authority of the Attorney-General to determine questions arising on disputed retainers, the committee observed that neither the society nor the Attorney-General can legislate on the subject, and that the approval of the Attorney-General must be taken to express his personal and individual opinion, which, though entitled to the highest consideration, has no official character and no representative authority, and will not bind any future holder of his office. A copy of this report was sent to the Law Society, and was referred by the council of the Law Society to a committee, who requested a conference on the matter. A conference took place between Sir Horace Davey, Mr. Leigh Clare, and Mr. Joseph Walton on behalf of the committee, and the president and vice-president on behalf of the society. After the report had been fully discussed, the committee were requested to draw up a set of rules, carrying out their views as expressed in their report, for the consideration of the committee appointed by the Law Society. A copy of the report may be had by members of the bar on application to the hon. secretary.

*Counsel's Fees.*

The committee having had a correspondence with the Incorporated Law Society extending over some years on the subject of counsel's fees, the committee drew up a report on the subject for the use of the bar. The committee expressed the opinion (*inter alia*) that by long-settled practice the fees on the briefs of leader and junior respectively stand to one another in the proportion of

three to two or five to three, and that such a practice is reasonable and works satisfactorily. There is, however, no rigid rule on the subject. A junior is entitled to refuse a brief which is not marked in this proportion, but he is not bound to do so, and he may accept a brief marked in smaller proportion without any breach of professional etiquette; and a leader may, without any breach of professional etiquette, accept a brief, the fee on which does not exceed that on the brief of his junior in this proportion.

That upon the question as to what special fees are recognised by the practice of the profession and are not taken as part of the brief fee, the usage of the bar appears to be as follows: A barrister is considered to be prepared to take any brief in the Courts in which he professes to practise, at a proper professional fee, according to the length and difficulty of the case. Any counsel is at liberty to say that he will not practise in a particular Court without a special fee of a named amount, or that he will not go into Court at all without a special fee of a named amount; but such special fees, when asked, should, according to the practice as hitherto understood at the Chancery bar, be asked in all cases, or in all Courts, except the one or more in which the barrister usually practises. At the Common Law bar the practice has been governed rather by the rules of the various circuits, and the special fees to be taken by members of circuits accepting briefs on other circuits have been fixed by the rules of the circuits, and not by the individual members of the bar. It appears to have been generally understood on all circuits that no one should take a special fee, properly so called on his own circuit. There appears, however, to be no objection in principle to a counsel having a special fee for going out of town to a circuit of which he is a member, or to particular towns on that circuit, provided that the special fee is taken in all such cases. In no case ought a fee, which is really a brief fee given for getting up a case in order to conduct it in Court and for conducting it there, to be divided and marked in part as a special fee merely for the purpose of paying a less fee to other counsel engaged in the case.

A copy of the report may be had by members of the bar on application to the hon. secretary.

*Public Trustee Bill*, 1890.

In anticipation of this bill becoming law, the Lord Chancellor confidentially requested the committee to make suggestions and observations on the draft rules thereunder. A sub-committee, consisting of Messrs. Crackanthorpe, Byrne, Queen's Counsel, and Messrs. Digby, Farwell, and Ingle Joyce, drew up a report on the subject, which was adopted by the committee, and a copy sent to the Lord Chancellor.

*Winding up of Companies Bill*, 1890.

A sub-committee, consisting of Messrs. Cozens-Hardy, Renshaw, and Buckley, Queen's Counsel, and Messrs. Chadwyck-Healey and Methold, were requested to report on this bill. Their report was afterwards adopted by the committee, and copies thereof were sent to the President of the Board of Trade, the Attorney-General, and to certain members of Parliament. A copy of the report may be obtained by members of the bar on application to the hon. secretary.

The bill having become law, and the Lord Chancellor having requested observations on the draft of the rules thereunder, the same were considered by Messrs. Cozens-Hardy, Buckley, and Hall, Queen's Counsel, and Messrs. Chadwyck-Healey and Oswald, who drew up a report thereon, which was afterwards presented to his lordship.

*Supreme Court of Judicature Amendment Bill*, 1890.

A report of this bill was drawn up by Messrs. Gully and Channell, Queen's Counsel, and Messrs. English Harrison, Smyly and Chadwyck-Healey, and adopted by the committee, and copies were sent to the Lord Chancellor and the law lords.

The bill having become law, and observations by the committee on the rules as to new trials and motions for judgment as affected by the bill having been requested by the Lord Chancellor, Messrs. Finlay, Channell and Kennedy, Queen's Counsel, and Messrs. Graham, Digby, Dickens and Lyttelton, at the request of the committee, drew up a report on the subject, which was afterwards presented to the Lord Chancellor.

*The Settled Land Bill.*

A report on this bill was drawn up by a sub-committee, consisting of Messrs. Robinson and Crackanthorpe, Queen's Counsel, and Messrs. Dunning and Wolstenholme, and afterwards adopted by the committee, and a copy thereof was sent to the Lord Chancellor.

*Rules under the Lunacy Act*, 1890.

The observation of the committee having been invited by the Lord Chancellor on the draft of the rules under the Act, Messrs. Hall, Q.C., Dunning, Methold, and Sturges were appointed a sub-committee to report on the same. Their report was afterwards adopted by the committee, and a copy thereof was sent to the Lord Chancellor.

*Rules under the Friendly Societies Act*, 1885.

A draft of these rules having been sent to the committee by the Lord Chancellor, the same was considered by Messrs. Crackanthorpe and Pitt-Lewis, Q.C., and Messrs. Sturges and Ram, and their report having been adopted by the committee, a copy was sent to the Lord Chancellor.

*Rules under the Bankruptcy Act*, 1890.

The committee having been requested by the Lord Chancellor to make observations on the draft of these rules, Messrs. Pitt-Lewis, Q.C., Digby, Smyly, and Joseph Walton drew up a report on the same, which was afterwards sent to the Lord Chancellor. The committee have to acknowledge the valuable assistance of Mr. Sidney Woolf, Q.C., and Mr. Yate Lee, not members of the committee, in drawing up this report.

*Interrogatories and Inspection in Common Law Actions.*

The committee having had their attention called by the Lord Chancellor to the observations of the Master of the Rolls in the House of Lords, on July 17, 1890, on this subject, the matter has been referred to a sub-committee, who have it now under their consideration.

*Law Reports.*

The opinion of the committee was requested by the proposed publishers as to whether it was desirable to publish a revised edition of the common law and equity reports from the earliest period down to such time as would not interfere with existing interests and copyrights. The committee informed the proposed publishers that such a work was, in their opinion, practicable, and that, if carried out by careful and competent editors, it would be very useful to the profession.

*Royal Courts of Justice.*

The sub-committee, which consists of Messrs. S. Hall, Q.C., Farwell, Q.C., W. W. Knox, English Harrison, and Bargrave Deane, have given a considerable amout of time and attention to matters connected with the Royal Courts, and representations and suggestions made by them have, by the direction of the Lord Chancellor, been carried out in the following respects:—

1. An additional robing-room has been provided for the bar on the west side of the Strand entrance, and has been

fitted not only with lockers, but also with shelves and pegs, the exclusive use of which may be obtained for a small annual payment. Improvements have also been made in the lighting of all the robing-rooms at the Strand entrance.

2. The way past the west of the building from the Strand to Carey Street has been properly lit.

3. Improvements have been made with the view of (*a*) remedying the draughts which pervade the Courts; (*b*) securing the more efficient reservation of seats in Court for the junior bar; (*c*) completing the alterations suggested in the fittings of the Courts, lavatories, and passages. The sub-committee have co-operated in the arrangements as to the room provided for the reception of persons taken suddenly ill within the building.

Representations have also been made to the Lord Chancellor as to (amongst other things) the ventilation, drainage, and sanitary condition of the Courts and other portions of the building, and as to providing a reading-room for the bar. These representations have all been cordially received by his lordship, and while some of them have already been attended to, others are under consideration.

March, 1891.

## MR. HANBURY AND THE PARLIAMENTARY BAR.

THE following correspondence has appeared in the *Times*:—

Sir,—As the difficulty which has arisen between Mr. Hanbury's committee of Parliament and the bar appears to have excited considerable interest, by desire I beg to ask you to publish the correspondence now enclosed. Yours respectfully,

SAML. POPE.

38 Parliament Street, Westminster: March 18.

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38 Parliament Street: March 14, 1891.

R. W. Hanbury, Esq., M.P.

My dear Sir,—The sympathy between committees of Parliament and the bar has hitherto been so complete, and their relations have been so cordial and satisfactory, that, as the senior practitioner, I have been requested, in the hope of avoiding any friction, respectfully to lay before you the view which, after consideration among themselves and consultation with the Attorney-General, as the head of their profession, the members of the bar practising in Parliament take of the difficulty which has arisen in the committee over which you preside. The simple issue is that you refuse to allow counsel to cross-examine any witness unless he has been personally present during the whole of the examination in chief.

We respectfully deny the competency of any committee so to limit the rights of petitioners or counsel. To petition Parliament is the constitutional right of every subject. Certain petitions have been received by Parliament, and have been referred to your committee with instructions to hear the petitioners by themselves or their counsel. We demur to any attempt to limit or control that right. No other tribunal in the kingdom has ever attempted such a limitation as is involved in your resolution. Of course, every tribunal has the right to secure order in its own proceedings, but always with a full regard to the rights of suitors and the independence of the bar. It does not remove the difficulty to say, 'Under special circumstances the committee will allow the counsel to proceed.' We claim to be heard as a right, and not by any allowance.

I am anxious to clear the matter of any personal interest on either side. The bar does, and will do, its utmost to assist committees in discouraging irrelevancy or needless repetition, but they cannot acquiesce in any course which must have the effect either of limiting the choice by a suitor of his representative or of greatly increasing the costs of the proceedings.

We shall all of us endeavour to avoid any occasion of difficulty, but should circumstances arise we hope that our insistence on what we conceive to be not only our own rights but those of our clients will not be supposed to involve any want of personal respect.

I write this as a private communication, but reserve the right to make it, with any reply, public, should necessity arise.

I am, my dear Sir, on behalf of the members of the bar practising in Parliament, and by their authority,

SAML. POPE.

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From Attorney-General. Enclosed to Mr. Hanbury, March 15, 1891.

2 Pump Court, Temple, E.C.: March 14, 1891.

Dear Pope,—I am extremely sorry to hear that a difficulty has arisen in one of the Parliamentary committee-rooms respecting the cross-examination of witnesses, and that the committee have laid down a rule that no counsel shall be allowed to cross-examine who has not heard the examination in chief.

I have been asked by some members of the Parliamentary bar to send you my views upon the matter, and I think it right to do so, as the profession and the committee are entitled to whatever assistance I can give to them in the matter.

I am satisfied that the enforcement of any such rule would work great injustice to the parties appearing before the committees, and would deprive the committees of the assistance to which they are entitled from proper cross-examination of the witnesses who appear before them. To anyone acquainted with the practical working of such inquiries, the above will, I think, be obvious, but out of respect to the committee I will state my reasons.

In the great majority of important cases counsel must be instructed days, and sometimes weeks, before the bill comes on for hearing. No one can tell the day or the hour at which any particular witness will be examined. The cross-examination of skilled witnesses must be, and is, carefully prepared by the leading counsel appearing for promoters or opponents respectively long before the evidence in chief is given. I may say, parenthetically, that many of the best cross-examinations on engineering matters which I have ever heard have been to my own knowledge prepared long before the case had been opened or any witness examined.

The evidence in chief frequently does not bear directly upon the points which it is the duty of the cross-examining counsel to elicit. In my judgment the committees would be deprived of the most useful assistance if the leading counsel, who are selected on account of their experience, and have prepared themselves to cross-examine, are not entitled to do so simply because a witness may be called when they may be temporarily absent without the possibility of their knowing beforehand when they will be required, the order for examining witnesses depending entirely upon the judgment of the counsel who are conducting the case for the time under the notice of the committee.

I may add that in no one of the Courts of law, either Chancery, common law, or assizes, has such rule ever been enforced.

I am quite satisfied that, as far as possible, members of the bar would desire to fall in with the wishes of the committee in the matter, so far as their duties to their clients would permit them to do, but such a rule must in many cases occasion a miscarriage of justice.

With regard to any particular line of action which

should be taken by the bar in consequence of the ruling to which I have referred, it seems to me that this must be left to the judgment of the members of the Parliamentary bar themselves, having regard to the interests of their clients and the necessities of the particular case in which the question has arisen; but I think that a firm but respectful protest should be made against the adoption of any such rule, on the ground that it is beyond the competence of the committee, and also by reason of the mischief which would be thereby occasioned to the clients whose interests are entrusted to the counsel and to the committee, who are entitled to the very best assistance which counsel can give them.

Believe me very truly yours,

RICHARD E. WEBSTER.

S. Pope, Esq., Q.C.

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House of Commons: March 16, 1891.

Dear Sir,—I have to thank you on behalf of the committee for your letter of March 14, addressed to us in the name of the Parliamentary bar. Although disputing the action of a public committee of the House of Commons on a question of public importance, it concludes, we observe, with an intimation that I must treat it as a private communication, while you reserve to yourself the right to make it and my reply public or not, as you may prefer. This unusual suggestion I hardly feel bound to accept, and I trust you will prefer publicity, as we do.

We more readily endorse the first part of your letter, which alludes to the sympathy existing between committees of Parliament and the Parliamentary bar, and to the desire to avoid any friction by a clear understanding of the rights of each. You fully admit, we observe, that every tribunal has the right to secure order in its own proceedings, and any difference of opinion between the committee and the leaders of the Parliamentary bar is therefore confined to the claims of the latter. In this instance the particular right claimed is the right to be absent during the whole examination of a witness hostile to your client, and to cross-examine him on that client's behalf without having heard one word of his evidence, and even without having had a junior present to report to his leader the general purport of that evidence. Last Friday, when I declined to allow you, among others, to cross-examine a witness, neither you nor your junior had been present while that witness was under examination in chief. Whether this right is claimed and admitted in the Courts of law appears to be disputed, but whether recognised there or here, it must, we think, conflict with the rights of suitors. The circumstances, however, of a Parliamentary committee differ much from those of the Courts of law, and make the rules of the one not of necessity applicable to the other.

When I gave effect to the decision of the committee last week we were not aware of precedents for our action, and were prepared to defend it on the ground of public convenience and common sense, even in the face of authority and precedent. We are now glad to find that the latter also are on the side of the committee, and, in fact, go beyond our recent ruling.

On April 19, 1847, a committee, consisting of Sir J. Yarde Buller, the present Duke of Rutland, Mr. John Tollemache, Mr. Newdigate, and Captain Plumridge, resolved that 'no counsel, who shall not have been present at the examination in chief, shall be entitled to cross-examine witnesses except under special circumstances and by the express permission of the committee.'

On May 12, 1847, another committee, the members of which were Mr. Forbes Mackenzie, Sir John Guest, Lord Norreys, Mr. G. R. Phillips, and Mr. G. H. Cavendish, passed a resolution in identical words, with the suggestive addition that where two or more parties have substantially the same interest only one counsel be heard.

In 1861 the General Committee on Railway and Canal Bills passed the following resolution, which remains the official authority upon this subject, and is quoted as such by Sir Erskine May:—

'As to examinations of witnesses by counsel: Resolved, that counsel shall not cross-examine a witness unless he has been present during the entire examination in chief, and that counsel shall not re-examine unless he has been present during the entire cross-examination.'

This resolution, which requires the presence of counsel during the whole time of the examination in chief or cross-examination, while it is more stringent than the rule laid down by a majority of our committee, is, we think, an improvement upon it. It removes all danger of dispute as to whether a counsel has or has not heard enough of the evidence to entitle him to cross-examine a witness thereon. Even to-day two leading Queen's counsel came into the committee-room when the examination in chief had nearly concluded, with the result, though probably not the intention, of raising this very issue—the question, namely, of what minimum of attendance entitles a counsel to cross-examine. This points to the need of avoiding all doubt on that matter in future by adhering more strictly to the terms of the authoritative resolution which I have last quoted.

These precedents are, as we hope you will agree, inconsistent with your claim to be heard of right, and not by any allowance.

A full regard of the rights of suitors points, we think, in an opposite direction to that indicated in your letter. We fail to understand how the interest of suitors is fully consulted if their principal advocate or, as happened on Friday, both their advocates are engaged elsewhere upon other business (possibly in three or four different cases), if their counsel do not attend to hear the evidence of their opponents, or if their leading counsel is absent during the greater portion of their own case. This means, we think, more counsel, more expense to suitors, and more time occupied in committee. It would appear also to produce in practice the evil which theoretically you assert might result from our ruling, and 'limits the choice' of counsel to a few leading members of the Parliamentary bar.

For these reasons, but at the same time with every desire to respect the legitimate claims of a bar to whom Parliamentary committees are under many obligations, we regret that we cannot admit the particular claim now put forward or alter a decision at which we arrived after due deliberation, which is in accordance with the existing regulations for the conduct of committees, and which we feel it our clear duty to maintain until otherwise instructed by the House of Commons itself.

I am, dear Sir, faithfully yours,

R. W. HANBURY.

Since the above was written we have received, and desire to thank you for, your second letter, enclosing the opinion of the Attorney-General. The great deference which we pay to his high legal authority must be subject to the fact that the opinion so given is opposed to the actual Parliamentary authority on the subject. It no doubt coincides, on the other hand, with the existing practice of many eminent Queen's counsel, a practice which is the real point at issue.

Samuel Pope, Esq., Q.C., &c.

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38 Parliament Street: March 18, 1891.

R. W. Hanbury, Esq., M.P.

My dear Sir,—Your letter dated March 16 has only this moment been placed in my hands. In accordance with

your wish, I send the whole correspondence, including this note, to the public press.

I am glad to note that you do not allege that the action of your committee was caused by any pressing inconvenience arising at the time. You will remember I informed you that the cross-examination which you refused to allow had no relation to anything which had been proved in chief, and it seems to us difficult to understand how 'public convenience and common sense' would be vindicated by compelling counsel to listen, it may be for hours, to matter in which his client has no interest, and to which his cross-examination is not to be directed.

I am a little astonished to find that your committee were unaware of the precedents given in May's 'Parliamentary Practice.' They have long been familiar to us, and some of us are old enough to recall the incidents upon which they are supposed to be founded.

It is true that in 1847 and 1861 the resolutions you quote were passed, but, if ever acted on at all, they were speedily found to be so unworkable that they were never enforced. It is, again, difficult to understand how resolutions can be regarded as 'authoritative' which for thirty years have been abandoned by the wisdom of all Parliamentary committees.

If the existing practice works injustice to clients, those clients have the remedy in their own hands.

I remain, my dear Sir,
Faithfully yours,
SAML. POPE.

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Sir,—The thanks of the public are due to Mr. Hanbury for his ruling against the practice of cumulative cross-examination by eminent counsel who take briefs and draw fees for half-a-dozen cases at once.

To the unprofessional person it has long seemed anomalous that a man should be handsomely paid for work that he does not do. Unlike Sir Boyle Roche's bird, these learned gentlemen spend their time scuttling like rabbits in and out of the various committee-rooms, picking up scraps and shreds of evidence from juniors, and justifying their existence by repeated cross-examination of witnesses and breathless attempts to be in two places at once.

Having for the last week been subjected to the exuberant rhetoric of Mr. Littler, Mr. Pope, and Mr. Taylor, in addition to the forensic eloquence of their juniors, I wish Mr. Hanbury the success he deserves in attacking this time-honoured abuse and monopoly of the business of the bar.

I am, Sir, yours,
'SERVING ON COMMITTEE.'

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A correspondent writes: 'It is considered improbable that any further steps will be taken with reference to the differences which have arisen between Mr. Hanbury and the Parliamentary bar. The rejection of the City and South London Railway (Extension to Islington) Bill removed the opportunity of reviewing in Parliament the revival of the resolution of 1861 with regard to the examination and cross-examination of witnesses, as the intention of the principal opponents to move for the recommittal of the bill to a new committee has become unnecessary. The two bills remaining in the group of bills referred to Mr. Hanbury's committee—namely, the West Metropolitan Tramways and the Latimer Road and Acton Railway (Extension of Time) Bills—not having been read a second time, will now, in accordance with custom, be placed, when ready for committee, in another group, so that the labours of Mr. Hanbury's committee are concluded for this session.'

## LAW SOCIETIES AND THE PUBLIC TRUSTEE BILL.

THE following petition has been presented by the Manchester Law Association to the House of Commons:—

The humble petition of the Manchester Incorporated Law Association sheweth:

That a bill has been introduced into your Honourable House, intituled 'A Bill for the Appointment of a Public Trustee.'

That it is the opinion of your petitioners, who are a body of solicitors carrying on business in the city of Manchester and the neighbourhood thereof, that such an appointment as is proposed by this bill is unnecessary and inexpedient.

That by the bill it is proposed to establish a Government department for the transaction of private business, and your petitioners humbly submit that this is unjustifiable in principle unless under the stress of some urgent necessity.

That the only reasons urged in support of such a demand are (*a*) the difficulty of finding suitable private trustees and (*b*) the misappropriation of trust funds or their negligent administration by private trustees. In the experience of your petitioners these cases are very inconsiderable when compared with the multitude of trusts which are honestly and carefully administered, and in which no practical difficulty exists in providing suitable trustees.

The cases in which any difficulty does in practice arise in securing trustees are mainly cases where new trustees have to be found on the death or retirement of the original trustees. This difficulty would be greatly diminished, if not removed, if legal provision were made for the remuneration of private trustees, in the manner in which it is proposed to remunerate a public trustee.

That the following objectionable results are likely to arise from the administration of trusts by a Government office:

1. The public trustee would not take a personal interest in the beneficiaries such as a private trustee usually does.

2. While a private trustee's office is administered with a large amount of discretional elasticity, and he frequently benefits his trust estate by carrying on a business until it can be advantageously disposed of and by other means at some personal risk, a public trustee's duties would certainly be carried out in a more rigid manner in order to avoid any liability on his part or on the part of the Consolidated Fund, which would stand behind him as his guarantor.

3. While a private trustee will incur some trouble to find a safe investment which will yield a reasonable amount of income to the life tenant, a public trustee would naturally prefer consols as involving the least amount of trouble. The effect of this would be not only to reduce the income of life tenants to the low level of dividends on consols, but also to make that level lower still by the rise in the price of consols which would follow the large investments by the public trustee in their purchase.

4. Apart from the question of remuneration, the expenses of administration by a public trustee would be greater than those of administration by a private trustee, owing to the fact that the public trustee would require strict evidence of many facts which the personal knowledge of the private trustee would enable him to dispense with.

That your petitioners do not overlook the fact that to some extent the adoption of the Act would not be compulsory, but they are also impressed with the feeling that if a public department is established there is a natural desire amongst officials to justify its existence by attracting business to it, and that there are many modes of doing

this; and, further, though it is true the Act in some parts would be permissive, there are other provisions which would enable the Court in appointing a new trustee to appoint the public trustee as sole trustee, whether the beneficiaries wished it or not (see section 2 (1) ), and also to appoint the public trustee in cases of probate or administration, irrespective of the wishes of the beneficiaries (see section 3).

Your petitioners therefore humbly pray that the proposed bill may not be passed into law.

And your petitioners will ever pray, &c.

The Seal of the Manchester Incorporated Law Association was affixed hereto in the presence of } L.S.

THOS. JOSH. GILL, Chairman of Committee.
JOHN BURY, Secretary.

The following circular has been sent by the Liverpool Law Society to various persons and societies interested in this important matter:—

With respect to this important bill now standing for second reading in the House of Commons, a meeting was held in London, on Thursday last, March 5, when deputies from twenty-five provincial law societies were present, together with the president and vice-president of the Incorporated Law Society of the United Kingdom.

At that meeting the following resolution was unanimously passed: 'That in the opinion of this meeting of the associated provincial law societies, the Public Trustee bill now before Parliament is objectionable, as being an effort in the direction of State interference with private business of a kind which especially requires the personal attention and local knowledge of those acquainted with the circumstances of the case. Further, that there is no evidence that legislation is needed or has been demanded, the difficulties which have been lately experienced having been greatly diminished by recent legislation; and that, should there be any legislation on this subject (a proposition which we do not affirm), such legislation would be better taken in the direction either of the establishment of public trust companies, or by giving to private trustees the advantages, and extending to them the immunities proposed to be given to the public trustee under the Act.'

The deputies afterwards attended before the Chancellor of the Exchequer, the Lord Chancellor being also present, to urge their views upon the Government.

The Government appear to be of opinion that there is a desire on the part of the public for a State trustee, in consequence of the number of cases of defaulting trustees and the supposed difficulty of obtaining persons to act as trustees.

The committee of this society in common with, as it seems, the whole of the profession, are of a different opinion. Their experience is that the cases of misbehaviour by trustees are very rare in comparison with the immense number of existing trusts, and that any difficulty in finding suitable trustees can easily be overcome.

They regard with apprehension the foundation of a new State department, which will absorb from the provinces and retain in London, and in the hands of the State, a large part of the trust funds of this country; they think that the necessary cost of working a trust from London, either direct or through a deputy, will be great, and that, in the absence of local knowledge, the most delicate part of a trustee's duties will be imperfectly done.

They are of opinion that, by the inevitable predilection of a State official to select State investments and to avoid the trouble and responsibility of investigating mortgage and other securities, the income of the life tenants will be greatly and unnecessarily diminished; and they believe that the proposals in the bill would in effect have most of the disadvantages of a suit in Chancery.

With this conviction they beg to express the hope that you will give us your active co-operation in urging these views on members of Parliament and other influential persons, so as to secure the rejection of the bill.

I am, dear Sir,
Yours truly,
F. ARCHER, President.

## LAW AND PROFESSIONAL NOTES.

By T. F. UTTLEY, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### LIMITED COMPANIES AND THEIR ACCOUNTS.

ATTENTION has been drawn in the daily press to the fact that the balance-sheets of many of the American Brewery and Industrial Companies set on foot here within the last few years have been made up to show large profits beyond what has been legitimately earned. No small part of the capital of these companies remain upon the hands of underwriters, and it is necessary for the interest of this class of persons that everything should be made to look well. Stocks in hand are often valued, not at cost prices, but at the market or selling prices of the day, and, in other ways, profit-and-loss accounts which are essentially false, and to which no respectable accountant ought to put his name, are. states the *Standard*, issued to cover payment of unearned dividends. Shareholders ought to look carefully into this matter, and no one should buy a share in any of these companies upon hasty, and perhaps interested, recommendations. On this subject of underwriting it may be pointed out that with the plethora of companies now existing many useful definitions have been given, and amongst others it has been laid down that underwriting means that, in the event of the public not taking the whole of the shares in a company, the underwriters would take an allotment of the shares remaining unapplied in the proportions for which they have been underwritten; or, as it may be more briefly expressed, 'underwriting is agreeing before issue to take any shares not taken up by the public.' By 'underwriting at a discount' one understands agreeing to have a commission. With regard to the statement as to profit-and-loss accounts, it is curious to compare them with remarks given in a paper once read before an accountants' students' society, the paper bearing the title of 'The Poetry of Accounts.' It was there suggested that, as an epic, an ordinary set of commercial accounts was often grand, often thrilling, showing the ups and downs of commercial life, and a ledger, if well arranged and well expressed, was a clear and succinct history of a business life. A skilful person, it was pointed out, can prepare accounts so clearly that they are both interesting and instructive. When the accountancy profession grows older, doubtless the fierce light of public opinion will beat upon it as strongly as it now does upon the law, and we shall be treated to disclosures of modern accountancy abuses. Our daily contemporary, however, seems to have anticipated that time. In connection with company matters it may be added that Australia has taken a leaf out of our book, and is moving to suppress bogus companies. It is proposed that no mining company shall be allowed to register until the locality of the claim concerned has been carefully examined and reported upon by experts, and until the proportion of the capital required by the Companies Act has been subscribed. It is also proposed that money subscribed shall not be withdrawn except for working purposes, and further, that the Stock Exchange shall inquire into the *bona fides* of a company before placing it on its list. According to the Victorian Companies Act, the amount of

capital which must be subscribed before registration is fixed at 5 per cent., and this amount ought to be actually paid up before registration and remain so paid up, for the law is now evaded by withdrawing the capital immediately after registration.

### SOME TORT POINTS.

At the assizes in different parts of the country decisions are often given which are of interest to students of the common law text-books. Everyone knows the decisions bearing on nuisances—*e.g.* as to chapel bells. To these may be added the decision that boiler works are an inconvenience and not a nuisance, but regard must be had to the character of the neighbourhood. Noisy businesses must be carried on, and provided they are carried on in the ordinary manner and at an ordinary place, they are not a nuisance. With regard to defamatory statements, it was held at Chester Assizes that to call a surgeon a 'bit of a boy,' evidently meaning that a person so young is not fit to be a doctor, was not a slander. The plaintiff has complained that a false and malicious slander was contained in these words: 'I am surprised at you having a bit of a boy like that to vaccinate your baby. He is not fit to do anything of the sort. Didn't I tell you not to have any of that lot on my premises?' On the other hand, it was held to be slander to utter in respect of a plaintiff the following words: 'It is said about the plaintiff—I was told by a gentleman at Manchester—he paid 10*s.* or 10*s.* 6*d.* in the pound.' 'What do you think about the plaintiff? He is a young idle man. He employs so many hands, and does not look after them. He has called his big creditors together and paid 10*s.* 6*d.* in the pound.' 'Have you heard about plaintiff? He has offered to pay 10*s.* in the pound, but it is no more than we could have expected.' The judge held that the words were slanderous.

### 'MORTGAGE OR LOAN TABLES.'

A very useful work has been compiled with the object of supplying a want to those who periodically have to make calculations to ascertain the amount to advance on loans repayable by instalments or to find the amount required to pay off a loan. The full title of the work is 'Mortgage or Loan Tables, showing amount to be lent repayable by instalments, including principal and interest at 5 per cent. per annum at 10*s.* per share per month from one-fifth of a share to ten shares, also showing the amount due on redemption at any period. The author, Mr. Thomas D. Challinor, in his preface, states that the thirty-years' limit has not been fully worked out, as there are few advances or loans made over this period; but, as there may be a few, a skeleton of the work is given as a guide in these cases. The work has been compiled as nearly as possible to the tables used by land and building societies charging interest at the rate of 5 per cent. per annum. Such a work as this should be acceptable to members and secretaries of land and building societies and others lending money repayable by instalments, and borrowers also will find it handy. Useful specimen tables and examples are given, with the aid of which no one should have any difficulty in finding any amount desired.

### ADVANCE FREIGHT.

Maritime practitioners should peruse carefully the case of *Smith, Hill & Co.* v. *Ryman, Bell & Co.*, 60 Law J. Rep. Q. B. 127, given in the March issue of the LAW JOURNAL REPORTS. There, amongst other matters of weighty interest, will be found a useful explanation of what 'advance freight' is. Freight, of course, is paid for carriage of goods; but advance freight, though it is in a sense freight, it has been decided is a payment made in consideration of the reception of the goods on board ship. It was pointed out that it has been held that if advance freight has been paid it cannot be recovered back, though the vessel be lost; and that, if an absolute obligation to pay advance freight has been entered into, such agreement can be sued upon, though the vessel in which the goods have been shipped has been lost before action. Very many years ago it was quaintly stated in a judgment that freight was the mother of wages, the safety of the ship, the mother of freight; that was the general rule of the maritime law.

### THE GOSPEL OF WEALTH.

At a recent meeting of the United Law Society, which meets weekly at the Inner Temple Lecture Hall, King's Bench Walk, Temple, one of the members, Mr. Washington Fox, moved: 'That this house approves of the principles laid down in Mr. Carnegie's "Gospel of Wealth."' Attention was drawn to Mr. Carnegie's statement of the three modes in which surplus wealth can be disposed of. (1) It can be left to the families of the descendants. The objection to this being that it makes men wanting in self-reliance and all the good qualities engendered thereby. Moderate allowances should be left to wife and daughters and to sons where they have not been brought up with a view to earning their own living. (2) It can be bequeathed for public purposes. This is to be strongly deprecated at best; the gift is a sort of tip to Charon. Bacon says: 'Defer not charities till death; for certainly if a man weigh it rightly, he that doth so is rather liberal of another man's than his own.' Other objections to such bequests are that the donor's object often remains unattained. He has no opportunity of seeing how his benefaction works, and so of altering the destination of his future gifts, and he is not subject to public criticism. (3) It can be administered by the owner during his life. This is the best mode of disposing of surplus wealth, and this states the principle contained in Carnegie's 'Gospel.' Those who, seeing so much misery around and having the power to relieve it, do nothing to this end, are not to be admired. The man of wealth is, as regards his surplus wealth, a mere trustee for the public good, which is only a recognition, or rather part, of the broader principle that we are trustees of all our gifts, whether of mind, body, or estate. Carnegie thinks surplus wealth might be properly disposed of in—*e.g.* establishing universities, free libraries, hospitals, providing public parks, halls, and swimming baths, and building churches. And these, when once made over to the public to be by them maintained. This is to promote individualism. There were then two commandments in Carnegie's 'Gospel': 'Defer not charities till death,' and 'Do your utmost to promote the independence and development of the individual.' This is a capital epitome of the article in the *Nineteenth Century*, and it is an excellent idea of this society to have an evening devoted to the discussion of points other than strictly legal ones. Law students who are in London would gain great advantage by attending these weekly Monday night meetings, and the full reports of them in the society's magazine are specially useful for reference. Country societies who see this magazine would find many a hint for moot points for discussion.

### FRIENDLY SOCIETIES.

The House of Commons lately gave some time to the discussion of friendly society matters. It was pointed out that there were three classes of friendly societies—first of all, what might be called the genuine friendly societies or benefit clubs, which were about 12,000 in number; next, the collecting societies, of which there were about fifty, the benefits of which were practically confined to life insurance; and, thirdly, the industrial assurance societies. All these classes were admitted to registration on the register established in London under

the Friendly Societies Act, as well as working-men's benefit clubs. But it could not be too strongly insisted upon that the Registrar of Friendly Societies could not ensure the good management of these societies, and the mere fact of registration afforded no guarantee that the society was solvent or even honest. The position of friendly societies was in many respects highly satisfactory, but still it was capable of great improvement. They might be improved by the admission of women, by the reduction of convivial gatherings—(laughter)—and in other ways. During the last few years a comprehensive inquiry had been made into the subject by a Parliamentary committee, but few of the thirty recommendations they made had been carried out. All friendly societies appealing to the working classes for funds for alleged future benefits should be compelled to submit the accounts to audit. With regard to the question of provident insurance and voluntary provision for sickness and old age, the old age pension provided by the Post Office was very little called for. The aim of the State should be to induce the industrial and domestic classes by every possible means to insure in health and youth against sickness and old age, and to take care that their savings should be protected not only against fraud but against incompetence. The State should work through the established friendly societies, and should help them by pecuniary contributions and by counsel. On behalf of the Government it was pointed out that there was the office of friendly societies for which an annual sum was voted to enable it to deal with a rapidly increasing and most complicated business, and very few of the managers and members of friendly societies would speak of that office as worthless. One of its most useful functions was to circulate information which was of general use to friendly societies, and one of the most important works it did was to send out annually to every society whose rules were registered a form reminding them of their obligations in regard to valuation. Collecting societies, as a means of encouraging thrift, were absolutely valueless, for all that the ordinary members knew of the society was the weekly visit of the collector for his subscription. The members had little control over the management in industrial insuring companies such as the Prudential, against the management of which he had not a word to say. No one could hear the evidence of the manager of that institution without being impressed with his ability and the wonderful success that institution had achieved. But what he was concerned with was to show the people of this country what expensive institutions they preferred to the Post Office. The history of the Prudential was very remarkable, and showed the vast sums of money which were drawn from the working classes. Comparing the terms of the Prudential with the terms of the Post Office, the Post Office for a 1*d.* a week insured a man at the age of twenty-three for 10*l.*, while the Prudential on the same terms only paid 7*l.* 10*s.* For 6*d.* a week the Post Office would insure a man for 70*l.*, while the Prudential only offered 45*l.* 10*s.*, and so on. If these facts were known and were circulated among the people, a real service would be done to the nation. If the Government were to give a subsidy, they must assume responsibility also. State aid meant State control and State responsibility as well, and the effect of a subsidy would be that the Government would be undertaking a guarantee of that which they had absolutely no power to carry out.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d.* DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## EASTER VACATION NOTICE.

### CHANCERY DIVISION.

*There will be no sitting in Court during the Easter Vacation.*

DURING the Easter vacation all applications which may require to be immediately or promptly heard are to be made to the Honourable Mr. Justice Lawrance.

Mr. Justice Lawrance will act as vacation judge from Thursday, March 26, to Monday, April 6, both days inclusive. His lordship will sit in Queen's Bench Judges' Chambers on Thursday, March 26, Thursday, April 2, and Monday, April 6. On other days, within the above period, applications in urgent Chancery matters may be made to his lordship at 3 Paper Buildings, Temple.

In any case of great urgency the brief of counsel may be sent to the judge by book-post, or parcel prepaid, accompanied by office copies of the affidavits in support of the application, and also by a minute, on a separate sheet of paper, signed by counsel, of the order he may consider the applicant entitled to, and an envelope capable of receiving the papers, and addressed as follows: 'Chancery Official Letter: To the Registrar in Vacation, Chancery Registrars' Chambers, Royal Courts of Justice, London, W.C.'

On applications for injunctions, in addition to the above, a copy of the writ, and a certificate of writ issued, must also be sent.

The papers sent to the judge will be returned to the registrar.

Chancery Registrars' Chambers,
Royal Courts of Justice: March 16, 1891.

## LAW STUDENTS SOCIETIES.

DEBATING.—The ordinary weekly meeting of this society was held at the Law Institution, Chancery Lane, on Tuesday, March 17, Mr. Harcourt in the chair. The subject for discussion—'That legislation is urgently needed to place further restrictions on gambling'—was opened by Mr. G. H. Bower. Mr. Savory opposed. The debate having been declared open, the following gentlemen spoke: in the affirmative, Messrs. Bilney and Woodhouse; in the negative, Messrs. Crawford, T. H. Bower, Addington-Willis, Parkes, Windsor, Hitchins, Hunt, Willson, Jones, and Arnold. Mr. G. H. Bower replied. On the motion being put to the meeting, it was lost by a majority of nine. There were thirty members and visitors present. The subject for discussion at the next meeting of the society on Tuesday, March 24, is: 'That all *bonâ fide* communications made by Trade Protection Societies in answer to inquiries are privileged.'

LIVERPOOL.—The next meeting of this association will be held at the Law Library on Monday, March 23. The chair will be taken by W. T. Rogers, Esq., solicitor. A paper will be read by T. R. Hughes, Esq., barrister-at-law, on 'The Dangers of Directors.' The subject for discussion at the last meeting was decided in the affirmative by a majority of 13.

MR. JOHN DOUGLAS JOHNSTONE, solicitor, of Tavistock, has been appointed by his Honour Judge Edge to be registrar of the Tavistock County Court, in the place of Mr. C. V. Bridgman, promoted to the registrarship of East Stonehouse Court. Mr. Johnstone, who was educated at Eton, was admitted Hilary Term, 1872. He already holds the clerkship to the Board of Guardians, Income Tax and Land Tax Commissioners, is clerk to the Tavistock Highway Board and to the School Boards of Whitchurch and Lydford, and is a perpetual commissioner and commissioner for affidavits.

## CALENDAR OF THE COUNTY COURTS.

FROM MARCH 23 TO MARCH 28.

| No. of Circuit | His Honour | March 23 | March 24 | March 25 | March 26 | March 27 | March 28 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Birkenhead | Northwich | Warrington | — | — |
| 8 | Judge Heywood | Manchester | Manchester | Manchester | Manchester | — | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | — | — | — |
| 19 | Judge Barber | — | Ashbourne | Matlock | Burton | — | — |
| 22 | Judge Harington | Chipping Norton | Stow-on-the-Wold | Alcester | Pershore | — | — |
| 47 | Judge Powell | — | Lambeth | — | — | — | — |

# House of Lords Register.

APPEALS FROM COURT OF APPEAL IN ENGLAND.

THURSDAY, MARCH 12.

*In re Gorton. Dowse* v. *Gorton* (appeal from decision of Cotton, L.J., Lindley, L.J., and Lopes, L.J., dated February 7, 1889 [58 Law J. Rep. Chanc. 403], which varied an order of Sir H. Bristowe, vice-chancellor of the Duchy of Lancaster, dated November 23, 1887).—*Cur. adv. vult.*

FRIDAY, MARCH 13.

*Montgomery* v. *Thompson* (appeal from decision of Cotton, L.J., Lindley, L.J., and Lopes, L.J., dated February 21, 1889 [58 Law J. Rep. Chanc. 374], which affirmed judgment of Chitty, J., dated November 9, 1888 [58 Law J. Rep. Chanc. 93]).—*Cur. adv. vult.*

MONDAY, MARCH 16.

*Attorney-General* v. *Emerson* (appeal from the judgment of the Court of Appeal [Lord Esher, M.R, Fry, L.J., and Lopes, L.J.], dated December 1, 1888, reversing the decision of the Divisional Court [Mathew, J., and Cave, J.]).—*Cur. adv. vult.*

TUESDAY, MARCH 17.

*Johnson* v. *North-Eastern Railway Company* (appeal from considered judgment of Court of Appeal [Lord Halsbury, L.C., Lord Esher, M.R, and Bowen, L.J.], dated November 14, 1888, which reversed judgment of Day, J.).—Dismissed.

# Court of Appeal Register.

## APPEAL COURT I.

Before the LORD CHANCELLOR, the MASTER OF THE ROLLS, and FRY, L.J.

THURSDAY, MARCH 12.

*Regina* v. *Commissioners under Boiler Explosions Act*, 1882 (Q. B. *Crown Side*) (appeal of the Tyne Coal Company (Lim.) (prosecutors) from order of Cave, J., and Charles, J., dated March 2, discharging *nisi* for prohibition from proceeding from inquiry).—Dismissed.

FRIDAY, MARCH 13.

*In re J. Hodgkins, ex parte Debtor* (appeal of debtor from receiving order, dated March 4, made by Mr. Registrar Linklater, on petition of Dawe and another).—Dismissed.

*In re W. F. Nuthall (judgment debtor summons); Ford* v. *Nuthall* (appeal of defendant Nuthall from order of Cave, J., dated February 14, directing monthly payment by debtor notwithstanding receiving order).—Allowed.

*In re Viscount Deerhurst, ex parte Seaton and another* (appeal of Seaton and another from judgment of Cave, J., dated February 11, upholding trustee's rejection of proof).—Dismissed.

SATURDAY, MARCH 14.

No sitting.

MONDAY, MARCH 16.

No sitting.

TUESDAY, MARCH 17.

*The Nouvelle Banque de l'Union (in liquidation)* v. *Ayton* (application of defendant for judgment or new trial on appeal from verdict and judgment at trial before Wright, J., with a common jury in Middlesex).—Dismissed.

WEDNESDAY, MARCH 18.

*Heighway and another* v. *Kirk and Randall* (appeal of plaintiffs from order of Stephen, J., dated February 19, at Maidstone, directing reference of trial of action to official referee).—New trial ordered.

*Sowerby & Co. (Lim.) (applicants)* v. *Great Northern Railway Company (respondents)* (appeal of Sowerby & Co. from judgment of the Railway and Canal Commissioners, dated February 27, on preliminary point as to legality of station terminal charges).—Part heard.

## APPEAL COURT II.

Before LINDLEY, L.J., BOWEN, L.J., and KAY, L.J.

THURSDAY, MARCH 12.

*Cheetham* v. *Oldham & Fogg* (appeal of plaintiff from order of the Vice-Chancellor, dated January 15, 1890).—Settled.

*Lawrence* v. *Welsby* (appeal of defendant Ann Hall from judgment of the Vice-Chancellor, dated August 6, 1890).—Allowed.

FRIDAY, MARCH 13.

*Indigo Co. (Lim.)* v. *Ogilvy, Gillanders & Co. and Others* (appeal of plaintiffs from order of North, J., dated February 13, refusing liberty to amend writ of summons by adding parties; heard March 10).—Dismissed subject to a slight modification.

*Roberts* v. *Cooper* (appeal of Leila Elkins and others (representatives of C. Lamb, deceased) from order of Kekewich, J., dated January 24).—Allowed.

SATURDAY, MARCH 14.

*In re J. Slevin, dec. Slevin* v. *Hepburn (construction)* (appeal of Attorney-General from order of Stirling, J., dated December 13).—*Cur. adv. vult.*

*In re Stephenson, dec. Stephenson* v. *Tear. In re Stephenson, infants (construction)* (appeal of plaintiff from order of Kekewich, J., dated January 12).—Dismissed, with liberty to amend summons.

MONDAY, MARCH 16.

*Aas* v. *Benham* (appeal of defendant from judgment of Kekewich, J., dated June 6).—Part heard.

TUESDAY, MARCH 17.

*Aas* v. *Benham*.—Part heard.

WEDNESDAY, MARCH 18.

*Aas* v. *Benham*.—Part heard.

## NOTICES FOR THE WEEK.

### ROTA OF REGISTRARS.

MONDAY, March 23.—Court of Appeal No. 2: Mr. Lavie. Mr. Justice Chitty: Mr. Beal. Mr. Justice North: Mr. Pemberton. Mr. Justice Stirling: Mr. Clowes. Mr. Justice Kekewich: Mr. Leach. Mr. Justice Romer: Mr. Farmer.

Tuesday, March 24.—Court of Appeal No. 2: Mr. Carrington. Mr. Justice Chitty: Mr. Pugh. Mr. Justice North: Mr. Ward. Mr. Justice Stirling: Mr. Jackson. Mr. Justice Kekewich: Mr. Godfrey. Mr. Justice Romer: Mr. Rolt.

Wednesday, March 25.—Court of Appeal No. 2: Mr. Lavie. Mr. Justice Chitty: Mr. Beal. Mr. Justice North: Mr. Pemberton. Mr. Justice Stirling: Mr. Clowes. Mr. Justice Kekewich: Mr. Leach. Mr. Justice Romer: Mr. Farmer.

Thursday, March 26.—Court of Appeal No. 2: Mr. Carrington. Mr. Justice Chitty: Mr. Pugh. Mr. Justice North: Mr. Ward. Mr. Justice Stirling: Mr. Jackson. Mr. Justice Kekewich: Mr. Godfrey. Mr. Justice Romer: Mr. Rolt.

The Easter Vacation will commence on Friday, March 27, and terminate on Tuesday, March 31, both days inclusive.

THE DISHORNING OF CATTLE.—At Edinburgh it was decided by five judges, on an appeal, that the operation of dishorning cattle was necessary in the interests of the animals themselves, and that, therefore, the perpetrators could not be found guilty of cruelty. The judgment of the Scottish Court on this point is contrary to that pronounced by English judges.

WE have received a new weekly periodical called *The Weekly Gallery of Celebrities*, containing this week, among others, an excellent picture of Sir Charles Russell, and promising for next week one of Mr. Montague Williams. The other portraits this week are Mr. W. Besant, Mr. Jerome, Miss Edna Lyall, and Dr. Koch, with short biographical sketches. The paper is well printed and got up, and is likely to prove attractive.

THE ADMINISTRATION OF THE POOR LAW IN LONDON.—Some time ago the proposal was made that the St. Marylebone Guardians of the Poor should be elected for three years instead of for one, the annual elections being costly and troublesome. The Local Government Board left the parishioners to decide the question, and a poll was accordingly taken; and yesterday Mr. Joseph Bedford, who was the returning officer, gave out the results. The total number of voters in the four wards of St. John's Wood, the Grove and Regent's Park, the Portman, and the Portland and Cavendish was 34,091. More than half the voters, with the Londoners' characteristic indifference to local questions, did not return their voting papers, though the voting papers were brought to the houses and were collected, and only 14,268 valid votes were given. Of these 9,608 were in favour of making the election of guardians triennial, and 4,660 were against change. Hereafter, therefore, the guardians will sit for three years.

## OBITUARY.

MR. WILLIAM FORBES, of Medwyn, the oldest member of the Faculty of Advocates in Edinburgh, died on March 12. Born in 1803, he was eldest son of the late Lord Medwyn, a well-known judge of the Court of Session in the early part of the century. Mr. Forbes was called to the bar in 1825, and after practising for some years he was appointed secretary to the Board of Lunacy, an office which he filled with much ability until his retirement a few years ago. He was a keen Conservative, and was warmly attached to the Scottish Episcopal Church.

UNITED LAW SOCIETY.—On March 16 the usual weekly meeting was held at the Inner Temple Lecture Hall; Mr. C. W. Williams in the chair. Mr. J. L. V. S. Williams moved: 'That the decision in *Simmons* v. *The London Joint-Stock Bank* was correct.' This was opposed by Mr. L. W. Browne. The other speakers were Messrs. W. F. Symonds, B. Hawkins, and J. R. Atkin. The motion was carried. The subject for debate on the 23rd inst. is 'The Roman Catholic Disabilities Question.'

WE are informed that the fourteenth edition of Mr. Jordan's well-known 'Handy-Book on the Formation, Management, and Winding-up of Joint-Stock Companies' is in the press, and will shortly be ready for publication. This edition is being prepared under the editorship of Mr. F. Gore-Browne, of the Inner Temple, who will be responsible for the strictly legal portions of the book. The new edition will be brought down to date, and in particular will deal at some length with the three Acts of last session relating to companies—viz. the Memorandum of Association Act, the Winding-up Act, and the Directors' Liability Act, and will contain other additions.

EQUITY AND LAW LIFE ASSURANCE SOCIETY.—The annual general meeting of this society was held on Tuesday, March 17, at the Society's House, 18 Lincoln's Inn Fields, London, W.C. The directors' report states that the business of the past year, the forty-sixth of the society's existence, has been most successful. The new sums assured have amounted to 611,307*l.*, of which 104,300*l.* has been reassured. The new premiums have amounted to 26,270*l.* 14*s.* 7*d.*; of this 3,011*l.* 1*s.* 8*d.* has been paid away for reassurances. The new premiums retained by the society amount therefore to 23,259*l.* 12*s.* 11*d.*, of which 19,794*l.* 9*s.* 11*d.* are renewable premiums, the largest addition yet made in any year to the income of the society. The renewal premiums show a substantial increase, having been 164,621*l.* 6*s.* 5*d.*, as against 152,864*l.* 10*s.* 7*d.* last year (exclusive of commutations); the amount running off by death, surrender, lapse, &c., being comparatively small. The claims by death have amounted to 127,998*l.* 8*s.* 3*d.*, a sum considerably less than the expected amount. The amount of the funds at the end of the year was 2,342,993*l.* 12*s.* 2*d.*, being an increase of 27,958*l.* 9*s.* 7*d.* during the year. In connection with this the directors point out that 42,471*l.* 13*s.* has been paid away as cash bonus, being an exceptional item following the division of profits. One of the most healthy signs of the state of this flourishing company's business is the very small proportion which the expenses of management bear to the premium income—viz. 11,094*l.* 17*s.* 6*d.* to 187,880*l.* 19*s.* 4*d.* The report must be highly gratifying alike to shareholders and assured.

RENTS COLLECTED AND DISTRAINTS LEVIED TO RECOVER SAME, by Messrs. HENRY C. WOOD (Surveyor to the Parish of Tooting) and HENRY KIRBY (Wood & Kirby), Certificated Brokers, 1 Great James Street, Bedford Row, W.C. No charge made to Landlords if Rent over 20*l.* Troublesome tenants got rid of. Possession also taken under Bills of Sale, Mortgages, &c. Bailiffs to the Parish of St. Dunstan in the West and City of London (Farringdon Ward). Money paid over same day received. Bankers: City Bank, Holborn Viaduct. References, if desired, to clients of many years' standing. Prompt and personal attention given.—ADVT.

THE NEW REGISTRAR IN BANKRUPTCY.—Mr. Herbert James Hope, the private secretary of the Lord Chancellor, has been appointed a Registrar in Bankruptcy, in the place of Mr. William Hazlitt, whose resignation has been announced. The learned gentleman was called to the bar in 1875.

WITH reference to the paper lately read by Mr. L. S. Bristowe, M.A., of Lincoln's Inn, before the Hospitals Association on 'The Legal Restrictions on Gifts to Charity,' it has been resolved by the council of the Hospitals Association to draft a short bill for presentation to Parliament, with a view to removing the disabilities at present existing.

PEERS AND PUBLIC-HOUSES.—The Parliamentary return of the owners of two and more on-licensed houses, recently issued at the instance of Mr. Summers, M.P., shows that 172 members of the House of Lords own 1,539 licensed drinkshops; nineteen dukes hold 321, twelve marquises hold 106, seventy-four earls hold 645, seven viscounts hold forty-five, one bishop holds two, and sixty-nine barons 420. The Bishop of Llandaff is the only bishop on the list.

CERTIFICATES OF ORIGIN.—Continuing the correspondence on the subject of certificates of origin required by various foreign countries, Sir James Fergusson informs the London Chamber of Commerce, under date the 13th inst., that as far as the Argentine Republic, Nicaragua, Salvador, Persia (Bushire and Tabriz consular districts), Japan, and the United States of Colombia are concerned, no certificates of origin for shipments to those countries are requisite. Costa Rica, Honduras, and Guatemala require certificates, but those issued by chambers of commerce are not received, whilst for Peru goods must be accompanied by the consular invoice of the Peruvian consul at the port of shipping. As regards Spain, it is not necessary that certificates accompanying British goods should bear the manufacturer's name.

THE POSSESSION OF GAME BILL.—At the City Terminus Hotel, Cannon Street, on Tuesday, March 17, a largely-attended meeting of dealers in fish, game, and poultry was held, having been convened by the London Central Poultry and Provision Trade Association, to protest against the passing of this bill. Mr. Liversidge, C.C., presided. Some of the leading members of the trade were present, and the letters in support of the action of the association were read from dealers in various provincial towns. The secretary (Mr. Key) stated that the progress of the bill had been conducted so quietly that the association received intimation of it only last Wednesday, when immediate action was taken by them. The object of the bill was to stop poaching—to stop traffic in an article which was not only unsaleable but also uneatable, and yet the provisions of the bill would, he said, crush out thousands of tons of food supplied to England. The chairman stated that the bill would practically prevent the sale in this country of any kind of game from Russia or Norway, although our dealers relied on those countries in the English close season. On the motion of Mr. Berry, seconded by Mr. Bewley, and supported by Mr. Bastard, a resolution was adopted protesting against the passing of the bill in its present form 'as injurious to the interests of this country, and contrary to the spirit of the age.' Mr. G. F. Brooke afterwards proposed that the resolution should be sent to Lord Salisbury, Mr. W. H. Smith, and Sir M. Hicks-Beach, and that a petition setting forth the facts should be presented to Parliament. Mr. Broome, in seconding the motion, argued that it would not pay a poacher to poach English game and send it to market to be sold as foreign game. The resolution was adopted, and a committee was appointed to take the necessary steps to oppose the bill in Parliament.

MR. JUSTICE KEKEWICH.—SPECIAL NOTICE FOR NEXT SITTINGS.—Witness cases will be commenced on Tuesday, April 14. The case of *Savory & Moore* v. *The London Electric Supply Corporation (Lim.)* motion treated as trial, and advanced by order, is fixed for that day.

THE SHARP *v.* WAKEFIELD LICENSING APPEAL.—Owing to the importance of the question at issue the House of Lords has decided to give judgment in this appeal on Friday, March 20. The case raises the whole question of the right of justices at their discretion to refuse the renewal of a licence.

LIFE ASSURANCE AND PROFESSIONAL SECRECY.—The French Court of Appeal has just delivered judgment in a case in which a widow had brought an action against a life assurance company for the amount of her husband's policy, which the company declined to pay because the medical man who had attended him refused to fill up the usual form with the name of the disease and its duration, declaring himself bound by the law of professional secrecy not to reveal the nature of his patient's disease. The Court has decided against the company, holding that the medical man himself is the sole judge as to whether facts revealed to him by a patient were confided to him under the seal of professional secrecy.—*Lancet.*

PRESENTATION TO LORD HANNEN.—On March 18 Lord Hannen was presented with a handsomely-framed address, engrossed on vellum, by the managing clerks representing solicitors practising in the Probate and Divorce Division. The presentation took place in Sir C. Butt's private room, which was numerously attended. Mr. Garnett introduced the deputation, after which Mr. Smith read the address, which expressed their respectful thanks for the uniform courtesy and kindness they had always received at his lordship's hands during the eighteen years he had presided at the Court, and of their high regard and esteem. They also hoped that he would for many years be enabled to exercise in that higher tribunal to which he had been summoned those great judicial functions for which he was so justly renowned. Lord Hannen, in reply, said that amongst the many expressions of good feeling and sympathy that he had received on the occasion of leaving the Courts, he could assure them that none had touched him so much as this presentation. He had been a judge for twenty-three years, eighteen out of which were passed in the Probate and Divorce Division, and it was an enormous satisfaction to him to feel that their verdict was in his favour, and that they had at least recognised that he had used his abilities to the utmost to do his duty. In thanking them most cordially for this testimonial of their good feeling he could only say that he would ever treasure in his heart the warmest gratitude for this kindness they had done him. His lordship then shook hands with all present, and the proceedings terminated.

## BIRTHS.

On March 12, at 5 Elms Road, North Dulwich, Surrey, the wife of Frederick Broadbridge, of Lincoln's Inn, of a son.

On March 12, at Wimbledon, the wife of George A. Rimington, Barrister-at-Law, of a son.

On March 12, at Lowdale Hall, Sicights, Yorks, the wife of Arthur English, Solicitor, of a daughter.

## DEATHS.

On Feb. 8, at Singapore, James Guthrie Davidson, Advocate and Solicitor, Supreme Court, Straits Settlement.

On March 8, Charles Welsby, Barrister-at-Law, of Southport, and formerly of Chester, aged 45.

On March 10, at Calcutta, Algernon Fiennes Nowell Watkins, Solicitor, youngest son of the late Rev. C. F. Watkins, Vicar of Brixworth, Northants.

On March 11, at Woodcote, Chislehurst, Clement Alexander Middleton, Barrister-at-Law, and a Bencher of Gray's Inn, aged 52.

On March 14, at Pau, William James Small, Solicitor, Dundee.

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# The Law Journal.

*SATURDAY, MARCH* 28, 1891.


## 'OBITER DICTA.'

THE Bar Committee having brought to the notice of the senior common law master the inconvenience of taking counsels' summonses at one o'clock, and the time wasted in consequence of the adjournment for luncheon, he has arranged that from the commencement of Easter sittings such summonses shall be first called at 1.30, except on Saturdays, when they will be taken at 12.30.

MANY interesting and important questions arise in connection with the decision of the Court of Appeal in Mrs. Jackson's case. On the main point the authority of Lord Eldon appears not to have been cited. It is worth noting, however, that, so far from sharing the views of his present successor on the relations of husband and wife, he expressed doubts in the case of *St. John* v. *St. John*, 11 Ves. 532, whether *The King* v. *Mead* had not gone too far in treating a separation deed as a renunciation of the marital right. 'The question,' he said, 'occurs, what was to be done if the husband had sought to get his wife back by force—that is, by force of his marital right—which, according to *The King* v. *Mead*, would have been an indictable offence; but that I desire may not be understood as being universally acceded to until it shall be determined upon a special verdict.'

WAS Lord Halsbury right in saying that any attempt by Mr. Jackson to exercise his 'supposed power' again would be a contempt of Court? In other words, has an order of discharge on a writ of *habeas corpus* the effect of a perpetual injunction against recapture? This does not seem to have been the opinion of the judges who decided *The King* v. *Mead*, for they distinguished the case of molesting the wife 'in her present return from Westminster Hall,' which they declared would be a contempt of Court, from a subsequent attempt to seize her by force, which they said would be a breach of the peace—by reason of the separation deed. The point is not without interest considering the great importance of the questions which arise on *habeas corpus* and the necessarily hasty manner in which the Courts are called upon to determine them. If no direct appeal lies from such an order as was made against Mr. Jackson, a formal attempt at recapture might be a necessary step in proceedings to bring the question of right before a higher Court. It would be unfortunate if the Court whose decision is disputed should have power to interfere summarily, and (as the law now stands) without appeal, with the due course of such proceedings.

ANOTHER *dictum* of Lord Halsbury, to which exception may be taken, is the following: 'If,' he is reported to have said, 'any one now were to contend that slavery ever existed by the law of England, he would be regarded with ridicule.' It is strange that this statement, which goes far beyond anything expressed or implied in the decision in *Somersett's Case*, should be made in the present day. The contention that slavery *never* existed by the law of England would justly be received with ridicule by any one acquainted with the history of this country. 'It is characteristic,' says Mr. E. A. Freeman, 'of English history, that slavery was finally wiped out from among us, not by a legislative enactment, but by a judicial decision, which did more credit to the hearts of the judges who gave it than it did to their knowledge of history' ('Norman Conquest,' vol. v. p. 480). The criticism is indeed hardly fair to Lord Mansfield and his colleagues, seeing that they confined their judgment to the particular form of slavery disclosed on the return before them, without committing themselves to any such general proposition as has now been enunciated by the Lord Chancellor.

PERHAPS never in the history of judicial decisions has authority been so boldly overruled and disregarded as in *Jackson's Case*. Let any person read the carefully considered judgment of Mr. Justice Coleridge in *Cochrane's Case*, 8 Dowl. 630, and after consulting

*Regina* v. *Mead*, 1 Burr. 542, and other authorities therein referred to, together with the more recent *In re Prince*, 2 F. & F. 263, contrast it with the judgments of the Court of Appeal. *Regina* v. *Leggatt*, 18 Q. B. 781, is the only authority on which the Court of Appeal rely, and when it is borne in mind that the rule in that case was granted on the authority of *Cochrane's Case*, and that Mr. Justice Coleridge himself was actually a party to it, the conclusion that in *Regina* v. *Leggatt* the Court did not intend to overrule *Cochrane's Case* is irresistible. It may very well be that, looking to the altered views of the marriage relationship which have become prevalent since *Cochrane's Case* was decided, the common law rights of a husband have become altered in a somewhat similar manner as the common law liabilities for blasphemy were not many years ago so eloquently declared to have been altered by the Lord Chief Justice of England. But this is not what we take the Court of Appeal to have said in *Jackson's Case*.

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THE Clitheroe abduction case has been the subject of leading articles and letters in the newspapers in which sentiment has been at least as apparent as judgment. But there is one important question raised by the case which has not received sufficient attention. History and fiction supply us with numerous instances of complication arising from the performance of the ecclesiastical ceremony where the parties have not lived together as man and wife. In truth, consummation is of the essence of marriage, and is so recognised, we believe, by the canon law and other systems. The evidence in this case seemed to imply that the marriage had not been consummated, and we can hardly imagine that any moral or ecclesiastical opinion or prejudice would be violated if the Matrimonial Court had jurisdiction under proper conditions to annul a marriage contracted in such circumstances.

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THE Matrimonial Causes Act, 1884, was carried through Parliament by the Government at the instance of Lord Hannen, who, as Mr. Justice Hannen, had expressed a very strong opinion, in issuing an attachment in *Weldon* v. *Weldon*, 53 Law J. Rep. P. D. & A. 9, against the obligation, existing until extinguished by that Act, of the judge of the Divorce Court to enforce a decree for restitution of conjugal rights by issuing such attachment. The measure was carried through the House of Lords absolutely *sub silentio*, and through the House of Commons with little or no debate, Mr. Warton alone, so far as we have been able to discover, protesting against it, and predicting that the result would be that, 'if any wife took it into her head to leave her husband she might do so, and the judge who had originated the measure might compel that husband so deprived of the solatium of his wife to pay something for her maintenance if she had nothing of her own.' 'The measure,' continued the honourable member, 'would certainly not improve the sanctity of marriage.'

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WE remarked a short time ago on the exceptional strength in both numbers and ability of the House of Lords as the highest Court of appeal. Eight judges sat and voted in the case of *The Bank of England* v. *Vagliano Brothers*, and to these might on occasion be added Lord Coleridge, Lord Esher, Lord Ashbourne, and Lord Moncrieff. Lord Hannen having recently been added to that august tribunal, there are now no fewer than thirteen judges available for the hearing of final appeals. Still, Lincoln's Inn can hardly be said to be satisfied. Of this large number only two noble and learned lords were members of the Chancery bar—viz. Lord Selborne and Lord Macnaghten; and as the former is now rapidly approaching fourscore years and very rarely sits, only one equity judge is practically available in the House of Lords. The other day, in the case of *Gorton* v. *Dowse*, which involved equitable questions of an extremely intricate and technical character, the House was constituted of Lords Herschell, Macnaghten, and Hannen. Judgment has been reserved, but it is hardly too much to say that when delivered it will be regarded as that of Lord Macnaghten; and, if in reversal of the Court of Appeal, it will practically amount to one equity judge overruling Lords Justices Cotton and Lindley, and possibly also the Vice-Chancellor of the Lancaster Palatine Court. For the purpose of really strengthening the House, although all must fully recognise the propriety in itself of Lord Hannen's elevation, it is to be regretted that one of the Appeal judges on the Chancery side, or Sir H. Davey or Mr. Rigby, was not chosen to fill the recent vacancy. This unsatisfactory state of things might also be remedied by the grant of a peerage to Lord Justice Lindley or Lord Justice Fry, so as to make their services available in the House of Lords.

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IT is extraordinary how little foresight or grasp of all the circumstances requiring to be dealt with is shown in our legislation even when the subject is both simple and of great importance. The Appellate Jurisdiction Act, 1876, disqualified a Lord of Appeal in Ordinary who was not a peer from sitting and voting in the House of Lords after his retirement. Then the Act of 1887 was passed, removing this disqualification. It really does not much matter whether Lord Blackburn or any retired Lord of Appeal is or is not qualified to take his share in the legislative business of the country. It might, however, be very desirable on occasion to obtain the services of a retired judge, but that the Acts give no power to do. It is very conceivable that a judge, either from occasional ill-health or desire for leisure and repose, might wish to retire and yet might, when there was no compulsion in the matter, be willing to strengthen the House on occasion by his presence and advice. It is very absurd, also, that the Lord Chancellor can, and the Lords of Appeal cannot, sit in the Court of Appeal. It would have been more convenient for the despatch of business, and probably, also, for the Lord Chancellor's political duties, if Lord Macnaghten or Lord Herschell, Lord Watson, or Lord Morris could have come to sit in the Royal Courts instead of Lord Halsbury. In a word, the holder of the higher judicial office ought to be empowered, if willing, to discharge the duties of a lower office.

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WE pride ourselves, and not without reason, on the increased rapidity in the administration of justice in our own days as compared with those of our forefathers. It behoves us all the more to see that there be no backsliding. Other causes, as we well know, than the promptitude and efficiency of the judges determine the

periods which elapse between the hearing of a case and appeals therefrom; and these causes are more operative in an appeal from the Court of Appeal than from a Court of first instance. Litigants think twice before they go to the House of Lords. But one cannot help feeling that there must be something wrong when one finds, after looking at the intervals in a number of cases between the decision of the Court of Appeal and the hearing in the House of Lords, that the foot of justice is getting lamer and not more nimble. *Sharpe* v. *Wakefield*, a case in which there was probably no hesitation as to whether there was to be an appeal or not, was heard by the Appeal Court in December, 1888; by the House of Lords in January, 1891. In *Abrath* v. *The North-Eastern Railway Company* the interval was from June, 1883, to March, 1886. In *Essex* v. *The Local Board of Acton* the interval was nearly three years. In the recent appeals in the House of Lords the period has been two years and sometimes more. A cursory examination of the reports in the Chancery and Queen's Bench Divisions leads to the conclusion that, in Lord Selborne's Chancellorship, from 1880 to 1885, an appeal was sometimes heard by the Lords in less than nine months, as in the famous case of *Dobbs* v. *The Grand Junction Water Works Company*; very frequently in less than a year from the decision of the Court of Appeal; whereas, under Lord Halsbury, scarcely a case appears to have been heard within the twelvemonth. In a word, Lord Selborne's average time—if we may employ this somewhat loose phraseology—was one year, and Lord Halsbury's very nearly two years.

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THE House of Commons has 'agreed to the Lords' amendments to the Commons' amendments to the Lords' amendments' of the Tithe Rent-charge Recovery Bill, as passed by the Commons, and the bill will, if Her Majesty shall have been pleased to assent to it, have become law before these lines meet the eyes of our readers. The final cause of dispute between the two Houses was upon words providing that 'no costs should be given in any case where no notice of opposition had been given.' The Commons wanted these words in, but the Lords struck them out, and eventually they were struck out by the Commons also, on the motion of Sir Michael Hicks-Beach, after no less than three divisions. The new Act, there being no provision to the contrary, becomes law at the beginning of the day of the royal assent (see *Tomlinson* v. *Bullock*, 48 Law J. Rep. M. C. 95), a rule of law which in this, as in many other cases, may cause serious inconvenience to the profession, who are thus frequently bound by a statute which they cannot possibly know the contents of. It is greatly to be desired that this rule should be altered, and that Acts should be directed not to come into operation until after a reasonable period from their becoming law.

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COURT of Appeal No. I. only sat on Saturday for the purpose of delivering two considered judgments, and has held no sitting this week owing to the continued absence of Lord Justice Lopes and the inability of the Lord Chancellor to continue his attendance. There are, however, no arrears of any importance. The new trial paper has been practically disposed of, and the Court is quite abreast of its work so far as interlocutory and bankruptcy appeals are concerned. Of the list of forty-three final appeals from the Queen's Bench Division, thirty have been disposed of, and those which have not been reached will probably be heard early next sittings, as the new trial paper is likely to be of very small dimensions.

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THE question put to the Attorney-General by Mr. Darling, M.P., in the House of Commons last week raised two points of considerable interest: first, whether it was intended to re-establish sittings for the trial of causes at the Guildhall; and secondly, whether the accommodation at the Royal Courts was insufficient for the judges of the Queen's Bench Division in the matter of Courts for the trial of causes. To the latter part of the question there could be only one answer, and the Attorney-General admitted that the existing accommodation is not sufficient when all the judges of the Queen's Bench Division are available. There are only ten Courts for fourteen judges, whereas eleven or twelve are required according to whether two or three Divisional Courts may be sitting. In answer to the first part of the question, the Attorney-General stated that there have been communications between the Lord Chancellor and the Corporation of London with reference to the possibility of holding two Courts for special jury actions in the London list at the Guildhall at the commencement of each sittings, when the Royal Courts are insufficient to accommodate all the judges of the Queen's Bench Division available for work. It is much to be hoped that this suggestion will be carried into effect, as, besides preventing a waste of judicial time, it will enable mercantile men once more to have their disputes settled by the tribunals of the country, which, owing to the inconveniences of attending the present law Courts, they are now practically prevented from doing.

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THE recent case of *The Hornsey Local Board* v. *Brewis and Others* (60 Law J. Rep. M. C. 48) raised the question whether the trustees of a chapel, in which they had no beneficial interest, could be made liable for paving expenses under the Public Health Act, 1875. The chapel consisted of two floors, the upper floor being the chapel itself, and the lower containing a lecture hall, which was used for the purposes of a Sunday school and of an institute. Lectures, concerts, &c. were also from time to time given in the hall, but the trustees personally derived no profits from these entertainments, and upon that ground refused to comply with a notice under section 150 of the Public Health Act, 1875, requiring them to pave, &c. the portion of the street upon which the chapel abutted. The local board having executed the work themselves, the Court (Hawkins, J., and Stephen, J.) held that the trustees were liable for the expenses so incurred upon the ground that they were the 'owners' of the premises when the works were completed, within the meaning of section 257 of the Act, and did not come within the exemption in section 151 of 'the incumbent or minister of any church, chapel, or place appropriated to public religious worship.'

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IN answer to Mr. Stewart in the House of Commons, Mr. Matthews has stated that it is not possible to find time (as we can well believe) for a Government Consolidation Bill on betting and gambling this session, but

that 'he would not lose sight of the subject.' An opportunity may perhaps be afforded of making a much-needed amendment of the law when Lord Herschell's Betting (Infants) Bill comes down to the House of Commons. In meeting Mr. Pickersgill's motion for a select committee on the subject, and his reference to the desirability of altering what we will venture to call the bad judge-made law of *Read* v. *Anderson* (see *ante*, pp. 82, 111), Mr. Matthews said he did not see how this law could be altered without altering the general law of contracts. We confess ourselves unable to perceive the difficulty. Before *Read* v. *Anderson* turf commission agents exercised their profession of making void contracts for other people at considerable risk; since that decision was pronounced they have become enabled to make bets and pay them in exactly the same manner as a buyer of cattle might buy cattle for his employer and pay for them. There is, however, the material distinction between wagering contracts and others, that before *Read* v. *Anderson* an agent paying a lost bet in defiance of a revocation of the authority to make it would have lost the money, whereas in the case of other contracts the authority to make them, once exercised, cannot, of course, be revoked. All that is needed is a short enactment to restore the *status quo ante Read* v. *Anderson*, and how such an enactment could affect the whole law of contracts, it is to us, with all deference to the great authority of the Home Secretary, quite impossible to conceive.

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Is the position of a bankrupt whose first application for discharge has been refused an utterly hopeless one; and must he, no matter how exemplary his behaviour, go through the remainder of his life as an undischarged bankrupt? This was the important question raised before Mr. Justice Cave and Mr. Justice Williams in the case of *In re Tobias & Co., ex parte H. A. Tobias.* Up to the present there has been no authority upon the point with the exception of certain *obiter dicta* thrown out by Mr. Justice Cave in *In re Lloyd, ex parte Lloyd*, 6 Mor. 297, and expressly stated by him to be an unconsidered opinion upon, and not a decision of, the point. The views so expressed have now been found to require modification. In *Lloyd's Case* the bankrupt, fifteen months after the absolute refusal of his discharge, applied a second time upon the same materials as were before the Court upon the original application. The County Court judge held that the matter was *res judicata*, and that, his first refusal being final, he had no jurisdiction to entertain the application. The bankrupt then applied, under section 104 of the Bankruptcy Act, 1883, for a review of the first refusal to discharge, and this was heard on the merits and refused. The bankrupt then appealed; and in granting the bankrupt his discharge, Mr. Justice Cave observed that if after a lapse of years a bankrupt could show that he had learned that in which he had failed before, perhaps on such fresh facts a Court might have jurisdiction to entertain a second application, but that, where the bankrupt relied upon the same facts as on the first occasion, an application for a review of the former order was the only course. In *In re Tobias, ex parte Tobias*, the bankrupt, relying upon subsequent good conduct, after the lapse of more than six years made a second application, which was refused on the ground of want of jurisdiction. An alternative application to review the first refusal was withdrawn under the mistaken impression that Mr. Justice Cave, in saying in *In re Lloyd* that, where the same facts as were used on the first occasion were relied on, an application to review was the proper course, meant that an application to review was improper when fresh facts were brought forward. Upon appeal from the refusal of the second application the Divisional Court held that the second application was properly refused, but that the bankrupt could rightly apply for a review, and upon it was entitled to his discharge. From the judgment of the Court we gather the following points: First, where a judge, in refusing a bankrupt his discharge, does not feel at liberty to fix a period of suspension, he may give the bankrupt liberty to apply again, but, having regard to the power of reviewing any order given by section 104 of the Act of 1883, the more convenient course is to refuse absolutely. Secondly, where a discharge is refused absolutely the Court has no power to entertain a second application. It will thus be seen that the suggestion made in *Lloyd's Case*, that on fresh facts—*i.e.* proof of subsequent good conduct—a second application might be made, is withdrawn. Lastly, the proper course for a bankrupt whose first application for a discharge has been refused to take is, whether he relies upon the same or on fresh materials, to apply for a review of the first order of refusal. This the Court must be careful not to grant where the sole object is to obtain an opportunity of appealing, when the time for appealing has gone by, but should grant in cases where good cause is shown; for the maxim 'Interest reipublicæ ut sit finis litium,' in accordance with which the time for appealing against a decision is always limited, must not be extended too far, and it is not for the good of the *respublica* that a punishment should be continued after the necessity for it has passed away. The practice upon a very important point is thus placed on an intelligible footing, and at the same time a motive for good conduct is supplied to undischarged bankrupts, which, if not previously lacking, had at any rate not been discovered.

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## *SHARPE* v. *WAKEFIELD* AND ITS RESULTS.

THE House of Lords, in a House of five peers strong, has unanimously affirmed the unanimous judgments of the Court of Appeal and High Court to the effect that persons licensed under the Licensing Act, 1828, have no vested interest in their licenses, similar to that possessed by persons licensed before 1869 under the Acts recited in the Wine and Beerhouse Act, 1869; and that, in considering whether the licenses of the persons licensed under the Act of 1828 ought to be renewed or not, the licensing justices may and ought to consider the number of houses in the neighbourhood already licensed, and ought to refuse to renew if they consider that too many licensed houses already exist in the licensing district. At the time that the Solicitor-General laid down the law otherwise in the House of Commons, we fully reviewed the law of the subject, and pointed out how and why the Solicitor-General's view was utterly untenable (see 'Ale and Beer Houses,' LAW JOURNAL for June 7, 1890, p. 345). We do not propose to criticise the judgments of the House of Lords in any way, but rather to treat them, as all such judgments ought in our opinion to be treated, in the same manner as we should treat an Act of Parliament. Happily for lawyers, the judgments are in writing, and

their meaning in connection with the questions raised is unmistakable.

Let us now consider a few of the practical questions which may be expected to arise in consequence of the judgment in *Sharpe* v. *Wakefield*: first from the side of those who are interested in the renewal of licenses, and, secondly, from the side of those who are interested in opposing such renewals on grounds other than those affecting the character of the licensed person or his house. The attention of those interested in renewals may be directed to three points. First, they should bear in mind that they must be prepared with affirmative evidence of their own that it is for the advantage of the licensing district that the house in which they are interested should continue to be licensed. It is quite possible that justices may have determined to reduce the number of houses, and they may proceed by way of selecting for renewal, say, the best eighty out of any 100 applicants for renewal. Secondly, very careful attention must be given to section 42 of the Licensing Act, 1872, and section 26 of the Licensing Act, 1874, which added together constitute a wall of defensive procedure not to be easily surmounted or broken through. Thirdly, the right of appeal against a refusal to renew is absolute and comprehensive (see *Garrett* v. *The Middlesex Justices*, 53 Law J. Rep. M. C. 81).

Now for those interested in the refusal of renewals. The main point for them to bear in mind is that justices are bound in point of law to hear evidence as to the requirements of the neighbourhood. This important rule had been laid down, as regards new licenses, in *Regina* v. *The Lancashire Justices*, 40 Law J. Rep. M. C. 17, long before *Sharpe* v. *Wakefield*; but it is undoubtedly the effect of *Sharpe* v. *Wakefield* that it applies to renewals. Another question of very great consequence is, What in an opposition to a renewal is the *locus standi* of those who would oppose a renewal on the ground that no licenses ought to be renewed at all, not because the peculiar circumstances of the neighbourhood require such a general extinction of houses licensed under the Act of 1828, but because, in the opinion of the opponents of the renewal, no license whatever ought anywhere to be granted for the sale of intoxicating liquors? Section 42 of the Act of 1872 and section 26 of the Act of 1874 say that the licensed person is entitled to a written notice of an intention to oppose, 'stating in general terms the grounds on which the renewal of the license is to be opposed.' Would a general notice to all licensed persons stating that the renewal of their licenses would be opposed, on the ground that there ought to be no licensed persons anywhere, be good in law? We think not. But the point is a doubtful one. One thing, however, is not doubtful, and that is, that the view that such a notice would be good is not borne out directly or indirectly by *Sharpe* v. *Wakefield*.

## BALANCE ORDERS UNDER THE COMPANIES ACT, 1862.

THE two sections of the Companies Act, 1862, under which liquidators obtain what are commonly known as 'balance orders'—that is, orders for the payment by contributories of the balance unpaid upon their shares—are sections 101 and 102. The first of these sections applies to moneys due in respect of calls made before the winding-up, which by section 75 are expressly made a specialty debt, while section 102 applies to calls made by the Court itself in the winding-up. Commenting on section 101, Mr. Buckley in his last edition of 'The Companies Acts' (6th ed. p. 288), says: 'The object of this and like sections is to avoid a double process and to do complete justice in the winding-up. And, therefore, it is only in rare instances (as where some of the parties concerned are not amenable to the jurisdiction in the winding-up) that an action should be brought.' The balance order, whether made under section 101 or section 102, is by virtue of section 120 enforceable as an order of the Court of Chancery—that is to say, by the usual modes of execution under 1 & 2 Vict. c. 110, and the Rules of Court, 1883, Order XLII. So far, therefore, the liquidator who obtains the balance order has the best of the game; but the usefulness of the balance order is certainly subject to two important exceptions, one of which is indicated in Mr. Buckley's note to section 101, which we have quoted, and to which we shall presently refer; and the other of which is shown by the decision in *Ex parte Grimwade; in re Tennent*, 55 Law J. Rep. Q. B. 459; L. R. 17 Q. B. Div. 357, where the Court of Appeal, affirming a previous case of *Ex parte Whinney*, L. R. 13 Q. B. Div. 476, held that a balance order is not a final order within the Bankruptcy Act, 1883, s. 4, subs. 1 (*g*) on which to serve a bankruptcy notice.

The other and more important drawback to the balance order is based on the jurisdiction, and did not, apparently, exist under the Joint-Stock Companies Act, 1848, under which power was given to serve notices by post out of the jurisdiction; but under the Companies Act of 1862 there is a direct decision of the Court of Appeal in *In re The Anglo-African Steamship Company*, 55 Law J. Rep. Chanc. 579; L. R. 32 Chanc. Div. 348, that the Court has no jurisdiction to give leave to serve notices of orders in the winding-up on persons out of the jurisdiction. The result of this decision is illustrated by the case of *The Westmoreland Green and Blue Slate Company* v. *Fielden*, recently decided by Mr. Justice Kekewich (reported in Notes of Cases, p. 48). In that case the liquidator had obtained a balance order, under section 101, for payment by a contributory of a large sum of money which became payable on the allotment of, and for calls on, his shares, the calls having been made before the winding-up. The contributory was residing in Guernsey, and the liquidator was, therefore, unable to serve or enforce the order, and the proceedings which he took with that object were set aside on the authority of *In re The Anglo-African Steamship Company*. In this state of things his only course was to proceed by action, obtaining leave to serve the writ out of the jurisdiction. In taking this course, however, he had to meet a rather adverse decision of Mr. Justice North in *Chalk, Webb & Co.* v. *Tennent*, 36 W. R. 263, an action which arose out of the case to which we have referred, of *Ex parte Grimwade, in re Tennent*, where the liquidator being, as we have stated, unable to serve a bankruptcy notice, brought an action on the balance order in the name of the company in order to obtain a final judgment on which a bankruptcy notice could be served, and Mr. Justice North held that no action was maintainable on the balance order. Warned, probably, by this example, the liquidator in *The Westmoreland Green and Blue Slate Company* v. *Fielden* brought his action in the name of the company, not upon the balance order, but for payment of the original debt in respect of which the balance order had

been obtained. The argument on behalf of the plaintiff, however, went a little beyond the pleadings, and it was contended that, if the action had been brought on the balance order in this case, it would have been maintainable because the balance order was obtained under section 101 in respect of calls made before the winding-up and constituting a debt under section 75 of the Companies Act, 1862, whereas in the case of *Chalk, Webb & Co.* v. *Tennent* the balance order on which the action was brought was obtained under the special jurisdiction of section 102 in respect of calls made in the winding-up. Mr. Justice Kekewich, however, refused to recognise the distinction, holding that as section 120, making the orders enforceable as orders of the Court of Chancery, applied equally to both classes of balance order, so, too, did the decision of Mr. Justice North, and that no action was maintainable upon the balance order. So far his decision was in favour of the contributory; but on the question directly raised by the pleadings he decided in favour of the liquidator—viz. that the action was maintainable for the original debt, notwithstanding that the liquidator had obtained a balance order in respect of the same debt; in other words, he held that the original right of action for the debt was not merged in the balance order. It appears that Mr. Justice North, in the case before him, refused to allow an amendment in order to raise this issue; but the point is so shortly reported that it is of little value as an authority on this head. Mr. Justice Kekewich's judgment is worth quoting at length so far as it deals with this subject. 'The defendant,' he says, 'seeks to apply the principle expounded by Mr. Baron Parke in the judgment in the Court of Exchequer in *King* v. *Hoare*, 47 Law J. Rep. Exch. 29; 13 M. & W. 504, where, as noticed by Lord Penzance in *Kendall* v. *Hamilton*, 48 Law J. Rep. C. P. 705; L. R. 4 App. Cas. 504, not only is the law stated, but reasons for it are given. It is enough to quote a few words of Mr. Baron Parke: "The cause of action is changed into matter of record, which is of a higher nature, and the inferior remedy is merged in the higher." In my opinion that rule has no application to a balance order. True it is that the balance order is a matter of record, but it does not fulfil the conditions of a judgment. In *Ex parte Grimwade* a balance order was held not to be a final judgment within the meaning of subs. 1 (*g*) of section 4 of the Bankruptcy Act, 1883; it does not prevent an executor from retaining his own debt out of his testator's assets, and, according to the authorities which I have followed on the first point, it cannot be sued upon. It may be used for the purpose of obtaining a writ of *ne exeat*, but that is because such a writ was a remedy of the Court of Chancery, and is, therefore, directly within the language of the Companies Act, 1862, s. 120. To hold that the rule which I have quoted from *King* v. *Hoare* applies to a balance order would be to extend that rule to cases not contemplated by it, and to merge the original right of action in a remedy which cannot properly be styled of a higher nature.' The question of merger raised by this case seems to be one of considerable difficulty, and, notwithstanding Mr. Justice Kekewich's decision, liquidators will probably be pursuing the safer course in bringing their actions in the first instance against contributories who are out of the jurisdiction without going through the useless step of first obtaining a balance order which they have no power to enforce.

## LEGISLATIVE PROGRESS.

IN the House of Lords the amendments made by both Houses to the Tithe Rent-charge Recovery Bill were finally adjusted.

The following bills were read a third time and passed:—

Consolidated Fund (No. 1).
The Army (Annual).
The Fishery Board (Scotland).
The Clergy Discipline Immorality.
The Pollen Fisheries (Ireland).
Technical Instruction.
The Registration of Certain Writs (Scotland).

On the Custody of Children Bill the Commons' amendments were agreed to.

The Borrowing (Infants) Bill was read a second time.

The Newfoundland Fishery Bill was presented by Lord Knutsford and read a first time.

In the House of Commons the following bills were read a third time:—

Consolidated Fund (No. 1).
The Custody of Children.

The Lords' amendments on the Technical Instruction Bill were agreed to, and the Savings Bank Bill passed through committee.

The following bills were read a second time:—

The Mail Ships.
The Merchandise Marks.
The Slander of Women.
The Tramways (Ireland) Act, 1860, Amendment.

The following new bills were introduced and read a first time:—

To Amend the Ancient Monuments Protection Act, 1882.

To Amend the Pharmacy Acts.

To Confer Powers upon the London County Council with respect to the Supply of Water.

To Improve the Procedure for making Statutory Rules.

To Assist the Managers of Reformatory and Industrial Schools in advantageously launching the Children under their Charge.

On the London Water Commission Bill an instruction was agreed to, on the motion of Mr. Ritchie, that the committee should have power to inquire into all matters connected with the natural price, management, sources, and sufficiency of the water supply of London and its suburbs, and to insert in the bill such provisions in connection therewith as in their judgment are expedient.

# Reviews.

## SERRELL ON ELECTION.

*The Equitable Doctrine of Election.* By GEORGE SERRELL, M.A., LL.D. (Lond.), of Lincoln's Inn, Barrister-at-Law. London: Stevens & Sons (Lim.). 1891.

THE object of this work, the author tells us, is to state the law on the doctrine of election with greater fulness than is possible in general treatises on equity, where, although the leading features can be given, little more can be done in the way of stating details than to supply references to the cases in which those de-

tails may be found elaborated. A good reason is given why the law of election may be made the subject of a special work or, to borrow the author's phrase, 'treated by way of monograph.' It is not a branch of any large subdivision of equity, but rests upon a simple principle, which is worked out to its logical conclusion. The broad outlines of the subject have long been settled, but several recent decisions have determined doubtful and important questions, and these cases are specially commented on and examined in the work before us. The first chapter is devoted to the doctrine of election and the principle on which it rests, with general observations, and in its opening sentences the general doctrine of election is elaborately stated, but our author finds it necessary to supplement his statement in a note. The doctrine of election is an equitable doctrine—*i.e.* a doctrine which, so long as the Courts of Equity and Law were separate, was recognised and enforced only in the Court of Chancery. Now, as we are reminded, under the Judicature Acts not only may the doctrine of election be raised in a defence to an action in the Queen's Bench Division, but proceedings may be commenced there (for election is not specially assigned to the Chancery Division) and damages sued for. The work is divided into seventeen chapters, and each point of the doctrine is carefully considered. In Chapter XI. we have the consideration of the principle of compensation, which has now been established in lieu of forfeiture, and in Note B to the same chapter there is a case elaborately illustrating how the right to compensation is worked out. Among other subjects of special interest may be noticed the questions of election by infants and married women, considered in Chapters XIII. and XIV. In Chapter XVI. the admission of extrinsic evidence is discussed. The work is well executed, and will be of service to all who desire to master the doctrine of election.

## LAND REGISTRATION.

*The Irish Landowners' Convention.* Registration of Title *v.* Registration of Assurances. By H. BROUGHAM LEECH, LL.D., Examiner of Titles to the Irish Land Commission, Regius Professor of Laws in the University of Dublin, late Fellow of Caius College, Cambridge. Published by the Executive Committee of the Irish Landowners' Convention. London: William Ridgway. Dublin: Hodges, Figgis & Co. 1891.

THIS elaborate essay has been written at the request of the executive committee of the Irish Landowners' Convention. Its primary object and aim, as we are told in the preface, is to advocate the principle of registration of title as against the registration of deeds or assurances, and perhaps the spirit of the advocate is a little too much displayed throughout its pages. The committee under whose auspices the work is published consider that the first and most necessary step towards removing the difficulties that beset the path of reform is to inform and rouse public opinion. They have accordingly determined to place in the hands of the public a clear statement of the problem, of the manner in which it has been solved in other countries, and of the principles on which it is proposed to solve it in England and in Ireland. The case of the Irish landowners, to a considerable extent, is based on the proposition which this work supports with great force, that many of the difficulties which stand in the way of legislation in England do not exist in Ireland. Chapters V. and VI. are occupied with a review and criticism of the Royal Commission of 1878, and Chapters VII. and VIII. with remarks on the Local Registration of Title (Ireland) Bill and the Registration of Assurances (Ireland) Bill which are now before Parliament. The essay will be found interesting and instructive to those who desire to master this very difficult subject.

## A BANKRUPTCY MANUAL.

*Bankruptcy.* A Manual of Practical Law. By CHARLES FRANCIS MORRELL, of the Middle Temple, Barrister-at-Law. London: Adam & Charles Black. 1891.

THE aim of the writer of the present manual has been to give a concise statement of the laws of bankruptcy, which, it is hoped, may be sufficiently intelligible to the general public, and yet not wholly without value to the professional reader. The work is much more to be recommended for the former than for the latter purpose. The general reader who desires to obtain some knowledge of bankruptcy will find the work useful, though he will probably find it a little difficult to understand a good many of the technical phrases which are to be found in its pages. The fault of the book from the standpoint of the professional reader is that there is a great absence of authority. Thus, on the question whether a married woman not carrying on a trade separate from her husband can be make a bankrupt, it would have been desirable to have had a reference to *In re Gardiner*, 57 Law J. Rep. Q. B. 149; L. R. 20 Q. B. Div. 249, and on the subject of infants' bankruptcy, *Ex parte Jones*, 50 Law J. Rep. Chanc. 673: L. R. 18 Chanc. Div. 109, might have well been mentioned. It is, however, stated in the preface that the work has been written subject to certain rules and directions which may explain the want of authorities to which we have adverted.

# Unreported Cases.

## COUNTY COURT.

JURISDICTION—CLAIM FOR INJUNCTION AND DAMAGES.

AT the Brompton County Court on March 5 the case of *Kellett and another* v. *Dews* was heard. It was an action remitted to this Court by an order of Mr. Justice Stirling. The plaintiffs' claim was for an injunction to restrain the defendant, his servants and agents, from interfering with the trade or business of a milkman, carried on by the plaintiffs at No. 3 Uxbridge Terrace, in the county of Middlesex, in which the defendant had been employed as a carrier for some years, and from interfering with, soliciting, or supplying, or endeavouring to supply, the customers of the said business served from No. 3 Uxbridge Terrace aforesaid, and from committing any further or other breach of an agreement, dated August 30, 1890, made between John Edward Jones—the predecessor of the plaintiffs in the said business—of the one part, and the defendant of the other part, and for damages for breach of the said agreement. The damages claimed by the plaintiffs were liquidated damages under the above agreement at the rate of 20*s.* a day for a period of ten days from January 17 to the issue of the writ in the action on January 28 last, amounting, therefore, to 10*l.* Evidence

of certain breaches of the agreement was given. *Barnes* v. *Geary*, L. R. 35 Chanc. Div. 154, was cited by counsel for the plaintiffs.—His Honour Judge Stonor said that the plaintiffs' claim was primarily in the nature of what was formerly termed an injunction bill, and the County Court had no jurisdiction to try an action of the kind, nor had the Chancery Division of the High Court any jurisdiction to remit it to the County Court, but, as it was coupled with a claim for damages for breach of contract, which, both in its nature and amount, was within the jurisdiction of the County Court, and which any Divisional Court of the High Court could remit to a County Court, he thought he had the power to try this case as one of contract under 100*l.* remitted by the High Court; and, curiously enough, if he found for the plaintiffs thereupon, also to grant an injunction against future breaches under section 89 of the Judicature Act, 1873, thus reversing the order of the plaintiffs' claim, converting the action from a Chancery suit to a common law action, but still dealing with the whole relief claimed. His Honour then found for the plaintiffs, with 40*s.* damages, and granted an injunction against future breaches of the agreement so far as regarded the customers of the trade or business during the period of defendant's service, but, inasmuch as the agreement and claim for an injunction were clearly too wide in terms, and the defendant was an illiterate man, who had signed the agreement without consideration, his honour gave no costs. Judgment accordingly. — Counsel: Shearman; Stevens.

## ASSIZE CASE.

### SLANDER AND LIBEL.

The case of *King* v. *Hastie* was heard at Lewes, on March 21, before Mr. Baron Pollock and a jury. The plaintiff was Mr. Thomas King, a farmer and corn dealer, of Uckfield, who sought to recover damages for alleged slander and libel from Mr. Arthur Hastie, solicitor, of Lincoln's Inn Fields, London.—Mr. Kemp, in opening, stated that this action became necessary in consequence of a long course of malicious conduct on the part of the defendant. The plaintiff occupied a farm which belonged to a Mrs. Sandwith, who formerly lived at Brighton, and was now at Odessa. A lease was drawn up from September, 1884, for fourteen years, the rent being 90*l.* a year, and the defendant, who represented Mrs. Sandwith, acted as solicitor in the matter. He made charges which, upon the introduction of a solicitor, he was compelled to reduce. He afterwards had considerable ill-will towards the plaintiff, as his conduct showed. Mrs. Sandwith went to Odessa, but before going, in September last, she requested the plaintiff to pay his rent into Glynn's Bank in London. Previously he had paid it to Mrs. Sandwith, and they were on the most friendly terms. On December 23 last the plaintiff paid 22*l.* 10*s.* for a quarter's rent due on September 29, 1890. Had he paid it to Mrs. Sandwith no doubt nothing would have occurred, for although the rent was not paid just at the time at which it was due it was usual, especially in the case of farmers, to allow some time for payment. On January 5, 1891, however, the defendant wrote to Mr. King demanding two quarters' rent, whereas it was clear that there was only one quarter's rent then due. The letter contained the demand for two quarters' rent, and threatened proceedings if it was not paid. On the following Friday the plaintiff called at Glynn's Bank and paid in one quarter's rent, which was then due. This was on January 9. Having paid this in, no rent was due. On the following day the defendant's clerk went to the plaintiff's farm and served him with a writ for a quarter's rent due at Christmas, this being the rent he had previously paid. In the writ there was a claim for what the defendant was certainly not entitled to—namely, 4*l.* 12*s.* for costs, the amount being excessive. The action was commenced before the rent was paid. Mr. Wells, the plaintiff's solicitor, advised him that he was bound to pay such reasonable costs as the law would permit. Mr. Wells offered the proper amount to the defendant, who said he did not care a ——, and if the plaintiff was not satisfied he could take the matter before a judge. The defendant declined to discuss the matter, and referred Mr. Wells to his clerk, telling him that he was an unmitigated scoundrel, and never paid anyone until he was sued. There was no possible justification for this statement. Mr. Wells paid the 4*l.* 12*s.*, thinking it was the best thing to do at the time, but paid it under protest. A receipt was sent by the defendant, and he went out of his way to say: 'We have had former experience with Mr. King, and know how difficult it is to induce him to pay without a writ.' These were the words complained of, and words that were written at a time when the defendant was demanding that to which he was not entitled. Such statements as were made by the defendant were of course derogatory to the plaintiff in the course of his business, and he asked the jury to award substantial damages.—Mr. Wells was called to prove the statement made to him by the defendant, and then the plaintiff stated that the allegations made against him had injured his reputation at the Mark Lane Corn Exchange, which he attended two or three times a week for the purpose of buying corn. He had a contract to supply on several occasions.—Mr. Alfred Agate, corn and seed merchant, of Horsham, and of the Mark Lane Corn Exchange, and Mr. William Lillies, corn merchant, of Church Street, Croydon, and of the Mark Lane Corn Exchange, were called, and stated that they had had business transactions with the plaintiff for over twenty years, and had never had any difficulty in obtaining money from him.—Mr. Gill submitted that the statement made by the defendant, if made at all, was upon a privileged occasion.—Mr. Kent having closed his case, Mr. Gill addressed the jury for the defence. He asked them to say that the plaintiff had sustained no damage at all, and contended that the action was supported by a solicitor with the view of making costs.—His lordship, in summing up, pointed out, if the jury thought the plaintiff was entitled to damages it was not their duty to give damages for the purpose of punishing the defendant, but simply such damages as would recoup the plaintiff for the loss he might actually have sustained.—The jury found for the defendant on the verbal communication, and for the plaintiff on the written libel, and assessed damages at 30*l.*—His lordship gave judgment accordingly.—On the application of Mr. Gill, who said the money should be paid into Court, execution was stayed.—Mr. Kemp, Q.C., and Mr. Horace Brown appeared for the plaintiff, and Mr. Gill and Mr. Hansell for the defendant.

## THE MARRIAGE OF NONCONFORMISTS (ATTENDANCE OF REGISTRARS) BILL.

MR. TOWNLEY wrote to the *Times* on March 12 as follows:—

Will you permit me as an officer with some years' experience of one of the largest registration districts in England to call attention to a great danger which threatens the present system of marriage registration owing to the inconsiderate haste with which the House of Commons has passed the second reading of Mr. Atkinson's bill to relieve Wesleyans of the attendance of registrars of marriages at their places of worship? For some four or five years representatives of Nonconformity in the House, who, judging by the frequent errors in their bills, have not

deeply studied the laws they seek to alter, have endeavoured to obtain the ear of the nation to what they term a grievance—that, while the Church of England is permitted to conduct its own marriage registration, Nonconformists are compelled to call in a registrar of marriages. They do not, they say, covet the small fee which is paid to the officer for his services; they object only to being placed at a disadvantage to the members of the Church of England. In order to secure uniformity they invariably propose, as Mr. Atkinson now does, to make the contrast even more marked, and as I shall show, in order to cure a small evil, propose to do a great wrong to the whole Nonconformist community. The great registration reform of 1837 was, as you are aware, the outcome of a royal commission which inquired into the whole question of birth, death and marriage registration of the country. The commission found the existing system of registration by the Church of England a scandal to the nation, and it was determined to provide a system under the immediate authority of a State department that should secure to every man, woman and child proper registration and the preservation of records of vital interest to the country. The clergy of the Church of England were made registration officers responsible to the State for a system of duplicate registration of marriages, and Nonconformists were permitted to enjoy something more than the privilege of marriage in their own places of worship—an exemption from ministers' fees. At that time the Nonconformists declared, as they declare now, that they would not, by accepting the position of the clergy, become registration officers of the State. They declined to be the custodians of registers, or responsible to the Registrar-General for a proper performance of duty. In this position it was imperative that provision should be made for the registration and preservation of the all-important marriage contract wherever made, and hence the creation of an officer called the 'registrar of marriages,' whose duty it is to attend at Nonconformist places of worship to see that the proper legal declarations are made by the contracting parties and to duly register the contract. It is idle to say that his presence is in any sense an intrusion. He is merely a silent witness—a well-trained, educated clerk to the officiating minister, and preferable, I regret to say from experience, in the way of education to many of the clerks who perform the same functions for the clergy. He is responsible under heavy penalties for the performance of his duties, and it is a libel on him to suggest, as Mr. Atkinson does, that he is given to 'spirituous' influences, or is in any sense a discreditable person. The effect of the reform of 1837 has been emphatically this, that the Nonconformists have secured the most perfect and reliable marriage registration known in England. If they doubt the fact, let them go to the nearest district register office or to Somerset House and judge for themselves. While Church registration still has many faults, Nonconformist registration, owing to the skill of the registrars and the process of revision it undergoes from the superintendent registrar to the lynx-eyed examiner at Somerset House, is, as nearly as such things can be, perfect.

Now, sir, it is proposed on a mere sentimental grievance, as feeble as it is undignified, to sweep away this safe and admirable system, and substitute what? Well, according to Mr. Atkinson, a system by which a Wesleyan minister who declines to be responsible to the State shall within seven days after performing a marriage certify under his hand that he has done so and send a certificate to a registrar, who is gratuitously to record the fact. No provision is made for registers, and should the minister forget the fact on which the birthright of a whole family may depend, he is to suffer a penalty not exceeding 40*s*. It may be said that this is too absurd to receive the sanction of Parliament. It has not been found too absurd to receive the sanction of principle implied in the second reading of the bill. We are told it will be amended in committee. Well, what are the amendments proposed? Mr. Henry H. Fowler proposes to extend its principle to all Nonconformists with an option to them to call in the registrar when they please. When he is not called in he is to furnish the registrar with a loose sheet on which he, the registrar, is to draw up the form of contract which in 50 per cent. of the cases will require amendment as to ages, names, and residences on consideration by the parties to it. This sheet is to be signed by the parties and the minister and forwarded to the superintendent registrar, who, if he does not receive it within three months of the marriage, is to prosecute the minister, if he can find him, and get him mulcted in a sum not exceeding 40*s*. Thus, guarded only by a small penalty, Nonconformist marriage registration is to become a thing of chance, dependent upon the will and educational capacity of ministers who may be ignorant of the laws they are supposed to administer. Mr. Fowler tries to preserve some sort of consolation fee for the disestablished registrar, but here his terms are so obscure and he so confuses the respective duties of superintendent registrars and registrars, that it is impossible to understand what he proposes except a very decided all-round reduction of fees without a vestige of compensation. Worse than all, Mr. Fowler proposes to substitute for penal servitude a fine not exceeding 10*l*. as a penalty for performing an illegal marriage in a licensed building.

A more dangerous alteration of the law can hardly be imagined. As the present law stands the Nonconformists have decidedly the best of it as compared with the Church of England, for they not only have a more perfect system of registration, but the fee of 5*s*. which the registrar earns, after possibly a journey of several miles to get it, is surely in pleasant contrast to the much higher fees and gratuities demanded in the Church of England. I ask, then, sir, is it wise to alter, without a proper examination of the whole question by evidence in a select committee, a marriage law which has worked well for fifty-three years, and which can only be attacked on some frivolous objection to the presence of a public officer in a place of worship? Moreover, is it fair and in accordance with that spirit of equity and justice which has hitherto guided the Legislature when making sweeping changes to deprive a large body of officials of the means by which they live without a penny of compensation? A meeting of registration officers over whom I had the honour to preside on Saturday last ask these questions, not only in their own interests, but in the interest of a considerable section of the population, to whom good registration is all-important.

## MERRY LAW REPORTS.

THE English Law Reports are not the place one usually resorts to for occasions of amusement, and yet one sometimes comes upon some bright jewel in their dull and decorous pages suitable for the mirth of grave and sober men, such as, we all know, the legal profession is composed of. One of these solemn jokes is the case of *Haslewood* v. *The Consolidated Credit Company*, L. R. 25 Q. B. Div. 555. The action was one of trespass, instituted in the Lord Mayor's Court. The defendants justified their acts under a chattel mortgage for 30*l*. made by the plaintiffs. The plaintiffs claimed the mortgage was void under the Bills of Sale Act, and its validity turned upon the question whether the variations it contained from the form prescribed by the Act were of such a character as to be readily understood without legal assistance. The plaintiffs claimed that they were not, and that the stipulations for repayment of the loan

were obscure and difficult to understand. The plaintiff was non-suited in the Mayor's Court, and then appealed to the Queen's Bench Division, and it so happened that the Divisional Court on this occasion was composed of no less exalted personages than the Lord Chief Justice and the Master of the Rolls, who, after a solemn, critical, grammatical consideration of the terms of repayment, were agreed that they were obscure and difficult to understand, and that the chattel mortgage was therefore void. With a persistence paralleled only by the insignificant amount at stake, the defendants appealed to the Court of Appeal, where Lords Justices Lindley and Bowen presided. After hearing argument, they evidently felt a little delicacy in overruling the two chiefs, so they ordered the case to be reargued before the full Court (Lords Justices Cotton, Lindley, and Bowen), and upon its coming up before them the counsel for the appellants were not even called on. After hearing what the respondents' counsel had to say, they unanimously reversed the decision of the Lord Chief Justice and the Master of the Rolls, and not only dissented from their law, but politely ridiculed their grammar, and held the clause perfectly plain and unambiguous. One would have thought that the very fact that two eminent judges should differ from three others on its construction was *primâ facie* evidence that it could not be very clear; but it so happened that, in *Goldstrum* v. *Tallerman*, L. R. 18 Q. B. Div., to which Lord Esher, M.R., himself had been a party, the Court of Appeal had decided that such a difference of opinion among judges had no such result. Lord Justice Bowen tried to soften the blow by ascribing the difference of opinion between the Court of Appeal and the Divisional Court to the fact that the Court of Appeal had the case of *Goldstrum* v. *Tallerman* in their minds, which the Court below had not, yet the reporter, with a brutal regard for accuracy, is careful to state in a foot-note that that case was cited to the Divisional Court. Perhaps the true explanation of the decision of the Divisional Court is to be found in the fact that the mortgage bore interest at the modest rate of 60 per cent. per annum; and it was, as Carlyle would say, a case of 'approximate justice striving to accomplish itself in one way or another.' As an instance of the marvellous persistency of litigants, and the occasional apparent obtuseness of the ablest judges, and the indiscretion of law reporters, the case in question is a striking instance.—*Canada Law Journal.*

## SOLICITORS' BENEVOLENT ASSOCIATION.

THE sixty-sixth half-yearly meeting of this association was held at the Law Institution, Chancery Lane, London, on Wednesday, the 18th inst., Mr. John Hunter (deputy-chairman of the board) presiding.

The Secretary read the minutes of the previous meeting, and the following report, as circulated among the members present, was taken as read:—

'The board of directors, in compliance with rule 16 of the association, present their report for the half-year ending December 31, 1890.

'Since the last half-yearly meeting fifty-eight new members have been admitted, making with those added during the previous six months a total of 194 new members during the year.

'The aggregate number of members enrolled is 3,247, of whom 1,144 are life and 2,103 annual subscribers. Fifty-nine life members are also contributors of annual subscriptions of one to ten guineas each.

'The directors hope for continued assistance in their endeavours to increase the present number of supporters, as many subscribers are lost every year from death and other causes.

'During the half-year the receipts of the association from all sources amounted to 3,722*l.* 8*s.* 2*d.*, of which the following is a general summary: Life subscriptions, 105*l.*; new additional subscriptions, 33*l.* 12*s.*; donations, 1,073*l.* 0*s.* 1*d.*; arrears, 46*l.* 4*s.*; renewals, 1,045*l.* 16*s.*; legacies, 525*l.*; dividends, 862*l.* 11*s.* 1*d.*; and festival tickets, 31*l.* 5*s.* The successful financial result of the half-year is mainly due to the receipt of a further munificent gift of 1,000*l.* from Mr. John Hollams. The members will doubtless desire to express their hearty thanks to Mr. Hollams for this renewal of his generous assistance; meanwhile the directors have invested the donation, and thereby created an annuity of 30*l.* to be known as "The Hollams Annuity No. 2." The creation of annuities by special gifts most materially strengthens the work of the association.

'The following legacies, received during the half-year, are gratefully acknowledged—viz. 500*l.* under the will of the late Mr. William Henry Oliver, of 4 Lincoln's Inn Fields; and 25*l.* under the will of the late Mr. Benjamin Bradley Hewitt, of Bishop's Waltham. As empowered by rule 4, the board have admitted Mr. Robert S. Gregson, of London (one of Mr. W. H. Oliver's executors), as an honorary life member of the association.

'The total capital of the association now consists of 50,660*l.* 4*s.* 11*d.* stock, in addition to the sum of 5,263*l.* 19*s.* 10*d.* pertaining to the Reardon bequest.

'During the half-year ninety-three grants were paid from the funds, amounting to 1,853*l.* Of this sum two members and fifteen members' families received 785*l.*, while eighteen non-members and fifty-eight non-members' families received 1,068*l.* The sum of 75*l.* was also paid to annuitants from the income of the late Miss Ellen Reardon's bequest; 14*l.* to the recipient of the "Hollams Annuity No. 1;" and 15*l.* to the recipient of the "Victoria Jubilee Annuity."

'These grants, together with the amounts recorded in the last half-yearly report, make a total of 3,721*l.* given in relief by the association during the year 1890.

'On December 31, 1890, a balance of 177*l.* 14*s.* 9*d.* remained to the general credit of the association at the Union Bank of London, together with the Reardon Trust balance of 86*l.* 13*s.* 8*d.*

'With much regret the directors record the decease of their colleagues Mr. John Clayton, of Newcastle-on-Tyne; Mr. James Anderson Rose, of London; and Mr. John Kendall, of London; in whose places they have elected Mr. Robert Richardson Dees, of Newcastle-on-Tyne; Sir Thomas Paine, of London; and Mr. Robert Cunliffe, of London.

'Mr. Gray Hill (Liverpool) has kindly consented to preside at the thirty-first anniversary festival of the association, to be held on Friday, June 26, at The Albion, Aldersgate Street, London. The co-operation and support of the profession on this occasion is earnestly hoped for.

'A statement of receipts and payments for the financial year ending December 31, 1890, is appended.

'(Signed on behalf of the Board)

'T. H. STEPHENS, Chairman.

'Feb. 11.'

The Chairman, in moving the adoption of the report, said he was glad to be able to state that the society had made steady progress in every respect. The number of subscribers were now 3,247, against 3,177 at this time last year, most of the new members being annual subscribers. Looking at the accounts for 1890, it would be found that, apart from the exceptional and munificent gift of 1,000*l.* from Mr. John Hollams, the receipts were in excess of those of the previous year—viz. 5,366*l.*, as compared with 5,020*l.* The invested capital had also been increased from 48,580*l.* to 50,660*l.*, by the addition of donations and legacies that had been received. The grants made in cases of

distress had also been slightly in excess of those for the previous twelve months—viz. 3,721*l.* in 1890 and 3,636*l.* in 1889. He (the Chairman) hoped their festival in June next would be the means of adding considerably to the funds, and that the support of the profession would be largely given to Mr. Gray Hill, of Liverpool, who has undertaken to preside. This will be the first occasion on which a provincial solicitor has taken the chair at a Solicitors' Benevolent Association dinner.

Mr. Robert Cunliffe (president of the Incorporated Law Society) having seconded the motion,

The report was unanimously adopted.

Mr. R. Walters moved a vote of thanks to the directors and auditors for their services during the past year, which was seconded by Mr. H. E. Gribble, and carried unanimously.

A vote of thanks to Mr. John Hollams, for his further munificent gift of 1,000*l.*, was moved by Mr. C. Mylne Barker, seconded by Mr. Francis Parker, and carried with acclamation.

On the motion of Mr. Sidney Smith, seconded by Mr. W. Beriah Brook, the proceedings concluded with a vote of thanks to the chairman for presiding.

## EASTER SITTINGS, 1891.

### QUEEN'S BENCH DIVISION.

*Order of Business.*

*Queen's Bench Court I.* (*First Court*).—Mondays, Tuesdays, Wednesdays, Thursdays, Fridays, and Saturdays, *ex parte* motions on the civil side, and opposed motions on the civil side.

*Queen's Bench Court I.* (*Second Court*).—Mondays, Tuesdays, Wednesdays, Thursdays, Fridays, and Saturdays, *ex parte* motions on the Crown side and Crown paper. Revenue paper.

*Queen's Bench Court VII.* (*Third Court*).—Mondays, Tuesdays, Wednesdays, and Thursdays, special paper and Crown paper. Fridays and Saturdays, opposed motions on the civil side.

Opposed motions (other than those on the Crown side and on appeals from inferior Courts) will be put in a list and taken in their order.

Notices of motion must be given to the officer in charge of the list in Room 468.

Rules and other opposed motions on the Crown side and appeals from inferior Courts assigned to this Division will be entered in the Crown paper and taken in their order.

REPORTS AND REPORTING.—We see by a supplement to the LAW JOURNAL for January 17 that these most excellent REPORTS are now entering upon their seventieth year of existence. The proprietor announces this fact in a modest and unassuming notice, but he might have been excused a flourish of trumpets on this occasion had he felt disposed to indulge in it. We do not know of any series of reports which has attained such a distinction in the history of legal reporting. The LAW JOURNAL and its invaluable REPORTS are still in the van, and we hope they will long continue to be.—*Western Law Times* (*Canada*).

RENTS COLLECTED AND DISTRAINTS LEVIED TO RECOVER SAME, by Messrs. HENRY C. WOOD (Surveyor to the Parish of Tooting) and HENRY KIRBY (Wood & Kirby), Certificated Brokers, 1 Great James Street, Bedford Row, W.C. No charge made to Landlords if Rent over 20*l.* Troublesome tenants got rid of. Possession also taken under Bills of Sale, Mortgages, &c. Bailiffs to the Parish of St. Dunstan in the West and City of London (Farringdon Ward). Money paid over same day received. Bankers: City Bank, Holborn Viaduct. References, if desired, to clients of many years' standing. Prompt and personal attention given.—ADVT.

## LAW STUDENTS SOCIETIES.

LIVERPOOL.—At a meeting of this association on Monday, March 23, Mr. W. T. Rogers in the chair, a most interesting and instructive paper was read by Mr. T. R. Hughes, barrister-at-law, on 'The Dangers of Directors,' which was thoroughly appreciated.—Mr. Leslie moved and Mr. M'Master seconded a cordial vote of thanks to Mr. Hughes for his paper, which, on being put to the meeting, was carried unanimously.

## OBITUARY.

HIS HONOUR JUDGE SIR FRANCIS ROXBURGH, Q.C., who died on Thursday, March 19, at 53 Westbourne Terrace, Hyde Park, in his seventy-seventh year, was married, in 1847, to Mary, daughter of the Rev. Henry Walker, of Great Bromley-Hall, Essex, who died in 1876; and in 1888 he married Eleanor, daughter of Sir T. Chambers, Q.C., Recorder of London. He was called to the bar in 1845, became a member of Lincoln's Inn in 1849, and a Q.C. and bencher of the Middle Temple in 1866, and in 1882 treasurer of that Inn. He was a justice of the peace for Suffolk. From 1878 to 1885 he was recorder of Aldeburgh. Since 1881 he had been judge of County Court Circuit No. 33. He was made a knight on the occasion of the opening of the Royal Courts of Justice in 1882.

MIDDLE TEMPLE.—His Royal Highness the Prince of Wales will dine with the treasurer and benchers of the Honourable Society of the Middle Temple on Grand Day of Easter Term at that Inn, which has been fixed for Thursday, April 9.

THE RAILWAY RATES COMMITTEE.—It has been arranged that the Joint Committee of the Lords and Commons, which has been appointed to consider the rates and charges bills of the various railway companies, shall sit on April 9, when the chairman will be chosen and the business of the committee proceeded with. Accordingly, petitions against any of the bills will have to be deposited at the Private Bill Office by Friday, April 3, five clear days before the sitting of the committee.

SIR PATRICK COLQUHOUN.—It was reported in the evening papers on Monday, March 23, that Sir Patrick Colquhoun, the eminent jurisconsult, had died at Cannes on the previous evening. We are happy to say that this is incorrect, as Sir Patrick is at present in London, and in the enjoyment of good health. A Reuter's telegram says that it was the Chevalier James Colquhoun, father-in-law of the Earl of Limerick, and Sir Patrick's brother, who died at Cannes on Sunday night. Deceased was in his sixty-sixth year.

THE VICE-CHANCELLOR'S JURISDICTION IN OXFORD.—At a meeting of the Oxford City Council last week it was resolved that the town clerk should be instructed to write, on behalf of the council, to the vice-chancellor, asking him to empower the university delegates, at a conference proposed between the city and the university, to discuss the jurisdiction of the University Courts, the powers of the proctors, and the right of veto possessed by the vice-chancellor with regard to the entertainments intended to be given in the city 'in so far as in the opinion of the city council any of them are, or may be, prejudicial to the interests or liberties of the citizens who are not members of the university.' Another resolution instructed the city delegates at the proposed conference that the vice-chancellor's veto on entertainments should be abolished.

## CALENDAR OF THE COUNTY COURTS.

FROM MARCH 30 TO APRIL 4.

| No. of Circuit | His Honour | March 30 | March 31 | April 1 | April 2 | April 3 | April 4 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | — | Altrincham | — | Birkenhead | — |
| 26 | Judge Jordan | — | — | — | Stafford | Leek | Market Drayton |

# House of Lords Register.

THURSDAY, MARCH 19.

*Longbottom* v. *Shaw* (appeal from judgment of the Court of Appeal, dated February 4, 1889, affirming judgment of Kay, J., dated June 28, 1888).—Dismissed.

*Ritchie & Co.* v. *Sexton* (appeal from an interlocutor pronounced in the First Division of the Court of Session in Scotland on March 18, 1890, affirming an interlocutor pronounced by Lord Kinnear, ordinary, on January 23, 1890).—Dismissed.

FRIDAY, MARCH 20.

*Philipps* v. *Halliday* (appeal from an order of the Court of Appeal dated February 14, 1889 [58 Law J. Rep. Q. B. 404], allowing an appeal from a judgment of the Queen's Bench Division, dated June 26, 1888).—Dismissed.

*Sharpe* v. *Wakefield* (appeal from an order of the Court of Appeal, dated December 15, 1888 [57 Law J. Rep. M. C. 121; 58 Law J. Rep. M. C. 57]).—Dismissed.

# Court of Appeal Register.

## APPEAL COURT I.

Before the LORD CHANCELLOR, the MASTER OF THE ROLLS, and FRY, L.J.

THURSDAY, MARCH 19.

*Howlett on behalf of the Committee of Visitors of the Kent County Lunatic Asylum* v. *Mayor, Aldermen, and Burgesses of Maidstone* (appeal of defendants from judgment of Denman, J., dated November 15, at trial without a jury at Maidstone).—Part heard.

FRIDAY, MARCH 20.

*Sowerby & Co. (Lim.) (applicants)* v. *Great Northern Railway Company (respondents)* (appeal of Sowerby & Co. from judgment of the Railway and Canal Commissioners, dated February 27, on preliminary point as to legality of station terminal charges).—Dismissed.

*Howlett on behalf of the Committee of Visitors of the Kent County Lunatic Asylum* v. *Mayor, Aldermen, and Burgesses of Maidstone.—Cur. adv. vult.*

SATURDAY, MARCH 21.

*Steinman & Co.* v. *Angier Line* (1887) *(Lim.) (damage to cargo)* (appeal of defendant from judgment of Smith, J., dated August 5, at a trial without a jury at Derby; heard January 22).—Dismissed.

*Beckett and another* v. *Tower Assets Co. (Lim.)* (appeal of plaintiffs from judgment of Cave, J., dated November 1, setting aside assessment of damages by jury after trial with special jury in Middlesex; heard February 5).—Allowed.

MONDAY, MARCH 23.

No sitting.

TUESDAY, MARCH 24.

No sitting.

WEDNESDAY, MARCH 25.

No sitting.

## APPEAL COURT II.

Before LINDLEY, L.J., BOWEN, L.J., and KAY, L.J.

THURSDAY, MARCH 19.

*Aas* v. *Benham* (appeal of defendant from judgment of Kekewich, J., dated June 6).—*Cur. adv. vult.*

FRIDAY, MARCH 20.

*In re J. Slevin, dec. Slevin* v. *Hepburn (construction)* (appeal of Attorney-General from order of Stirling, J., dated December 13; heard March 14).—Allowed.

SATURDAY, MARCH 21.

*Dashwood* v. *Magniac* (appeal of plaintiffs from judgment of Chitty, J., dated January 14).—Part heard.

MONDAY, MARCH 23.

*Dashwood* v. *Magniac.*—Part heard.

TUESDAY, MARCH 24.

*Aas* v. *Benham.*—Allowed in part.

*Michell* v. *Michell* (appeal of respondent from order of Jeune, J., dated February 10, for argument of question as to amount payable to husband out of settled property).—Allowed.

*Thornton* v. *Union Discount Company of London (Lim.)* (appeal of defendant company from order of North, J., dated February 28, refusing jury trial in London).—Dismissed.

*Symington* v. *Cann* (appeal of F. W. Moore Cann from order of North, J., dated March 13, for receiver of partnership assets until trial).—Dismissed on terms.

*In re an Action, Young* v. *Solly* (appeal of defendant H. A. Schultes-Young from order of Stirling, J., dated March 10, refusing to extend time for applying to rescind charging order).—Dismissed, charging order to be amended by consent.

*Abdy* v. *Abdy* (appeal of petitioner from order of Jeune, J., dated February 24, staying proceedings until further order).—Dismissed.

WEDNESDAY, MARCH 25.

No sitting.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## HONOURS AND APPOINTMENTS.

MR. CECIL BRANDRAM FIELDING MOUNT (of the firm of F. W. Mount & Son), of 17 Gracechurch Street, London, E.C., has been appointed a Commissioner to administer Oaths. Mr. Mount was admitted in 1881.

Mr. Sidney George Spreat, of 57 Gracechurch Street, London, E.C., has been appointed a Commissioner for Oaths. Mr. Spreat was admitted in 1882.

Mr. Frank Edwin Barber (of the firm of Carter & Barber), of 6½ Austinfriars and Walthamstow, has been appointed a Commissioner for Oaths. Mr. Barber was admitted in 1876.

Mr. Charles Edward Bloomer (of the firm of Pearce-Jones & Co.), of 33 John Street, Bedford Row, and Watford, Herts, has been appointed a Commissioner for Oaths. Mr. Bloomer was admitted in 1884.

Mr. Herbert Frederick Oddy, of 58 Lombard Street, London, E.C., has been appointed a Commissioner for Oaths. Mr. Oddy was admitted in 1884.

Mr. Samuel Parks Clare, of 25 Fenchurch Street, E.C., and Lewisham, has been appointed a Commissioner for Oaths. Mr. Clare was admitted in 1885.

Mr. A. Moxley Stark, of 62 Strand, has been appointed a Commissioner for Oaths. Mr. Stark was admitted in 1884.

Mr. Walter Henry Hunt, of 13 Old Jewry Chambers, London, E.C., has been appointed a Commissioner for Oaths. Mr. Hunt was admitted in 1882.

Mr. Francis William Preston, M.A. (of the firm of Hewlett & Preston), of 2 Raymond Buildings, Gray's Inn, London, has been appointed a Commissioner for Oaths. Mr. Preston was admitted in 1883.

Mr. William Lenn West, LL.B. Lond., of 15 Lincoln's Inn Fields, London, has been appointed a Commissioner for Oaths. Mr. West was admitted in 1884.

Mr. Edward Frederick Green (of the firm of Cheese & Green), of 123 Pall Mall, S.W., St. Margaret's, Twickenham, and Fulham, has been appointed a Commissioner for Oaths. Mr. Green was admitted in 1885.

Mr. John George Clabburn (of the firm of Oldman & Clabburn), of 2 Old Serjeants' Inn, Chancery Lane, W.C., and Chiswick, has been appointed a Commissioner for Oaths. Mr. Clabburn was admitted in 1883.

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THE ANNUAL MEETING OF THE BAR.—The annual meeting of the bar was held on Saturday, March 21, in the old dining-hall of Lincoln's Inn. The business was of a formal character. The chair was taken by Mr. W. F. Robinson, Q.C., who said, in opening the proceedings, that among the matters which that meeting had to consider was the eighth annual statement of the Bar Committee. That statement necessarily contained a very small portion of the work which the Bar Committee had done during the past twelve months. The committee had had during the past year several meetings with committees of the Incorporated Law Society, which, he thought, had been productive of much good. One of the subjects which had been discussed was the subject of counsel's retainers, and another was the dispute as to the proper ratio of one counsel's fees to those of another when a leader and a junior were engaged in a case. That was a matter which had been carefully considered by the Law Society and themselves, and he hoped it was now generally established that the fees on the briefs of leader and junior respectively should stand to one another in the proportion of three to two or five to three, and that such a practice was reasonable and worked satisfactorily. The chairman having briefly referred to other matters contained in the report, and the meeting having proceeded with the election of auditors and other formal business, the proceedings terminated

THE CHARITY COMMISSIONERS.—The thirty-eighth report of the Charity Commissioners for England and Wales has just been published. The commissioners have made 438 orders during the past year, making a total of 11,118 since 1860. The total sum of stocks and investments held by the official trustees of charitable funds at the end of last year amounted to 15,161,457*l.* The commissioners have now on their registers 15,398 charities, of which 644 were entered in 1890.

THE GATES AND BARS IN ST. PANCRAS.—It will be remembered that last year an Act of Parliament was passing authorising the County Council of London to arrange for the removal, upon certain conditions, of the gates now existing in several streets in the parish of St. Pancras. Those conditions having now been fulfilled, the clerk of the said council has issued a formal notice addressed to the Duke of Bedford, ordering his grace, as the ground landlord of this portion of St. Pancras, to take down and remove these obstructions within three months from the present date, and to repair the footway and roadway on which they stand, 'together with any sheds, fences, rails, or posts, or other erections.' The gates and bars specified in this notice are those across Upper Woburn Place, Gordon Street, and Torrington Place. A similar notice has been issued to a Mr. Alfred Henry Harrison, ordering him in like manner to remove the gate and bar on his property which runs across Sidmouth Street, near Gray's Inn Road and King's Cross.

MERCHANDISE MARKS.—An addition to the Merchandise Marks Act of 1887 is proposed in a Government bill introduced by Baron H. de Worms. The first proposal is that the Customs entry relating to imported goods shall, for the purposes of this Act, be deemed to be a 'trade description applied to the goods.' Consequently if it be false, there will be an offence against the Act. The second proposal is to empower the Board of Trade, with the concurrence of the Lord Chancellor, to make regulations providing that in cases appearing to the Board to affect the general interests of the country, or of a section of the community, or of a trade, the prosecution of offences under the Act shall be undertaken by the Board. The regulations will also prescribe the conditions on which such prosecutions are to be undertaken. The expenses of prosecutions so undertaken are to be paid out of moneys provided by Parliament; and whenever any regulations are made, they are to be laid before Parliament. Nothing in the bill, however, is to affect the power of any person or authority to undertake prosecutions otherwise than under these regulations.

NEWSPAPER STATISTICS.—From the 'Newspaper Press Directory' for 1891 we ascertain that 'there are published in the United Kingdom 2,234 newspapers, distributed as follows: England—London, 470; provinces, 1293—total, 1,763; Wales, 90; Scotland, 201; Ireland, 157; Isles, 23. Of these there are 142 daily papers published in England, six in Wales, nineteen in Scotland, fifteen in Ireland, and one in the British Isles. On reference to the first edition of this useful directory for the year 1846, we find the following interesting facts—viz. that in that year there were published in the United Kingdom 551 journals; of these fourteen were issued daily—viz. twelve in England and two in Ireland; but in 1891 there are now established and circulated 2,234 papers, of which no less than 183 are issued daily, showing that the press of the country has more than quadrupled during the last forty-five years. The increase in daily papers has been still more remarkable, the daily issues standing 183 against fourteen in 1846. The magazines now in course of publication, including the quarterly reviews, number 1,778, of which more than 448 are of a decidedly religious character, representing the Church of England, Wesleyans, Methodists, Baptists, Independents, Roman Catholics, and other Christian communities.

THE LAW OF EVIDENCE.—A useful bill has been introduced by the Lord Chancellor for consolidating a variety of enactments relating to evidence. These enactments are numerous, and in the dates of their passing extend to an Act of last year, from a portion of a statute of the time of Queen Elizabeth, being 'an Act for the Punyshement of suche persones as shall procure or comit wyllfull perjurye.' The subjects dealt with are the competency of witnesses, the examination of witnesses, the attendance of witnesses, the proof and admissibility of public and other documents, evidence by commission in civil proceedings, depositions under special Acts, evidence for foreign proceedings, the ascertainment, for the purpose of proceedings in any part of the Queen's dominions, of the law as administered in any other part or in a foreign country.

STREET MUSIC.—A bill relating to street music in London has been introduced by Mr. Jacoby, M.P. It proposes to empower any householder, personally or by his agent or servant, to require any person grinding or playing upon any street organ or other instrument of music in front of or near his house or premises to desist, and to refrain from again performing within a quarter of a mile. For refusing to comply with such a requirement a performer is to be liable to a penalty not exceeding 40*s.*, or, in the discretion of the Court, to imprisonment for fourteen days, with or without hard labour. The same penalty is reserved for anyone who grinds or plays upon any street organ or other instrument of music before eight in the morning or after eight in the evening. However, the bill is not intended to apply to any person not playing for reward, or to any musician belonging to Her Majesty's forces, whether naval, military, or auxiliary, or to persons taking part in a procession, whether it have a religious or political object, or be for the purposes of any charitable institution or of any labour organisation.

ROYAL EXCHANGE ASSURANCE CORPORATION.—The report of the actuary on the quinquennial valuation, December 31, 1890, has just been presented to the court of directors. It states that the quinquennium just closed has been an important one in the history of the corporation. It has been marked by the establishment of branch offices in several large commercial centres, by a complete revision of the terms and conditions of assurance and of the rates of premiums, and by an alteration in the methods and basis of valuation. These changes have enabled the corporation to maintain its high position among the large and flourishing companies which are actively seeking the support of the insuring classes throughout the United Kingdom. The new business during the period is represented by 2,111 policies assuring in the aggregate a sum of 1,338,725*l.* and producing a premium income of 56,800*l.* The consolidated revenue account throws light upon two of the principal elements in the prosperity of a life assurance company—namely, the rate of interest and the ratio of expenditure. As to the former, the life funds have yielded a clear 4 per cent. after deduction of income-tax; and, seeing that the valuation estimates are based upon the assumption of 3 per cent. only being obtained, a large annual profit has accrued, and may be expected to accrue, from this source. Concerning the highly important question of expenditure, it is, again, satisfactory to remark that the ratio of working charges to the premium receipts (13 per cent.) remains practically stationary at a very moderate figure, especially as it proves that the increase in the business has been secured by economical means. The result of the valuation is to show that the life assurance exceeds by 278,131*l.* the net liability under life assurance contracts, a result which cannot but be considered highly satisfactory to all who are interested in this company. The actuary recommends that 258,000*l.* be alone distributed on the present occasion, and that the remainder—namely, 20,131*l.*—be carried forward to the credit of the next valuation. Of the above surplus, the proprietors would take 86,000*l.* and the policy-holders 172,000*l.*, a sum sufficient to provide a handsome bonus.

THE TREATMENT OF UNCONVICTED PRISONERS.—The English law holds that, however strong the evidence may be against him, a man must be considered as innocent till such time as the verdict and sentence are pronounced. This being the case, it is surprising that better care is not taken to provide suitable accommodation for unconvicted persons awaiting their trial. The rough treatment of prisoners in police cells is a constant subject of complaint, while the cells under the Central Criminal Court, which has just been officially visited by Mr. Justice Grantham and Mr. Sheriff Harris, consist of solitary boxes about 7 feet high and 4 feet square, with only a little hole to admit fresh air. So impressed were both judge and sheriff that they have brought the matter to the notice of the Lord Mayor, and the Court of Aldermen discussed the subject. Surely Newgate is large enough to supply suitable accommodation for prisoners awaiting their trial. With the telephone at hand there is no need to keep the prisoners cooped up just under or close to the Court. They can be brought from the prison cells rapidly enough for all practical purposes. It is not fair, it is not humane, to torture a prisoner just before his trial by such close and cruel confinement. At such a moment the prisoner should be spared from all disturbing influences, so that he may collect his thoughts and be in a frame of mind to make the best defence possible. But if the prisoner is to be subjected to prolonged suspense and confinement, not in a cell, but in a sort of box, it can scarcely be said that he has a fair trial. Nor does an unconvicted prisoner deserve such treatment. We are glad, therefore, to note that this grievance has attracted the attention of the Court of Aldermen, and that they have summoned the governor of Newgate and the chairman of the City Lands Committee to attend their next meeting to discuss the matter. Much has been said of late in the lay press concerning the barbarous treatment of prisoners in Russia; perhaps it would be well if we put our own house in a little better order.—*The Lancet.*

## BIRTHS.

On March 18, at Heathland Lodge, Hampstead Heath, the wife of Johnston Watson, Barrister-at-Law, of a son.

On March 18, at Wroxham Mansions, Canfield Gardens, South Hampstead, N.W., the wife of F. H. Priestley, Solicitor, of a daughter.

On March 20, at 32 Albert Square, Stepney, E., the wife of Corrie Grant, Barrister-at-Law, of a daughter.

On March 24, at 40 Norland Square, Notting Hill, the wife of Henry John Mead, Solicitor, of a son.

## MARRIAGES.

On Feb. 27, at St. Paul's Church, Paget, Bermuda, the Rev. Ralph Venables Wilson, Chaplain Royal Navy, to Emily Darrell, daughter of the Hon. Richard Darrell Darrell, Solicitor-General, Veranda House, Bermuda.

On March 17, at Christ Church, Mayfair, Loftus Balfour, son of the late John Moreton, Moseley Court, Wolverhampton, to Grace, daughter of Joseph Underhill, Q.C., 113 Piccadilly.

## DEATHS.

On March 17, at 4 Nicholas Street, Chester, Alfred Carrington, Solicitor, aged 45.

On March 18, at Wellington College, Edward Hutton, younger son of W. H. Coohran, of Liverpool, Barrister-at-Law, and Edith, his wife, aged 15.

On March 19, at 53 Westbourne Terrace, Hyde Park, his Honour Judge Sir Francis Roxburgh, Q.C., aged 76.

On March 22, at 26 Park Terrace, Stirling, Alexander Bennett M'Grigor, LL.D., of Cairnoch, Solicitor in Glasgow, aged 63.

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# The Law Journal.

*SATURDAY, APRIL* 4, 1891.


## 'OBITER DICTA.'

THE Lord Chancellor will read with some amusement (possibly with other feelings also) the practical application of his recent judgment in the *Jackson Case* by Mr. Plowden, the metropolitan magistrate. Whether spoken ironically or in 'all sincerity,' the advice given to applicants at the Police Court on Tuesday last was startling news to the ill-used wives of London. It is impossible that the matter can remain where it is, and the sooner a final decision is given in the *Jackson Case* the better will it be for the country at large.

IT is of the greatest importance at the present time to understand the exact distinction between the sets of licensed houses which are affected by *Sharpe* v. *Wakefield* and the sets of houses which are not. The sets of houses which are affected are (1) the 'alehouses' licensed under the Licensing Act of 1828 (9 Geo. IV. c. 61) for the sale of all or any intoxicating liquors for consumption on or off the premises where sold, and (2) the houses licensed under any of the Acts recited in the Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27), for sale of beer, wine, cider, or perry for consumption on the premises where sold, in event of such houses having had a license attached to them since May 1, 1869. The sets of houses which are *not* affected by *Sharpe* v. *Wakefield* are (1) houses, or, more properly speaking, shops, licensed under some one or more of the Acts recited in the Wine and Beerhouse Act, 1869, for consumption of beer, wine, cider, or perry *off* the premises where sold, and (2) houses having had on May 1, 1869, and continuously kept up by renewal since then (*Regina* v. *Curzon*, 42 Law J. Rep. M. C. 155) a license for the sale of beer, wine, cider, or perry under some one or more of the Acts recited in the Wine and Beerhouse Act, 1869, for consumption *on* the premises where sold.

THE census will be taken in England and Wales in pursuance of the Census (England and Wales) Act, 1890 (53 & 54 Vict. c. 61), Scotland and Ireland having each separate Acts (53 & 54 Vict. c. 38, and 53 & 54 Vict. c. 46). By section 5 of the Act occupiers are to fill up the census papers 'with the following particulars and no others—namely, particulars showing the name, sex, age, profession, or occupation, condition as to marriage, relation to head of family, and *birthplace* [there will be great difficulty in getting at this in most cases, as, at all events, no person can know his own birthplace except by hearsay] of every living person who abode in every house on the night of the census-day,' which is, by section 1, Sunday, April 5. By section 6, the enumerators have the duty of completing defective papers and correcting 'such as they find to be erroneous,' and by section 20 they may ask all questions necessary for obtaining the returns required by the Act, any person refusing to answer or wilfully giving a false answer being liable to a fine of not more than 5*l.* 'for each offence.' The first census was taken in 1801, under 41 Geo. III. c. 15, and a census has been taken decennially ever since, but the early Acts only got at the numbers and occupations of the people by a series of questions addressed to clergymen and overseers, the Act of 1840 (3 & 4 Vict. c. 99) being the first to get at the name, sex, &c. of each individual.

THE lamented death of Mr. Price removes from the Railway and Canal Commission a valuable public servant, who had filled the office of commissioner since its first establishment by the Regulation of Railways Act, 1873. Under the Railway and Canal Traffic Act, 1888, as under that Act, Mr. Price's successor must be 'of experience in railway business,' and although the opinion of Mr. Justice Wills must prevail on a question of law, each of the three commissioners has an equal vote upon those questions of fact as to what are 'reasonable' facilities, what is an 'unreasonable' preference, which are ever and anon coming before the

commissioners, who, indeed, act as a special jury in deciding these questions. The new toll clauses, which are expected shortly to be promulgated after due inquiry before the joint select committee of the two Houses, will greatly increase the responsibilities of the commission, and the appointment of Mr. Price's successor will be watched with great interest. The salary is 3,000*l.* a year, and the commissioners are prohibited from holding railway investments.

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*Sowerby* v. *The Great Northern Railway Company* (Notes of Cases, p. 50) is a case of very great importance to railway companies and their customers. It was there held, affirming the judgment of the Railway Commissioners, that railway companies may, under the head of terminal charges, make a charge for station accommodation. It will be remembered by those interested in the subject that in *Hall* v. *The London, Brighton and South Coast Railway Company*, 5 Nev. & Mac. 28, a similar view was taken by the High Court on appeal from and in reversal of the late Railway Commission (which sharply criticised the judgment of the High Court in their twelfth annual report), and also that the Court of Appeal was somewhat unexpectedly found to have no jurisdiction in the matter (see *ibid.* 55 Law J. Rep. Q. B. 238). The Railway and Canal Traffic Act, 1888, has since effected two important changes. In the first place, Sir F. Peel, though still remaining a commissioner, has been deposed from his high place, and Mr. Justice Wills reigns in his stead, it being especially provided by section 5, subsection 3, of the Act, that the opinion of the *ex-officio* commissioner (which Mr. Justice Wills is in England) 'shall prevail upon any question which in the opinion of the commissioners is a question of law.' In the second place, by section 17 of the Act, an appeal lies from the Railway Commissioners, not as before to the High Court, but direct to a 'Superior Court of Appeal'—*i.e.* in England or Ireland to the Court of Appeal, and in Scotland to the Court of Session in either division of the Inner House. Nor is there any further appeal to the House of Lords unless there shall have been a difference of opinion between any two 'Superior Courts of Appeal,' one of which may have given leave to appeal.

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We have before us the Tithe Act, 1891 (54 Vict. c. 8), containing twelve sections and a schedule of fees in connection with the new procedure for recovery of tithe through a County Court instead of by distress. As we stated last week (*ante*, p. 209), the Act became law on the beginning of the day (March 26) on which it received the royal assent. But section 10 enacts that 'this Act shall extend to every sum on account of tithe rent-charge which first becomes payable on or after the half-yearly day of payment of such tithe rent-charge which occurs next after the passing of this Act, whether such sum accrued before or after that day, and *shall not extend to sums due on account of tithe rent-charge which were in arrear before the passing of this Act.*' Turning to the Tithe Commutation Act of 1836 (6 & 7 Wm. IV. c. 71), we find that by section 67 of that Act tithe rent-charge is payable by two equal half-yearly payments, on July 1 and January 1, in every year. Therefore the substituted procedure for recovery of tithe will not come into force till after July 1. Other parts of the Act, however, came into force on March 26. Thus any contract made on or after that day between an occupier and owner for the payment of the tithe rent-charge by the occupier was, and will be, by virtue of s. 1, subs. 1 of the Act, absolutely void. It is clear that many Lady-day leases, which, if made on the day of their commencement, have just come under subs. 2 instead of subs. 1 of s. 1 by a single day, will require careful attention in connection with the liability to tithe rent-charge, which now falls on the owner instead of on the occupier.

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Lord Grimthorpe writes to the *Times* to explain 'the law and practice relating to the addition and selection of the members of the Judicial Committee of the Privy Council for such a case as the Lincoln or Lambeth appeal from the Archbishop of Canterbury now pending.' Mr. W. H. Smith had stated in the House of Commons that 'the Government has nothing to do with the selection of the members who are to try any particular case,' but Lord Grimthorpe declares it 'to be clear that Mr. Smith was imperfectly informed by some legal adviser who knew little of either the Acts of Parliament or the practice,' and points out that the Act 3 & 4 Wm. IV. c. 41 'contains a dormant power for the Crown to send any Privy Councillor into the Judicial Committee *pro hâc vice* only. In the *Bennett Case* it appears that the President of the Council gave what Lord Grimthorpe calls 'the very proper order' that all the then members of the Judicial Committee 'should be summoned, being left to arrange among themselves who should sit.' By 3 & 4 Wm. IV. c. 31, as amended by the Judicature Acts, the President of the Council, the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, and any other judge of the High Court, and all persons who have at any time filled those offices, constitute the Judicial Committee, 'provided nevertheless,' so it is enacted by 3 & 4 Wm. IV. c. 41, 'that it shall be lawful for' Her Majesty 'from time to time as and when' she 'shall think fit, by sign-manual, to appoint any two other persons, being privy councillors, to be members of the said committee.' It is further provided by section 14 of the Appellate Jurisdiction Act, 1876, that 'Her Majesty, by Order in Council, with the advice of the Judicial Committee or any five of them, of whom the Lord Chancellor is to be one, and of the archbishops and bishops, being privy councillors, may make rules for the attendance as assessors on the Judicial Committee of so many archbishops and bishops as may be determined by the rules.' The existing rules, which bear date November 28, 1876, provide for attendance by rota, and that at least three assessors must be present.

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Very important is the point decided in *Gibson* v. *Reeves* (Notes of Cases, p. 45). The action was for penalties under the Dramatic Copyright Act, which gives double costs to a plaintiff recovering penalties. As is well known, Pollock's Act (5 & 6 Vict. c. 47) substitutes for double costs a 'full and reasonable indemnity' in each case. A Divisional Court, therefore, in *Gibson* v. *Reeves*, held that the plaintiffs (there were two of them) were entitled to have their costs taxed as between solicitor and client, and the Court of Appeal has now affirmed that judgment, mainly on the authority of *Hasker* v. *Wood*, 54 Law J. Rep. Q. B. 416, in

which it was held that the general provisions of the Judicature Acts (see especially section 67 of the Judicature Act, 1873) did not overrule any earlier statute giving an indemnity as to costs to a particular plaintiff as a matter of right. This decision is as satisfactory as it is correct. It is material to point out that the recent enactment (section 5) of the Supreme Court of Judicature Act, 1890, respecting costs, which caused so much general excitement in the profession in November last, provides that, 'subject to the Supreme Court of Judicature Acts *and* the Rules of Court made thereunder, *and* to the express provisions of any statute *whether passed before or after* the commencement of this Act,' costs in the Supreme Court are to be in the discretion of the Court. Looking to the great risk in the present day as to costs, it may be expected that in many Acts to be passed in future Parliament will provide that a plaintiff is to have a right to costs. Penal actions, for instance, no person can be expected to bring unless at least his costs out of pocket are secured to him.

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ARE officers on full pay disqualified for being county councillors? The Army Act, 1881, by section 146, enacts that 'a person who is commissioned and in full pay as an officer in Her Majesty's regular forces shall not be capable of being nominated or elected to be sheriff of any county, borough, or other place, or to be mayor or alderman of, or to hold any office in, any municipal corporation in any city, borough, or place in the United Kingdom;' and by section 2 of the Local Government Act, 1888, 'the council of a county shall be constituted and elected in like manner and be in the like position in all respects as the council of a borough.' This leaves the question rather doubtful. The Government, however, propose to solve it for the future by a clause to be inserted in the annual Army Act to the effect that 'to section 146 of the Army Act, 1881, there shall be added a proviso that nothing in that section shall disqualify any officer for being elected to, or being a member of, a county council.' It may be pointed out in connection with this proposal that by subsection 14 of section 75 of the Local Government Act, 1888, 'twelve months shall be substituted for six months,' in section 39 of the Municipal Corporations Act, 1882, 'as the period of absence which disqualifies an alderman or councillor.'

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VOLUME IV. of the 'Second Revised Edition' of the Statutes has just appeared, containing statutes or parts of statutes from 1814 to 1830. An 'introductory note' explains that a new procedure has recently been adopted in respect of Statute Law Revision Bills. A select committee of the House of Commons 'has proposed to go beyond the bounds to which the Statute Law Committee had confined themselves, and to recommend the omission from the revised statutes of any preambles to an Act or introductory words to a section which, though not dead, were, in their opinion, inoperative.' In the present volume, therefore, preambles and other similar matter have been omitted, brief statements of the effect of the omitted matter being substituted where necessary, as authorised by the Statute Law Revision Acts of 1890. 'In cases where no such statement is necessary, the word "preamble" alone is printed, to show that a preamble to an Act is left out, and the word "recital" alone, to show the omission of introductory words to a section subsequently to the first.' We observe that the ferocious enactments against Jesuits and monks to which, as still part of the Roman Catholic Relief Act, we have more than once referred, appear without any omission of a recital in section 28 of that Act, that it is expedient to make provision 'for the gradual suppression and final prohibition' of such Jesuits and monks.

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ACCORDING to the decision of Mr. Justice North in *In re Wray*, a decision that was not interfered with by the Court of Appeal, the attachment for non-compliance with an order is not in the nature of civil process, but punitive or disciplinary; and the bankruptcy of the defaulting person who ought to have made the payment is not in itself a sufficient reason for refusing to issue an attachment against him, but the Court has a discretion, under subsection 2, section 10 of the Bankruptcy Act, 1883. From the judgment of Lord Justice Cotton in the Court of Appeal, it may be gathered that, in his opinion, the existence of a receiving order did not deprive the Court of jurisdiction to order a writ of attachment to issue. Mr. Justice North held that section 9 did not apply to proceedings pending against a debtor at the time when a receiving order was made against him, the application for an attachment being merely a continuation of the proceedings which led to the making of the order for payment. *In re Wray* was approved by the Divisional Court in *Mitchell* v. *Simpson*, 58 Law J. Rep. Q. B. 425; 59 *Ib.* 355; L. R. 23 Q. B. Div. 373; 25 *Ib.* 183.

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LAST year Mr. Justice Kekewich, in *In re Simes; Simes* v. *Newbery*, W. N. 1890, p. 114; 38 W. R. 70, decided that, having regard to section 9 of the Bankruptcy Act, 1883, there was no jurisdiction to direct the issue of a writ of attachment against a defaulting trustee for non-compliance with an order to pay a sum of cash into Court, he having been adjudicated a bankrupt on his own petition subsequently to the order, but before the date of the notice of motion for attachment. That decision, however, was not generally accepted as correct, notwithstanding that the learned judge had relied upon the authorities of *Cobham* v. *Dalton*, 44 Law J. Rep. Chanc. 702; L. R. 10 Chanc. App. Cas. 655, and *In re Ryley*, 54 Law J. Rep. Q. B. 420; L. R. 15 Q. B. Div. 329. For the case of *In re Wray*, 56 Law J. Rep. Chanc. 737, 1106; L. R. 36 Chanc. Div. 138, was not brought to the attention of his lordship, and, consequently, was possibly overlooked by him when deciding *In re Simes* as he did.

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ON January 13 the point came before Mr. Justice Chitty in *In re Edye, a Solicitor* (Notes of Cases, p. 4), a solicitor having made default in complying with an order to pay a sum of money into Court. His defence to a motion for a writ of attachment against him was that, having since been adjudicated bankrupt, he was protected from imprisonment by section 9. Mr. Justice Chitty referred to the cases of *In re Wray* and *In re Simes*, and, with regard to the latter, observed that he was persuaded that if the authorities against such

an operation of the Act of 1883 had been cited to Mr. Justice Kekewich his decision in *In re Simes* would have been different. In this position of things Mr. Justice Chitty felt bound to follow *In re Wray*, and his lordship accordingly made an order of attachment. It may, therefore, we think, be now taken to be settled law that the Court has jurisdiction to order a writ of attachment to issue against a trustee, or person acting in a fiduciary capacity, for default in payment of any sum in his possession or under his control which he has been ordered to pay by a Court of equity, notwithstanding that he has subsequently become bankrupt; and that the same rule applies to a solicitor who has made default in payment of a sum which he has been ordered to pay in his character of an officer of the Court making the order.

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*Beati possidentes* well applies to the decision of the Court of Appeal in *In re Lashmar; Moody* v. *Penfold*, 60 Law J. Rep. Chanc. 143; L. R. (1891) 1 Chanc. Div. 258, the contest in that case being as to whose the land should be when neither of the claimants was intended to take it. Peter Lashmar gave his real estate to three trustees, and then specifically devised three houses unto a man and his wife during their lives, with remainder as to the premises in question to a nephew for life, with remainder to C. in fee-simple. C., by his will, devised the premises to L. and M. upon trust to pay the rents to his widow, or to permit her to receive them during her life, and after her death upon trust for his illegitimate son in fee. The illegitimate son died without issue and intestate before the passing of the Intestates Act, 1884, so that there was no escheat to the Crown of his interest. The survivor of the man and his wife above-mentioned survived the first testator's nephew, C.'s widow and the intestate, and remained in possession and enjoyment of the house in question till November, 1889. Then arose the question as to whether the surviving trustee of Peter Lashmar's will, or the survivor of the trustees appointed by C.'s will, was entitled to the property, all the beneficiaries being dead. Penfold, the trustee of the first will, was in possession, and C.'s trustee took proceedings to recover it from him. The Court of Appeal held that as on the death of the tenant-for-life under C.'s will the trust for the illegitimate son, when he had attained twenty-one, was a bare trust, the legal estate (if C. had had a legal estate to dispose of) would have vested in that son, and nothing would have remained in C.'s trustees. Accordingly, those trustees, having no estate in them, could not claim it from Penfold, who had the legal estate in him. In their judgments their lordships referred to *Doe* v. *Biggs*, 2 Taunt. 109, with reference to the question whether the trustees of C.'s will had any estate in them during the life of the tenant-for-life. The effect of that ancient decision, according to 'Lewin on Trusts,' 8th edit. p. 212, is that in the case of words which direct that the trustees should pay the rents to a person or permit that person to receive them, 'the former or latter words shall prevail, as the instrument in which they are found happened to be a deed or a will.' The Court of Appeal did not absolutely overrule that case, but they spoke of it as 'a rock ahead that everybody knows,' and suggested that 'in most cases there is sure to be a context which displaces the conclusion at which the Court arrived in that instance.'

## 'LAW JOURNAL REPORTS' FOR APRIL.

THE April number constitutes a volume of 160 pages, sixty-four of which comprise cases in the Chancery Division (pp. 177–240), sixty-four in the Queen's Bench Division (pp. 145–208), sixteen in the Probate, Divorce, and Admiralty Division (pp. 25–40), and sixteen are devoted to Magistrates' Cases (pp. 57–72). A large proportion of these cases were decided during last sittings. The interest of the number, however, centres in the great Bank of England case, in which the House of Lords delivered their considered judgments on March 5 last.

In the Chancery Division there are sixteen cases, of which six were appeals. In *Lopes* v. *Dick; in re Dick*, the Court of Appeal, reversing Mr. Justice Stirling, decided that, notwithstanding the absence of a power to vary investments in a settlement, the trustees had power under the Trust Investment Act, 1889, to sell out securities for the purpose of investing in other securities authorised by the Act. In *The Halifax Joint-Stock Banking Company* v. *Gledhill* it was held that 13 Eliz. c. 5, s. 5, protects a purchaser for value of any interest, legal or equitable, devised under a settlement which is fraudulent and void under the statute as against creditors, provided such purchaser had no notice of the fraud. *Coventry's Case* involved the question of the liability, in respect of the registration of shares, of an agent acting without his principal's authority. *In re Joshua Stubbs* was a case in which debenture-holders were allowed to continue an action notwithstanding a winding-up order, and their receiver was allowed to continue in his office in preference to the official liquidator. *In re Parker* was one of the numerous mortmain cases which have recently come before the Court in which a mortgage charging the undertaking of a corporation was held not to create an interest in land within 9 Geo. II. c. 36. *In re Slevin* involved the failure of a charitable legacy on the ground that the institution for which it was intended had ceased to exist before the payment of the legacy. The decision of Mr. Justice Stirling has since been reversed by the Appeal Court. *The Earl of Aylesford* v. *Earl Poulett* settled a question falling within the General Order under the Solicitors' Remuneration Act, 1881, schedule 1, part 1, rule 10. In *Jenkins* v. *Jackson* the Court of Appeal approved the form of order with regard to the apportionment of costs in a Chancery action, settled in *Knight* v. *Pursell*, 49 Law J. Rep. Chanc. 120. *In re The Agricultural Hotel Company* decides that the Court has power to confirm a special resolution of a company for the reduction of the whole of its ordinary capital, notwithstanding that preference capital is left intact. *Dashwood* v. *Magniac*, following *Honywood* v. *Honywood*, 43 Law J. Rep. Chanc. 652, affirms the rule that timber estates are exempted from the general law relating to timber.* *In re Thorley* makes annuities given to trustees whilst they should carry on their testator's business liable to legacy duty. *In re The Alabama, &c. Railway Company* defines the position of debenture-holders of a company who do not prove as creditors in the winding-up. According to *Fillingham* v. *Wood* a tenant of part of a house for a greater interest than from year to year is the 'adjoining owner' within the Metropolitan Building Act, 1855, s. 82, and en-

* This case was, however, during the last days of the past sittings argued on appeal before Lords Justices Lindley, Bowen and Kay, who reserved judgment.

titled, under section 85, to three months' notice of intended alteration to a party structure. *The British Tanning Company* v. *Groth* was a case in which no protection was afforded against the consequences of the prior publication in this country of an invention patented in a foreign country with which Her Majesty had made international arrangements under the Convention of 1883, and defined the effect of section 103 of the Patents, &c. Act, 1883, as amended by section 6 of the Patents, &c. Act, 1885. *Scott* v. *Homer* states it to be the absolute unqualified right of the suitor to adjourn a summons in chambers from the chief clerk to the judge at his own risk as to costs. *Bolton* v. *Salmon* decides that where a person joins in a mortgage as surety for the mortgagor by giving security and covenanting for payment of the mortgage debt, if the surety be discharged from liability on the covenant by alteration of the contract, the surety's security is also released.

In the Queen's Bench Division there are ten cases reported, of which one was in the House of Lords and six in the Court of Appeal. In *The Governor and Company of the Bank of England* v. *Vagliano Brothers* it was held by a majority of six to two of the House of Lords, reversing both the Courts below, that the loss on forged drafts accepted by the respondents and paid over the counter by the appellants must fall on the respondents, and an authoritative interpretation was given to the term 'fictitious' in the Bills of Exchange Act, 1882, s. 7, subs. 3. *Barrow* v. *Isaacs* was a hard case, in which the Court of Appeal was unable to give relief against the forfeiture of a lease incurred by the inadvertent failure of the lessee to obtain the landlord's consent to an underlease. This case has been the main cause of the introduction of a bill now before the House of Commons. *Rogers, Sons & Co.* v. *Lambert & Co.* was a case involving the principles of bailment, *jus tertii*, and estoppel. *Stevens* v. *Marston* decided that a covenant in an agreement giving the landlord power of distress for the non-payment of money due for goods supplied was void for want of registration as a bill of sale. *The London Bank of Mexico and South America* v. *Apthorp* was an unsuccessful attempt by the appellant to obtain exemption from income-tax in respect of transactions in a foreign country. *The National Bank* v. *Silk* involved the negotiability of specially crossed cheques and an abortive attempt by the drawer to stop payment. *Edwards* v. *Marston* was a bill of sale case in which *Goldstrom* v. *Tallerman*, 56 Law J. Rep. Q. B. 22, was distinguished. In *Vernon and others* v. *Watson* a defendant who had been convicted and sentenced for misappropriating the moneys of a friendly society was held not to be afterwards liable in a civil action. According to *Ex parte Raison*, a person adjudicated bankrupt under the Act of 1883 has a right to apply for his discharge under section 28 of that Act, notwithstanding the repeal of section 28 by the Act of 1890. *Cusack* v. *The London and North-Western Railway Company* decides that the Court has a discretion under Order LIX., rule 16, to extend the time for appealing from a County Court.

In the Probate, &c. Division there are five cases, one of which was in the House of Lords. *The Cressington* was a case in which shipowners were protected from liability in respect of damage to cargo by reason of an exception in the bill of lading. *Long* v. *Long & Johnson* was a divorce petition in which the co-respondent was amerced in damages, though the petition was dismissed, as the connection had been against the respondent's will. *The Calliope*, in the House of Lords, discharged wharfingers from liability for damages caused by obstructions in the bed of the river. The judgment of the Court of Appeal was reversed and that of Mr. Justice Butt restored. In *The Asia* the Court refused, in the absence of special circumstances, to give a successful plaintiff his costs in an action which might have been commenced in the County Court. The *Marianne* decided the meaning of 'necessaries' for the purposes of a charterparty and brokers' commission.

There are five Magistrates' Cases, one of which was a Crown case reserved. In *Underwood* (*appellant*) v. *Jones* (*respondent*) it was held that the functions of justices, under 59 Geo. III. c. 12, s. 7, with respect to the appointment of an assistant-overseer are ministerial only. *The Burnley Equitable Co-operative and Industrial Society* v. *Casson* decided that the contract of apprenticeship is not necessarily personal, and may be fulfilled by a society. In *Noble* v. *Killick* a railway company were held entitled to proceed criminally against the defendants for travelling in a higher class than the tickets were taken for, notwithstanding a demand made for payment of the excess fare. In *Regina* v. *Vreones* (Crown case reserved) an attempt to mislead, by the manufacture of false evidence, a tribunal which might have been, but never was, in fact, called into existence was held to be a misdemeanour. In *The Farmers' and Cleveland Dairy Company* (*appellant*) v. *Stevenson* (*respondent*) the existence of a warranty for the quality of goods was held to entitle the appellants, who supplied the goods, to the protection afforded by the Sale of Food and Drugs Act, 1875, s. 25. Conviction quashed.

## THE SMALL HOLDINGS BILL.

THE Small Holdings Bill of Mr. Jesse Collings, which is backed also by Mr. Robert Reid, Mr. Burt, Sir H. Selwin-Ibbetson, Mr. Broadhurst, Colonel Cotton Jodrell, Mr. Cyril Flower, and Mr. Hobhouse, and was read a second time, shortly before Easter, amid a chorus of applause from all parties, may be considered as safe to pass before the close of the present session. It is a very important and lengthy measure, containing sixty-eight clauses. The following is a brief outline of its contents:—

*Meaning of 'Small Holding.'*—The term 'small holding' means land of not less than one acre and not exceeding fifty acres in extent, including buildings. Here mark the distinction between the scope of this measure and that of the Allotments Act, under which no allotment is to exceed one acre.

*Sale of Small Holdings.*—Any sanitary authority, whether urban or rural, may sell a small holding to any one person on the terms, amongst others, that the purchaser shall pay on completion one-fourth only of the purchase-money, so that three-fourths shall always remain unpaid, the purchaser paying half-yearly interest on the balance at the rate of one per cent. above the rate of interest paid by the local authority to the Treasury (clause 4), 'which may advance from time to time out of any moneys from time to time supplied under any Act of Parliament for that purpose such sums as the Treasury may deem expedient to any local authority for carrying out any of the purposes of the Act upon such terms as to payment of interest and repayment of principal and otherwise as the

Treasury may determine by a minute from time to time' (clause 48).

*Conversion of Present Occupiers into Owners.*—Existing occupiers of small holdings may be converted into owners by the following process. Any urban or rural sanitary authority may, out of the moneys in their hands borrowed from the Treasury, advance sums not exceeding three-fourths of the purchase-moneys in each case to the existing occupiers of small holdings to enable them to purchase their holdings within the district of such authority. The sales are to be completed at a fixed price, according to a scale to be settled from time to time by the Local Government Board. No advance is to be made by the local authority unless they are satisfied that the title is good, the sale *bonâ fide*, and the price reasonable, nor is any such advance to be made except in cases where it is made to one person for the purpose of occupying and farming the holding in respect of which the advance is made (clauses 7 and 8).

*Alienation, Transfer, and Transmission.*—Holders may not alienate except by mortgage of the entire holding, or by sale or devise to one person of the entire holding (clauses 10 to 13).

*Registration.*—'Every local authority which shall establish any small holding under this Act shall open a separate register for the registration of titles to such small holdings. The business of such registry shall be conducted by a registrar with any necessary assistance, and any number of local authorities may combine to have a joint office and joint registrar.' Each registry is to have a plan or plans. The register is to show the number of the holding on the plan, the description of each holding, the mode and date of its creation, and many other particulars. 'The local authority may charge on any registration or application to register any matter or thing under this Act, such fees as may from time to time be prescribed by the Local Government Board.'

*Letting of Land for Small Holdings.*—The local authority may let any of their land for small holdings. They must be let free of rates and taxes, the local authority being deemed responsible for these. 'Each small holding let to one person shall consist of not more than ten acres; but the local authority shall have power to let one or more small holdings to a number of persons working on a co-operative system, provided the same be approved by the local authority,' and the local authority may use any of their land for public pasture (clauses 37 to 41).

*Acquisition of Land.*—Any local authority may for the purposes of the Act purchase, sell, hire, or exchange any lands, whether situated within or without their district. There are no powers of compulsory purchase.

*Expenses of Local Authority.*—These are to be defrayed out of a special district fund, leviable under the Act (clause 49). Amongst the expenses chargeable on this fund are 'expenses of officers, offices, books, stationery, stamps, legal charges, insurances, *repairs*, and other current expenditure of a like nature;' and, what is of still greater importance, 'any deficiency whereby the annual net receipts of such local authority fall short of the sums they are annually required to pay to the Treasury for interest or repayment of instalments of principal sums advanced to them by the Treasury' (clause 66). As for limitation of rate, similar to that under the Libraries Acts, there is none. Clause 52 is, indeed, marginally noted 'limitation of rate,' but when examined it will be found not to limit the amount, but merely to deal with the question how far a rate may be retrospective.

Such is the Small Holdings Bill. It differs from the Allotments Act in the amount of land (fifty acres as against one) which may be acquired for the small holding; in the class of people who are to be benefited, being all the world as against the labouring classes; and in the mode of procedure, being a purely optional as against a partially compulsory procedure. Perhaps, like the first Agricultural Holdings Act, Lord Westbury's Declaration of Title Act, Lord Cairns's Transfer of Land Act, and other statutes of a similar character, it will become a dead-letter Act; perhaps, on the other hand, it will change the face of rural England, drive French eggs out of the English market, lead to the re-establishment of protective duties on corn, tend to the abolition of hunting, and make the fortune of many a country solicitor.

## LEGISLATIVE PROGRESS.

On Thursday, the 26th ult., the royal assent was given by commission to the following bills:—

Consolidated Fund (No. 1).
Seed Potatoes Supply (Ireland) Amendment Act, 1890.
The Army (Annual).
The Custody of Children.
Technical Instruction.
Tithe Rent-charge Recovery.
Local Government Provisional Order (Poor Law).
Shakespeare's Birthplace, &c., Trust.

The House of Lords stands adjourned till Tuesday, April 14, and the House of Commons till Monday, April 6.

# Reviews.

## STOCK EXCHANGE CUSTOMS.

*The Rules and Usages of the Stock Exchange.* By G. Herbert Stutfield, B.A., Oxon, late Vinerian Scholar of the Middle Temple, Barrister-at-Law. London: Effingham Wilson & Co. 1891.

This work will be found useful to those who desire to become acquainted with the rules and usages of the Stock Exchange. In the introduction we have some interesting observations on the struggles between commercial men and lawyers, between whom we are told, with perhaps a trifle of exaggeration, there is but little sympathy. 'Business men,' says the author, 'with their love of despatch and their reverence for credit, have found no congeniality either in the law itself or in the habits of lawyers—a body of men who are hardened to delay and take nothing for granted.' Special attention is directed to the decisions in Grissell's and Cole's cases. The most eminent lawyers of the day, we are told, advised against the validity of the custom there established, and the result was consequently 'a great triumph for the Stock Exchange, and perhaps the same may also be said for the law.' Would it not, however, have been better in a work presumably designed to a large extent for business men to employ somewhat simpler language than the following: 'So far as the law recognises the usage with reference to which the parties con-

tract the usage constitutes the law *uti nuncupassit ita jus esto* prevails now as it did in the days of the XII. Tables.' We have next a short 'preliminary' sketching the effect of the Rules, and then the Rules themselves are considered *seriatim*. Throughout the work the author wisely, as we think, declines to discard the everyday colloquialisms which have long obtained currency on the Stock Exchange, and it will be observed that 'bulls,' 'bears,' 'stags,' 'corners,' and 'contangos' are all unceremoniously introduced as familiar household words. In Chapter VI. the relations between the broker and his client are considered. The observations here made will be found of value, for, as Mr. Stutfield points out, 'the client, often through ignorance or thoughtlessness, subjects his broker to great trouble and inconvenience when a slight acquaintance with the necessities of the case, of the ways of dealing on the Stock Exchange, to which, of course, the brokers must conform, would make him rather more considerate.'

## SMITH'S COMPANY LAW.

*The Handy-book of the Law of Joint-Stock Companies, under the Companies Acts, 1862 to 1890.* With directions for Forming a Company. By James Walter Smith, Esq., of the Inner Temple, Barrister-at-Law. Twenty-first Thousand. New and Revised Edition. London: Effingham Wilson & Co. 1891.

This work made its first appearance nearly thirty years ago, and it has been from time to time almost entirely rewritten. It is almost pathetic to follow the account which the author gives us in his preface as to the rapid changes in the law of joint-stock companies, and we wholly agree with his observation on p. 6 that a consolidation of 'the Companies Acts would be very convenient.' In 1888 we had several additions made bearing on the subject, one of them being, in the author's opinion, 'an important contribution to the unintelligibility of the Stamp Acts.' The three Acts added by the legislation of 1890 are very important, and are embodied in the present work, which will be found handy and useful.

## M'ARTHUR ON MARINE INSURANCE.

*The Contract of Marine Insurance.* Second Edition. By Charles M'Arthur. London: Stevens & Sons (Lim.). 1890.

The five years which have passed since the first edition of this work appeared have been productive of many changes in the law of marine insurance. The general effect of these changes is summed up by Mr. M'Arthur as follows: Numerous and important decisions have been given by the Courts on points in respect of which the law had previously been doubtful or undeclared, and to give effect to these decisions as well as to reconcile divergencies of practice, additional rules have been made for the guidance of average adjusters. New clauses have been framed for insertion in policies, and some of the previously existing clauses have been modified to suit the ever-varying exigencies of business. Finally, an important step has been taken in the direction of an international system of general average by the revision of the York-Antwerp Rules. The York-Antwerp Rules, 1890, are given in Appendix VI., and a new chapter has been added on the subject of mutual insurance contracts, in which the many cases decided in recent years in this subject are collected. The work is carefully executed and brought down well to date. A good specimen of Mr. M'Arthur's work is to be found at p. 5 *et seq.*, where he discusses the law as to 'the communication of material facts,' ending with the decisions in *Blackburn, Low & Co.* v. *Vigors*, 57 Law J. Rep. Q. B. 114; L. R. 12 App. Cas. 531, and *Blackburn, Low & Co.* v. *Haslam*, 57 Law J. Rep. Q. B. 479; L. R. 21 Q. B. Div. 144. The book would be improved by further references to other reports of the cases cited.

## FISHER AND STRAHAN'S LAW OF THE PRESS.

*The Law of the Press.* A Digest of the Law specially affecting Newspapers: with a Chapter on Foreign Press Codes and an Appendix containing the Text of all the Leading Statutes. By J. R. Fisher and J. A. Strahan. London: Clowes & Sons. 1891.

There is slowly growing up, as stated by the authors of this book in their preface and as recently evidenced by the Newspaper Registration and Libel Act of 1881 and the Law of Libel Amendment Act, 1888, a distinct law of the press. This law has, we think, been very successfully dealt with, the leading cases being fully brought out and the comments being appropriate and clear. We find successive chapters on registration, postal regulations, advertisements, copyright, proprietor and staff in the first part; the law of libel in the second; and foreign press laws in the third. There is, perhaps, a little too much about copyright and libel; and, in comparing the Postmaster-General and the Treasury to Pilate and Herod respectively, the indignation of the authors against post-office regulations has carried them too far. There are more than three hundred pages. The price is nowhere stated.

## SMITH ON HUSBAND AND WIFE.

*A Handy-book on the Law of Husband and Wife.* By James Walter Smith, Esq., B.A., LL.D., of the Inner Temple, Barrister-at-Law. Eleventh Thousand. New and Revised Edition. London: Effingham Wilson & Co. 1891.

In this handy treatise the law of husband and wife, and matters relating thereto, is summed up in twenty chapters. The first chapter is devoted to the consideration of the law respecting the position of parties who have not yet entered into the matrimonial state, and deals with engagements to marry and of contracts to bring about a marriage. The last chapter treats of the law relating to children, and in the Appendix the Married Women's Property Act, 1882, is set out in full. Mr. Smith's opinion of this measure is that it shows as a patched piece of work, and lacks the unity of design and uniformity of expression which it would have had if left wholly to one draftsman, even though not one of the best. The book is carefully written, and will be found useful.

Commercial Failures.—According to *Kemp's Mercantile Gazette* the number of failures in England and Wales gazetted during the week ending March 28 was eighty-one. The number in the corresponding week of last year was eighty-seven, showing a decrease of six, being a net decrease in 1891, to date, of 131.

# Unreported Cases.

## CONSISTORY COURT OF LONDON.

ST. GABRIEL, FENCHURCH—FACULTY FOR RIGHT OF WAY ACROSS CHURCHYARD.

A SITTING was held on Wednesday, March 25, in St. Paul's Cathedral, before Dr. Tristram, Q.C., Chancellor of the Diocese, who was attended by Mr. Lee, the registrar. This was an application by the rector of the united parishes of St. Gabriel, Fenchurch, and St. Margaret Pattens, in the city of London, and the churchwardens of the parish of St. Gabriel, Fenchurch, and the City of London Real Property Company (Lim.) for a faculty to authorise the granting to the company of a right of way across the churchyard of St. Gabriel, Fenchurch. The City of London Real Property Company (Lim.) are the owners of the property adjoining and abutting on the west side of the churchyard of St. Gabriel, Fenchurch. By an agreement made on April 24, 1890, between the rector and churchwardens of the parish and the company, the rector and churchwardens concurred in granting to the company a right of footway across the churchyard from Fen Court to the property of the company for a term of eighty years, and at a yearly rental, payable to the rector, of 45*l.*, the pathway over which the right of way was granted to be paved, drained, and fenced in with iron railing sand gates in accordance with the specifications and drawings to be approved by the surveyor of the rector and churchwardens and under his superintendence, all such works to be executed at the cost of the company. The present application was now made for a faculty to authorise the granting of the right of way.—Mr. H. C. Richards said the Court had already granted a faculty authorising the company to open windows on the churchyard, and the present application was for a faculty to authorise the granting of a right of way to the company across the churchyard. The right of presentation to the living was alternately with the Lord Chancellor and the Corporation of London, and it had been necessary to obtain the consent, not only of the Lord Chancellor, but also of the Corporation of London. Both the Lord Chancellor and the Corporation of London had consented. The Corporation of London had suggested that the passage or way through the company's premises into Lime Street should remain an open one for fourteen years from December 25, 1890, and that, instead of the right of way being granted for 500 years, as originally proposed, it should be granted for eighty years and at a yearly rental of 45*l.*, and this had been agreed to. The churchyard was closed for burials by Order in Council in 1853.—Evidence was then given in support of the application. Resolutions of the vestry were produced agreeing to the granting of the right of way.—Mr. Soulsby, for the City of London Real Property Company (Lim.), supported the application.—Mr. W. A. Godwin, secretary to the City of London Real Property Company (Lim.), said the company were owners in fee of the premises 35 and 36 Lime Street, in respect of which the right of way across the churchyard was asked for. The company assented to the requirements of the Corporation as regarded the increase of the rent to 45*l.*, and the reduction of the term for which the right of way was to be granted from 500 to eighty years. The whole of the work was to be undertaken at the entire expense of the company, and carried out under the superintendence of the parish surveyor. It was also agreed that the way should be open to the public between certain hours and on certain conditions.—The Chancellor of London granted the faculty asked for. It was no detriment to the churchyard or to the houses adjoining to make the pathway, and it was of advantage to the church by increasing the rector's income, and it would also be of material advantage to the public, inasmuch as the public, subject to certain conditions, would have a right of way, not only through the churchyard, but also through the property of the company. The Court would grant the faculty as prayed.—The faculty was accordingly granted.—Mr. H. C. Richards and Mr. Nelson appeared for the rector and churchwardens; and Mr. Hugh R. Soulsby for the City of London Real Property Company (Lim.) in support of the application.

ST. PAUL'S, CAMDEN SQUARE—FACULTY FOR CHANCEL SCREEN.

This was an application for a faculty to authorise certain alterations in the church of St. Paul's, Camden Square. It was proposed, among other alterations, to place a chancel screen with gates in the church.—The Chancellor of London said that, as a general rule, the practice of the Court was not to permit chancel gates until it was proved that they would be of real utility to the church. As it was now the practice for churches to be open during the daytime, it was no doubt desirable that persons should not have an opportunity of going into the chancel. The evidence before the Court satisfied it that the gates would be of utility. It was in the discretion of the Court to grant a faculty for a chancel screen with or without gates, and, where the Court was satisfied that the gates would be of real utility to the church, the Court was prepared to grant a faculty for a chancel screen with gates. In this case the Court was satisfied that the gates would be of real utility to the church, and he granted the faculty as prayed.—The faculty was accordingly granted.

## COUNTY COURT.

INJURY TO CATTLE—BARBED WIRE.

At Crediton County Court on November 19, 1890, and January 21, 1891, before his Honour Judge Edge, the case of *Bennett* v. *Blackmore* was heard. His Honour: This is an action to recover damages for an injury sustained by the plaintiff's mare, alleged to have been caused by the defendant placing a barbed-wire fence on a portion of his land which adjoined the plaintiff's field. I find the facts to be as follows: The plaintiff is the tenant of a farm at Morchard Bishop, and the defendant is the rector of the parish, and, as such, occupies the glebe land which adjoins the plaintiff's farm. Between a field, a part of the glebe, and a field of the plaintiff's called Wood Park, there is an ordinary fence, consisting of a ditch and a bank, and upon the latter a hedge of underwood. The ditch and bank are upon the defendant's land, and it was admitted by the defendant at the hearing that the fence had always been maintained and repaired by himself and his predecessors in the living. Neither the plaintiff nor his father or grandfather, who had occupied the farm for a great number of years, had ever repaired the fence, which, I have no doubt, had been maintained by the owners of the glebe for the mutual benefit of the occupiers of both farms. For some time previous to the occurrences forming the subject of this action, horses placed in the defendant's field occasionally forced their way through the fence and got into plaintiff's field, and it is alleged that animals from the plaintiff's field had in like manner got into defendant's land. However that may be, a gap had been made between the two fields, and on August 13 last two horses from the defendant's land got through the gap and were found trespassing in the plaintiff's field. They were at once turned out by the plaintiff or his men, and a message was sent to the defendant informing him of what had occurred, and

requesting him to make up the gap. The defendant was not at home, but the message was received and acted upon by his hind, for whom the defendant accepts responsibility. The next day the hind proceeded to make up the gap by placing wooden rails on the side next the glebe land and field-stakes with three lines of barbed wire on the side next the plaintiff's field. The lowest wire was fixed about fourteen inches from the ground below it, but this ground was higher than the natural level of plaintiff's field, owing to the bank having fallen down and filled up the ditch and made a small mound above it. The plaintiff's mare was placed in his field on August 15, and the same day the plaintiff saw and examined the barbed wire; but I do not think the mere fact of his allowing the mare to remain in the field amounted to contributory negligence. The next day the mare was found to be injured on one of her legs, just about fourteen inches from the bottom of her hoof. There was great contention as to the possibility of this injury having been caused by the barbed wire, and several witnesses were called by defendant to show they had experimented by trying to get a horse into such a position as it could touch the barbed wire, and failed to do so; but I do not attach much importance to this evidence, inasmuch as there is a great difference between forcing an unwilling horse into a certain position and a willing horse of its own motion placing itself in that position. From the cumulative evidence of a number of facts, pointing in one direction, as to the size, shape and position of the wound; the hoof marks at the gap, sworn to as being those of the mare; the injury being caused so soon after the wire had been put up, and so soon after the mare had been put in the field, and there being no evidence of anything else likely to cause the injury, I have no difficulty in coming to the conclusion that it was caused by a barb on the wire. I have already said that the wire was placed on the defendant's land. As a matter of fact, it was from two to three feet within his boundary, and it is consequently submitted on behalf of defendant, that, in point of law, no action will lie, as he was entitled to put what he pleased on his land, so long as the thing put there did not project into or come upon the plaintiff's land. I consider the barbed wire, placed in the position it was in, very dangerous, especially at a gap where horses had been accustomed to congregate; but, in answer to my questions, defendant's counsel contended that a man liable to fence might put up a fence which was dangerous to his neighbour's cattle if the fence was, as in this case, three feet within his own boundary. I cannot believe that to be the law. It seems to me that, if a man is liable to fence for the benefit of himself and his neighbour, he must put up such a fence as, having regard to the use to which the lands are put, is a benefit and not a source of danger to his neighbour. To state the contrary proposition is to show its absurdity. But even if he is not liable to fence, but does put up a fence, he must, in altering the normal state of things, take care to protect his neighbour from injury (*Hawken* v. *Shearer*, 56 Law J. Rep. Q. B. 284). Nor does it make any difference that the dangerous thing is on his own property. If he makes it his fence he must, as was observed by the Lord President of the Court of Session in the Scotch case of the *Elgin Road Trustees* v. *Innes* (14 Rettie's Court of Session Cases, 48), be taken to have abandoned everything outside it for the time being, and 'it must be dealt with, therefore, on the same footing as if it were on the very line of the boundary.' That was a case in which barbed wire had been placed on the defendant's land, but so as to leave a narrow strip of land between the fence and the highway; and the Court held it to be dangerous to persons and cattle using the highway, and removable as a nuisance. That is the only case I am aware of where the use of barbed wire has been in question, and where it has been held that an action was maintainable though the thing complained of was on the defendant's land and never came upon the plaintiffs'. It is true the fence in that case was placed along the public highway; but I cannot see that makes any difference, except that there it was an actionable wrong to the public, whilst here it is an actionable wrong to an individual. The cases cited by Mr. Bullen as to dog-spears and spring-guns appear to me to have been decided upon very different considerations. In those cases the injuries were caused by the plaintiffs wilfully going where they had no right to be; but even then, in the majority of cases, damages were recovered. In the dog and hare case, the dog ran some considerable distance into the plantation after the hare, and was injured by a dog-spear there, and the Court held in effect that the owner, in taking it along a footpath through a plantation, ought to have had it under control. That is a far different case to this, where the barbed wire was dangerous to cattle lawfully in the plaintiff's field. There was not much cross-examination as to the damages, which are probably from their nature uncertain; but, as Mr. Heath put them at from 20*l.* to 25*l.*, I think I shall be doing fairly if I assess them at 21*l.* The verdict will be for the plaintiff for 21*l.* and costs.—Leave to appeal was given, but the appeal has been abandoned.—Roberts (instructed by Searle) for plaintiff; Bullen (instructed by Carter) for defendant.

## THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Lord Grimthorpe writes to the *Times* as follows:—

I learn both from some newspaper articles and from private inquiries that there is considerable misapprehension about the law and practice relating to the addition and selection of the members of the Judicial Committee for such a case as the Lincoln or Lambeth appeal now pending. Some persons are alarmed at the possibility of the Court being packed again as it was in the Bennett case, while others are confidently repeating the answer of the First Lord of the Treasury to Colonel Sandys on March 10 that it is impossible, for that 'the Government has nothing whatever to do with the selection of the members who are to try any particular case.' It is desirable that both the legal possibilities and the practice should be better understood. It is clear that Mr. Smith was imperfectly informed by some legal adviser who knew little of either the Acts of Parliament or the practice, as explained by the late registrar to the Ecclesiastical Courts Commission in 1882.

He said that for the *Bennett Case* Lord Hatherley, with or for Lord Ripon as President, gave the very proper order that all the then members should be summoned, and they were, being left to arrange among themselves who should sit. He added that the same practice had been continued ever since in ecclesiastical cases, though not in others, where some judges were summoned according to the nature of the case and their previous experience, besides some of general experience. It is evident that no other plan would escape accusations of the Court being packed according to supposed ecclesiastical prejudices. And in that very case, after the general summonses were gone, and only four days before the trial, Mr. Gladstone filled up the vacancies of the two nominee members, under 3 & 4 Wm. IV. c. 41, one with Sir Montague Smith, a perfectly proper appointment, and the other with Montague Bernard, the editor of the *Guardian*, whose vote was afterwards rejoiced over by another of the High Church newspapers as having turned the scale in favour of Bennett. The committee itself all but stated that the majority was as small as possible. For Lord Cairns's illegal 'muzzling order' had not then been issued (as it was after the *Ridsdale Case*, where there was

a small minority afterwards disclosed), pretending to interpret the Privy Councillor's oath for them and ordering them not to tell how they had voted, even out of Court. Sir Fitzroy Kelly smashed its validity to pieces in the opinion of every lawyer I ever heard speak of it, except a relation of Lord Cairns. There is one vacancy in those two nominee places now.

But, besides that, Mr. Smith's adviser does not appear to know that the same Act contains a (dormant) power for the Crown to send any Privy Councillor into the Judicial Committee *pro hâc vice* only; and Mr. Gladstone, in the Collier job, also taught it how to make a Privy Councillor, like a judge of the Supreme Court, for the purpose. So the true answer to Colonel Sandys's question (for which he also does not seem to have been well instructed) would have been, not that 'the Crown has nothing to do with the selection of the members to sit,' but has everything to do with it, if it chooses to be unscrupulous. I am far from suspecting the present president of an intention to do anything of the kind, though, oddly enough, we learnt from Bishop Wilberforce's suicidal Life that it was Mr. Gathorne Hardy's hand that, *assidente* Gladstone, slew the three episcopal judges of the committee, at Wilberforce's instigation. They were afterwards, with all the bishops, reintroduced in rotation batches of five assessors only in 1876—an altogether amusing incident now.

## THE PUBLIC TRUSTEE BILL (No. 2), 1891.

THE Sheffield District Incorporated Law Society have formulated the following observations on and objections to the above bill:—

1. The bill is objectionable in its principle, as creating a State department for the transaction of private business of a kind which essentially requires personal knowledge of the circumstances of each case, and tact and delicacy of management. It is not to be supposed that the officers of a public department, who necessarily proceed by rule, can satisfactorily transact business of this kind.

2. There is no evidence that any legislation whatever is required.

3. Although the bill is permissive, the office will gradually appropriate to itself a large part of the trust business of the country, both owing to the inclination of the Courts to appoint an official, and the tendency of every public department to increase the scope of its powers, so as to become self-supporting.

4. The business, as conducted by a public department, will be done, if not badly, at all events, neither so expeditiously nor so cheaply to the *cestuis que trust* as under the present system.

5. The patronage the Act will place in the hands of any Government is objectionable.

6. The great expense which will be entailed by the appointment of the public trustee, with branch offices in the large provincial towns, and the great cost it will cause by the payment of salaries to officials, is uncalled for, and will prove to be oppressive to the country at large.

7. The necessary large expense caused to each trust estate, payable either out of capital or income, is a serious objection. If the commission charged on the administration of bankruptcy estates (say 6½ per cent.) affords any guide to the cost of the administration of an estate by the public trustee, the amount will be very heavy, and out of all comparison with the present cost of administering trust estates, and the beneficiaries will suffer accordingly.

8. The withdrawal from the provinces and the accumulation in London in the hands of a public official of vast sums of money is detrimental to the interests of commerce and business, and financially unsound.

9. Owners of property will suffer, trust funds being no longer available for loans on their estates. The rate of interest will probably rise, and the expense and difficulty in the negotiation of mortgages will be greatly increased.

10. A serious diminution in the income of trust estates will result, inasmuch as the tendency of the public trustee will be to resort to consols, paying now only 2*l.* 15*s.*, and before long 2*l.* 10*s.* per cent. Great hardships will be occasioned, particularly in small estates.

ARTHUR WIGHTMAN, President.
HERBERT BRAMLEY, Hon. Secretary.

Sheffield: March 20.

## LAW AND PROFESSIONAL NOTES.

By T. F. UTTLEY, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### HINTS ON COMPANY MATTERS.

A RECENT lecture under the title 'Suggestions for the Consideration of Accountants' has attracted much attention. The lecturer, Mr. T. B. Moxon, in the first place, pointed out the stringent nature of the requirements of the French Code de Commerce as to the books to be kept by a trader; and, further, that the French Code insists upon a yearly stock-taking and balance-sheet. The lecturer was of opinion that articles of association ought to set forth clearly how the powers of companies in drawing, endorsing, accepting, and negotiating bills, and in entering into commercial contracts should be exercised. The articles should empower the directors of a company by resolution to authorise any one or more persons, jointly or severally, to do such things for the company, with power to revoke such authority or to substitute fresh agents; and similar provision might advantageously be made in respect of the exercise of borrowing powers granted by the articles of association. The last word in the name of a limited liability company must be the word 'limited,' and the requirements of the Act are not satisfied by the adoption of the abbreviation 'ld.' The Act required that the name of the company should be exhibited outside every office or place where its business was carried on, and that it should have its name engraved in legible characters on its seal, and mentioned in all notices, bills, cheques, orders for money or goods, bills of parcels, invoices, receipts, &c., and the penalty on the company for not thus publishing its name was 5*l* a day, and every director or manager who issued or authorised the issue of any of the above documents 'whereon its name is not mentioned in manner aforesaid' was liable to a penalty of 50*l.* for each offence, and was further personally liable to the holder of any such document for the amount thereof unless the same was duly paid by the company. The Act further required that bills of exchange and other documents of a like nature must be distinctly made 'on behalf of the company.' The proper form of signing for a company was 'For Brown, Jones & Co. (Limited), A. Brown, director.' An instance lately arose in which officials, who described themselves as officials, but did not say they signed for the company, were held to be personally liable. Reference was also made to the register of mortgages and charges which every company is required to keep and to submit to the inspection of any creditor or shareholder on application; the annual list of shareholders which every company must send to the Registrar of Joint Stock Companies within twenty-one days after its first general meeting in each year, and the register of members from the date of registration of the company, which must be open to inspection for at least two hours a day, free of charge to shareholders, and on payment of not more than 1*s.* to any other person.' It has been held that it was the duty of the auditor, in auditing the accounts of the com-

pany, not to confine himself to verifying the arithmetical accuracy of the balance-sheet, but to inquire into its substantial accuracy and to ascertain that it contained the particulars specified in the articles of association and was properly drawn up, so as to contain a true and accurate representation of the state of the company's affairs, and as improper payments which had been made with the natural and immediate consequence of the breach of duty on the part of the manager and auditor they were held liable in damages to the amount so paid, as far as the Statute of Limitations did not cover them. In this case the directors also were held jointly and severally liable to make good the loss incurred, because they had fallen short of the standard of care they ought to have applied to the affairs of the company. The lecture was delivered under the auspices of the Manchester Society of Incorporated Accountants.

### BICYCLES AND THEIR MANUFACTURE.

Mr. Justice Charles lately, at the Midland Assizes, gave judgment in a case of some interest to cyclists, which will touch them more especially now that the summer season is fast approaching. It appeared that a bicycle manufacturer sought to recover from a bicycle retailer damages for breach of contract in not taking certain machines contracted to be supplied to him by the plaintiff. Out of an order for 100, twelve had been delivered, and then the defendant repudiated the contract on the ground that the machines were rubbish and constantly needed repairs. Nevertheless, judgment was delivered for the plaintiff. The judge pointed out that, where reasonable steps were taken to secure the safety of a machine and where the defect was latent, there was no blame to be attached to the vendor. If the machines which had been refused were articles which the plaintiff could have taken to the market and sold at the same price which he would have received from the defendant, then the case would have been one for nominal damages. Having regard to the nature of the case and to the articles, he could not say that they could have been taken to the market and sold for the price which defendant would have paid. If they were absolutely unsaleable the plaintiff would have been entitled to the whole value, but he still regarded them as saleable articles, and said he had lost a profit on each. Judgment would therefore be in plaintiff's favour. During the course of the trial it was stated that, if a machine broke down the first time it was used, it would be called a 'waster.' Sometimes the joints are not perfectly brazed, but in fitting a machine that might happen, and the workman not be aware of it. Brazing could not always be done with certainty, but when it was found to be faulty it could be easily remedied. Some machines sold at 12*l.* only cost 5*l.* 10*s.* These are curious revelations, but doubtless well understood in the trade.

### THE EXAMINATION OF TITLE.

There has been much dispute as to the advantage of having land transferred in the same way as other property is sold—that is to say, apparently without examination of title. The recent strictures on the present law as to forged transfers seem, however, to point out more clearly the undoubted advantages of such examination as to land and the desirability of its extension to shares. According to a contemporary, if a purchaser buys shares under a title which in any link depends upon a forgery, although he may have been entered upon the books of the company and have enjoyed the position and privileges of a shareholder for many years, he is liable to be ousted from his position and to be compelled to repay the dividends he has received whenever the true owner turns up and discovers the forgery. It is of no avail to the purchaser that his transfer has been passed to the directors or that it has been duly 'certificated'—that is, that in answer to the usual inquiry made by the lawyer before he pays his money the company have assured him that the seller has lodged with them his certificate for the purposes of transfer. If, however, the purchaser has bought shares from a vendor to whom the company have issued a share certificate, and it turns out that the vendor claimed under a forgery, and had therefore no title, the company are liable in damages to the purchaser since he bought a worthless right upon the faith of their representation in the certificate. As no one thinks of making an inquiry into the title to shares upon a sale, as is done under similar circumstances where land is sold, the present law is most unsatisfactory. Some railway companies propose to get out of the difficulty by means of guarantees. According to the bill in Parliament, however, it is proposed to make registration of transfers compulsory, the company to make reasonable bye-laws as to (*a*) execution and attestation, (*b*) reasonable inquiries as to persons, circumstances, documents, dealings, and the demand of a statutory declaration at company's expense. Compensation in event of forgery to be either new shares or market value of old.

### DIRECTORS' LIABILITY.

It is a nice question whether directors can contract themselves out of the provisions of the Liability Act of last year. The waiver clause must first provide that the applicant for shares agrees not to put in force the statutory remedy. An application in this form followed by an allotment would constitute a contract; then follows the question, Can a contract which is virtually an abrogation of a statutory right be deemed to be a valid contract? A contemporary thinks not, on the ground that it is contrary to public policy. *A propos* of this subject our contemporary points out it is a curious phase of our method of administering law that it is nobody's business to see that Acts of Parliament are complied with. The Attorney-General gave it as his opinion the other day that the insertion of a waiver clause in prospectuses as to the Directors' Liability Bill would certainly be an avoiding—he was not prepared to go so far as to say an evasion—of the provisions of the Act of 1890; but it was not his duty to undertake a prosecution. Upon whom, then, does the duty devolve? Whose duty is it to see that the law is enforced? What is the use of having a lot of Acts of Parliament which are merely dead letters on the statute-book? Perhaps some persons would say that the only way to find out what is the legal interpretation of any given Act or clause of an Act is to bring an action. But this frequently throws the onus on the wrong shoulders, and an innocent shareholder is forced into litigation in order to obtain his rights and a proper fulfilment of the law.

### A BIT OF FRENCH LAW.

It is customary among French peasants to donate and divide land and goods prior to death. When the father increases in years and can no longer work he usually decides to divide his land among all his children. On a certain fixed day they accordingly all adjourn to the village lawyer, and there the poor old man transfers all his land. According to the law of France an equal division of the father's property is allotted to each child, and therefore a surveyor makes the measurements. Assuming there are five children, then the land will be divided into five lots. The name of each lot is then written on a bit of paper, the children draw for the lots, and all is done. The amount to be allowed to the parents who have thus lost all the property must, however, be arranged, but the unscrupulous children try and beat the amount down. Remembering

that possession is nine points of the law, and having once got it, the children frequently ignore their parents altogether. The superiority of one plot of land over another, however, often occasions quarrels among the children themselves. Do they really manage these things better in France?

MODERN LAW BOOKS.

Law books, like their subject, have in the past been wont to be conservative in their forms. Law being a science, it was treated scientifically in the texts, and for the initiated who knew the key to the stores of legal lore such treatment was at once the clearest, most regular, and most satisfactory. It is now some time since English lawyers hit on the happy expedient of writing popular law books to save laymen from lawyers' bills, with the result of provoking more litigation than ever. Yet another sort of law book has of late years been making its appearance—namely, that expounding the law applicable to a particular trade, profession, or business. This class can certainly be justified. It makes no pretence of rendering every man his own lawyer, but it enables every one to form some idea of the legal relations which affect his sphere of life, and it is by no means to be despised by the practising lawyer. All these views were written *à propos* of 'The Law of the Press,' which the *Scotsman* recently reviewed in its columns. It conceives that we, the English, with an insatiable appetite for legislation, are on the fair road already to having a newspaper law code of considerable size, but they (the Scots) have fortunately been spared up till now such an infliction. Considering the sweeping changes which have been made in the direction of simplifying English law, it is a matter for surprise that the canny Scots should still permit their legal lore to be enshrouded in uncouth words and phrases when more simple language would answer the purpose quite as well.

## HEIRS WANTED.

Mr. Sidney H. Preston, of 1 Great College Street, Westminster, writes as follows:—

The 'agony' columns of our leading newspapers are sources of considerable amusement to many people, as notices of an extraordinary and generally romantic character are often to be found there. Probably by far the more numerous kindred notices are those issued by solicitors and others inquiring for missing persons for their 'advantage.' The more noticeable cases of this description during 1890 were the following:—

Jane Allnatt (children of), Maud C. Baylis, James H. Blandy (last heard of 1873), William Bottomley, Annie H. Bridgman, James Brown (son of Robert), Augustus A. Campbell, John Cayzer, Sir Edward Cheetham, John Childs, Henry S. Church (emigrated 1843), Edmund Clark (sailor), John Clint (Liverpool), Clara Cooper, Henry Cozens, Edwin A. Dadds, Charles Denton (last heard of 1874), George and Benjamin Emmerson (or descendants), Patrick Ewing, Helen Geary (children of), William Geary (supposed to have died in some hospital), Honora Green (next-of-kin of), Edward Hall (or children), Charles and Thomas Harrison (formerly of Newcastle-on-Tyne), Mary Hayward (Portsmouth), Hayward family, Frederick Hooker (next-of-kin of), Emma Hunt (milliner), George R. Jackson (cabdriver), Ellen Kenna (next-of-kin of), Knighton family, Robert Lynd, Owen M'Cabe, Frank Marshall (sailed from Liverpool 1881), Archibald E. Mathison, Millett family (Wilts), Henry Mossop (Cumberland), Arthur R. Payne, John Pedler (seaman), John R. Pringle (Edinburgh), William Purchase (emigrated 1848), James H. Roberts, or children, Elizabeth Sargent, Jane Shesring, Henry G. Standley, Mary B. Steel, Robert and William Tait (Edinburgh), Richard Tallett, or Tullett, Charles Tarry, James Wainwright, Thomas B. Waterhouse (last heard of 1863), Sarah Winkle, Sarah Wormald, and the Yates family (Manchester).

Many of these missing individuals are wanted to claim money or property more or less considerable, and you may therefore like to record the fact in your widely-read paper. Mr. *Punch* may have been quite right when he observed that the first, or 'hatches, matches, and despatches,' columns of our leading papers were the most widely read, yet I venture to think that the 'agony' columns far outshine them in general interest.

## ARRANGEMENTS FOR QUEEN'S BENCH CHAMBERS.

*Easter Sittings*, 1891.

A to F.

All applications by summons or otherwise in actions assigned to Master Johnson are to be made returnable before him in his own Room, No. 110, at 11.30 A.M., on Tuesdays, Thursdays, and Saturdays.

G to N.

All applications by summons or otherwise in actions assigned to Master Walton are to be made returnable before him in his own Room, No. 175, at 11.30 A.M., on Mondays, Wednesdays, and Fridays.

O to Z.

All applications by summons or otherwise in actions assigned to Master Wilberforce are to be made returnable before him in his own Room, No. 179, at 11.30 A.M., on Tuesdays, Thursdays, and Saturdays.

The parties are to meet in the anteroom of Masters' Chambers, and the summonses will be inserted in the printed list for the day after the summonses to be heard before the master sitting in chambers, and will be called over by the attendant on the respective rooms for a first and second time at 11.30, and will be dealt with by the master in the same manner as if they were returnable at chambers.

By Order of the Masters.

Masters in Chambers.

A to F.

Mondays, Wednesdays, and Fridays: Master Kaye.
Tuesdays, Thursdays, and Saturdays: Master Pollock.

G to N.

Mondays, Wednesdays, and Fridays: Master Macdonell.
Tuesdays, Thursdays, and Saturdays: Master Butler.

O to Z.

Mondays, Wednesdays, and Fridays: Master Archibald.
Tuesdays, Thursdays, and Saturdays: Master Manley Smith.

Rents Collected and Distraints Levied to Recover Same, by Messrs. Henry C. Wood (Surveyor to the Parish of Tooting) and Henry Kirby (Wood & Kirby), Certificated Brokers, 1 Great James Street, Bedford Row, W.C. No charge made to Landlords if Rent over 20l. Troublesome tenants got rid of. Possession also taken under Bills of Sale, Mortgages, &c. Bailiffs to the Parish of St. Dunstan in the West and City of London (Farringdon Ward). Money paid over same day received. Bankers: City Bank, Holborn Viaduct. References, if desired, to clients of many years' standing. Prompt and personal attention given.—Advt.

# SITTINGS PAPERS.

## SUPREME COURT OF JUDICATURE.

*Easter Sittings*, 1891.

## COURT OF APPEAL.

### APPEAL COURT I.

FINAL AND INTERLOCUTORY APPEALS FROM THE QUEEN'S BENCH DIVISION, THE PROBATE, DIVORCE, AND ADMIRALTY DIVISION (ADMIRALTY), AND THE QUEEN'S BENCH DIVISION SITTING IN BANKRUPTCY.

*April*

Tuesday 7 Appeal Motions, *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals.
Wednesday 8, Thursday 9 } Queen's Bench Final Appeals.
Friday 10 Bankruptcy Appeals and Queen's Bench Final Appeals.
Saturday 11 Queen's Bench Final Appeals.
Monday 13 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required.
Tuesday 14, Wednesday 15, Thursday 16 } Queen's Bench Final Appeals.
Friday 17 Bankruptcy Appeals and Queen's Bench Final Appeals
Saturday 18 Queen's Bench Final Appeals.
Monday 20 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required.
Tuesday 21, Wednesday 22, Thursday 23 } Queen's Bench Final Appeals.
Friday 24 Bankruptcy Appeals and Queen's Bench Final Appeals.
Saturday 25 Queen's Bench Final Appeals.
Monday 27 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required.
Tuesday 28, Wednesday 29, Thursday 30 } Queen's Bench Final Appeals.

*May*

Friday 1 Bankruptcy Appeals and Queen's Bench Final Appeals.
Saturday 2 Queen's Bench Final Appeals.
Monday 4 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required.
Tuesday 5, Wednesday 6, Thursday 7 } Queen's Bench Final Appeals.
Friday 8 Bankruptcy Appeals and Queen's Bench Final Appeals.
Saturday 9 Queen's Bench Final Appeals.
Monday 11 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required.
Tuesday 12, Wednesday 13, Thursday 14 } Queen's Bench Final Appeals.
Friday 15 Bankruptcy Appeals and Queen's Bench Final Appeals.

N.B.—Admiralty Appeals (with Assessors), and also the Queen's Bench New Trial Paper, will be taken on days to be appointed by the Court.

### APPEAL COURT II.

FINAL AND INTERLOCUTORY APPEALS FROM THE CHANCERY, AND PROBATE, DIVORCE, AND ADMIRALTY DIVISIONS (PROBATE AND DIVORCE), AND THE COUNTY PALATINE AND STANNARIES COURTS.

*April*

Tuesday 7 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required.
Wednesday 8, Thursday 9 } Chancery Final Appeals.
Friday 10 County Palatine Appeals (if any) and Chancery Final Appeals.
Saturday 11, Monday 13, Tuesday 14 } Chancery Final Appeals.
Wednesday 15 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required.
Thursday 16, Friday 17, Saturday 18, Monday 20, Tuesday 21 } Chancery Final Appeals.
Wednesday 22 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required.
Thursday 23, Friday 24, Saturday 25, Monday 27, Tuesday 28 } Chancery Final Appeals.
Wednesday 29 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required.
Thursday 30

*May*

Friday 1, Saturday 2, Monday 4, Tuesday 5 } Chancery Final Appeals.
Wednesday 6 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required.
Thursday 7 County Palatine Appeals (if any) and Chancery Final Appeals.
Friday 8, Saturday 9, Monday 11, Tuesday 12 } Chancery Final Appeals.
Wednesday 13 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required.
Thursday 14, Friday 15 } Chancery Final Appeals.

N.B.—Lunacy Petitions (if any) are taken in Appeal Court II. on every Monday, at Eleven, until further notice.

## HIGH COURT OF JUSTICE.

### CHANCERY DIVISION.

### CHANCERY COURT I.

BEFORE MR. JUSTICE CHITTY.

*April*

Tuesday 7 Motions and Non-Witness List.
Wednesday 8, Thursday 9 } Non-Witness List.
Friday 10 Motions and Non-Witness List.
Saturday 11 Petitions, Short Causes, Procedure Summonses, Opposed Petitions, and Non-Witness List.
Monday 13 Sitting in Chambers.
Tuesday 14, Wednesday 15, Thursday 16 } Non-Witness List.
Friday 17 Motions and Non-Witness List.
Saturday 18 Petitions, Short Causes, Opposed Petitions, Procedure Summonses, and Non-Witness List.
Monday 20 Sitting in Chambers.
Tuesday 21, Wednesday 22, Thursday 23 } Causes with Witnesses.
Friday 24 Motions and Non-Witness List.
Saturday 25 Petitions, Short Causes, Procedure Summonses, Opposed Petitions, and Non-Witness List.
Monday 27 Sitting in Chambers.
Tuesday 28, Wednesday 29, Thursday 30 } Causes with Witnesses.

*May*

Friday 1 Motions and Non-Witness List.
Saturday 2 Petitions, Short Causes, Opposed Petitions, Procedure Summonses, and Non-Witness List.
Monday 4 Sitting in Chambers.
Tuesday 5, Wednesday 6, Thursday 7 } Non-Witness List.
Friday 8 Motions and Non-Witness List.
Saturday 9 Petitions, Short Causes, Procedure Summonses, Opposed Petitions, and Non-Witness List.
Monday 11 Sitting in Chambers.

| | | |
|---|---|---|
| | *May* | |
| Tuesday | 12 | Non-Witness List. |
| Wednesday | 13 | |
| Thursday | 14 | Motions and Non-Witness List. |
| Friday | 15 | Motions continued and Non-Witness List. |

N.B.—In the weeks when Non-Witness Actions are taken, Further Considerations will be taken on Tuesdays. In the weeks when Witness Actions are taken, Further Considerations will not be taken on Tuesdays, but may be taken on Saturdays.

N.B.—The following papers on Further Consideration are required for the use of the Judge—viz. Two copies of Minutes of the proposed Judgment or Order, one copy Pleadings, and one copy Chief Clerk's Certificate, which must be left in Court with the Judge's Clerk one clear day before the Further Consideration is ready to come into the Paper.

## CHANCERY COURT II.

### BEFORE MR. JUSTICE NORTH.

| | | |
|---|---|---|
| | *April* | |
| Tuesday | 7 | Motions, Adjourned Summonses, and General Paper. |
| Wednesday | 8 | Adjourned Summonses. |
| Thursday | 9 | |
| Friday | 10 | Motions and Adjourned Summonses. |
| Saturday | 11 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 13 | Sitting in Chambers. |
| Tuesday | 14 | Adjourned Summons. |
| Wednesday | 15 | |
| Thursday | 16 | |
| Friday | 17 | Motions and Adjourned Summonses. |
| Saturday | 18 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 20 | Sitting in Chambers. |
| Tuesday | 21 | Adjourned Summonses. |
| Wednesday | 22 | |
| Thursday | 23 | |
| Friday | 24 | Motions and Adjourned Summonses |
| Saturday | 25 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 27 | Sitting in Chambers. |
| Tuesday | 28 | General Paper. |
| Wednesday | 29 | |
| Thursday | 30 | |
| | *May* | |
| Friday | 1 | Motions and Adjourned Summonses. |
| Saturday | 2 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 4 | Sitting in Chambers. |
| Tuesday | 5 | General Paper. |
| Wednesday | 6 | |
| Thursday | 7 | |
| Friday | 8 | Motions and Adjourned Summonses. |
| Saturday | 9 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 11 | Sitting in Chambers. |
| Tuesday | 12 | General Paper. |
| Wednesday | 13 | |
| Thursday | 14 | |
| Friday | 15 | Motions and Adjourned Summonses. |

Any Cause intended to be heard as a Short Cause before Mr. Justice Chitty or Mr. Justice North must be so marked in the Cause Book at least one clear day before the same can be put in the Paper to be so heard. Two Copies of Minutes of the proposed Judgment or Order must be left in Court with the Judge's Clerk the day before the Cause is to be put in the Paper.

## LORD CHANCELLOR'S COURT.

### BEFORE MR. JUSTICE STIRLING.

| | | |
|---|---|---|
| | *April* | |
| Tuesday | 7 | Motions, Adjourned Summonses, and General Paper. |
| Wednesday | 8 | General Paper. |
| Thursday | 9 | |
| Friday | 10 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 11 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 13 | Sitting in Chambers. |
| Tuesday | 14 | General Paper. |
| Wednesday | 15 | |
| Thursday | 16 | |
| Friday | 17 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 18 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 20 | Sitting in Chambers. |
| Tuesday | 21 | General Paper. |
| Wednesday | 22 | |
| Thursday | 23 | |
| Friday | 24 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 25 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 27 | Sitting in Chambers. |
| Tuesday | 28 | General Paper. |
| Wednesday | 29 | |
| Thursday | 30 | |
| | *May* | |
| Friday | 1 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 2 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 4 | Sitting in Chambers. |
| Tuesday | 5 | General Paper. |
| Wednesday | 6 | |
| Thursday | 7 | |
| Friday | 8 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 9 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 11 | Sitting in Chambers. |
| Tuesday | 12 | General Paper. |
| Wednesday | 13 | |
| Thursday | 14 | |
| Friday | 15 | Motions, Adjourned Summonses, and General Paper. |

Any Cause intended to be heard as a short Cause must be so marked in the Cause Book at least one clear day before the same can be put in the Paper to be so heard, and the necessary Papers, including Minutes of the proposed Judgment or Order, must be left with the Judge's Clerk one clear day before the Cause is to be put into the Paper.

## CHANCERY COURT IV.

### BEFORE MR. JUSTICE KEKEWICH.

| | | |
|---|---|---|
| | *April* | |
| Tuesday | 7 | Motions and Adjourned Summonses. |
| Wednesday | 8 | General Paper. |
| Thursday | 9 | |
| Friday | 10 | Motions and Adjourned Summonses. |
| Saturday | 11 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 13 | Sitting in Chambers. |
| Tuesday | 14 | General Paper. |
| Wednesday | 15 | |
| Thursday | 16 | |
| Friday | 17 | Motions and Adjourned Summonses. |
| Saturday | 18 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 20 | Sitting in Chambers. |
| Tuesday | 21 | General Paper. |
| Wednesday | 22 | |
| Thursday | 23 | |
| Friday | 24 | Motions and Adjourned Summonses. |
| Saturday | 25 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 27 | Sitting in Chambers. |
| Tuesday | 28 | General Paper. |
| Wednesday | 29 | |
| Thursday | 30 | |
| | *May* | |
| Friday | 1 | Motions and Adjourned Summonses. |
| Saturday | 2 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 4 | Sitting in Chambers. |
| Tuesday | 5 | General Paper. |
| Wednesday | 6 | |
| Thursday | 7 | |
| Friday | 8 | Motions and Adjourned Summonses. |
| Saturday | 9 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 11 | Sitting in Chambers. |
| Tuesday | 12 | General Paper. |
| Wednesday | 13 | |
| Thursday | 14 | |
| Friday | 15 | Motions and Adjourned Summonses. |

Liverpool and Manchester Business will be taken as follows: Motions on days appointed for Motions. Short Causes, Petitions, and Adjourned Summonses on Saturdays. Summonses in Chambers on Friday afternoons, Liverpool and Manchester Summonses being taken on alternate Fridays, commencing with Liverpool Summonses on Friday, April 10.

## CHANCERY COURT III.

### BEFORE MR. JUSTICE ROMER.

Actions transferred for Trial or Hearing only will be taken in the order in the Cause List on every day of the Sittings from April 7 to May 15, both inclusive.

# CAUSE LISTS.

## SUPREME COURT OF JUDICATURE.

*Easter Sittings*, 1891.

### THE COURT OF APPEAL.

*Appeal Court I.—Notices.*

N.B.—Queen's Bench Interlocutory Appeals will be taken in Court I. on Tuesday, April 7, and afterwards on every Monday in Easter Sittings.

N.B.—Subject to Interlocutory Appeals on Tuesday and Bankruptcy Appeals on Friday, Queen's Bench Final Appeals will be taken in Court I. during the first week of the Sittings, and afterwards subject to the Order of the Court.

N.B.—The Queen's Bench New Trial Paper will be taken at times to be appointed by the judges after the commencement of the Sittings

N.B.—Admiralty Appeals (with Assessors) will be taken in Court I. on days specially appointed by the Court.

*Appeal Court II.—Notices.*

N.B.—Interlocutory Appeals from the Chancery and Probate and Divorce Divisions will be taken in Court II. on Tuesday, April 7, and afterwards on every Wednesday in Easter Sittings.

N.B.—Hampson *v.* Guy (part heard) and Reeves *v.* Pennington will follow the Interlocutory Appeals in the paper of Court II. on Tuesday, April 7.

Appeals from the Lancaster Palatine Court (if any) will be taken in Court II. on Thursday, April 9, and on Thursday, May 7; see Notice at end of List of Palatine Appeals.

Lunacy matters will be taken in Court II. on every Monday, at 11, until further notice.

## APPEALS FOR HEARING.

### (SET DOWN TO THURSDAY, MARCH 26, INCLUSIVE.)

### *From the Chancery Division.*

FOR JUDGMENT.

Dashwood *v.* Magniac

FOR HEARING.

*Final List.*

1890.

In re J. K. Mainwaring, dec.
Crawford *v.* Royal Infirmary and other charities
In re J. K. Mainwaring, dec.
Crawford *v.* Forshaw

In re Henry Woollcombe, dec.
Woollcombe *v.* Woollcombe (construction)

1891.

Tucker *v.* Kaye and others
Redman *v.* Rymer
Angus *v.* Clifford
In re Aurum Co. & Co.'s Acts, ex parte S. M. Sulybach & Co.
Walthamstow Local Board *v.* Staines
In re National Debenture and Assets Corporation (Lim.) & Co.'s Acts (petition)
In re C. Palmer, dec.
Palmer *v.* Hardwick
In re Lacon, dec.
Lacon *v.* Lacon
In re Williams, dec.
Morgan *v.* Williams
In re V. Nevin, an infant, and Guardianship of Infants' Act, 1886
Jones *v.* Dinas Steam Colliery Co. (Lim.) (construction of lease)
Cossey *v.* Roper
Scholes *v.* Brook
In re J. Thorley, dec.
Thorley *v.* Massam
In re W. R. Thorley, dec.
Thorley *v.* Massam

Cronbach *v.* Uranium Mines (Lim.)
Goodall, Backhouse & Co. *v.* Wilkinson and another
In re Courts of Justice Concentration Site Act, 1884, and Lands Clauses Consolidation Act, 1855
Gedye *v.* Commissioners of H.M.'s Works and Public Buildings
In re J. Bald, dec.
Bald *v.* Bald.
In re Tredwell, dec.
Jaffray *v.* Tredwell
Boulton *v.* Carter, Paterson & Co. (Lim.)
Low *v.* Bouverie
In re Shaw Hall Cotton Spinning Co. (Lim.) & Co.'s Acts
Hair *v.* Geddes
Odhams *v.* Biggar
Barrow *v.* Barrow
Gray and others, exors. of Margaret Gray, added by order *v.* Sangster and others

### *From the County Palatine Courts.*

FINAL LIST.

1891.

Winby *v.* Manchester, Bury, Rochdale, and Oldham Steam Tramways Co.
Perry *v.* Glazebook

In re Higginbotham and Orrell's Settlement Trusts (construction)

N.B.—The County Palatine Appeals, as the dates of setting down are reached in the General and Separate Lists, are taken on the first Thursday in every Sittings, and afterwards on the first Thursday in the following months during the Sittings.

N.B.—During Easter Sittings Palatine Appeals (if any reached) will be taken on the following days, viz.:—
Thursday, April 9.
Thursday, May 7.

### *From the Chancery Division, and from the Probate, Divorce, and Admiralty (Probate and Divorce) Divisions.*

INTERLOCUTORY LIST.

1890.

In re Ormerod, Grierson & Co. (Lim.) and Co.'s Acts.

1891.

S. A. Hampson *v.* W. Guy and others
M. P. Reeves (otherwise Stonehill, spinster) *v.* E. Pennington
Bonnard *v.* Perryman

In re D. H. Porrett, one, &c. and Animal Products Co. (Lim.)
In re W. Cheesman, one, &c. (application of W. L. Vernon)
Salomons *v.* Knight

### *From the Queen's Bench and Probate, Divorce, and Admiralty (Admiralty) Divisions.*

FOR JUDGMENT.

Stuart *v.* Bell
In re Kent County Council and Council of the Borough of Sandwich and Local Government Act, 1888 (Q. B. Crown Side)

In re Kent County Council and Council of the Borough of Dover and Local Government Act, 1888 (Q. B. Crown Side)
Howlett, on behalf, &c. *v.* Mayor, &c. of Maidstone

FOR HEARING.

*Final List.*

1890.

Rogers, Sons & Co. *v.* Lambert & Co.
Evans *v.* Newfoundland Railway Co. and others
Smith, Hill & Co. *v.* Pyman, Bell & Co.
Condy *v.* Blaiberg
A. Lavesseur and another, Liquidators of La Société Industrielle et Commerciale des Métaux *v.* Mason and Barry (Lim.)
Lewis *v.* Pontypridd, Caerphilly and Newport Railway Co.
De Souza *v.* Cobden

Murray *v.* Warren
Tynedale Steamship Co. (Lim.) *v.* Newcastle-on-Tyne Home Trade Insurance Association
Unwin *v.* Hanson
Newman *v.* London and South-Western Railway Co.
Kinnell & Co. *v.* Clements & Co.
Pyke *v.* Day and another
Richards and others *v.* Butcher
In re Walbaum's Registered Trade-marks, 28,593, 28,594, and Trade-marks Acts

1891.

Armour *v.* Bate
Same *v.* Same
Hunt *v.* Great Northern Railway Co.
Hick *v.* Tweedy
Coles *v.* Fisher
Pelsall Coal and Iron Co. (Lim.) *v.* London and North-Western Railway Co.
Same *v.* London and North-Western Railway Co. and Great Western Railway Co.
Vernon and others (trustees of Loyal Mundy Lodge of Independent Order of Oddfellows, Manchester Unity) *v.* Watson (Q. B. Crown Side)
Attorney-General *v.* Sharpe and another (Q. B. Revenue Side)
Deep Navigation Collieries (Lim.) *v.* Rhymney Railway Co.
Goddard and another *v.* Hill
Cox and another *v.* Welch and another
Skinners' Co. *v.* Knight and others
F. H. Wenman *v.* Lyon & Co. (Q. B. Crown Side)
Kingsford *v.* Oxenden
Woodfin *v.* Marston & Co. (Lim.)
Braunstein *v.* Lewis and another
Hilder *v.* Hume, Webster & Co.
School Board for London *v.* Wall, Bros.
London Bank of Mexico and South America (Lim.) *v.* Apthorpe (Surveyor of Taxes) (Q. B. Revenue Side)
Justices of the Peace for the County of Kent *v.* Sandgate Local Board
De Cosinck *v.* Singer
Levin & Co. *v.* Seligsen (trading, &c.)

Lethbridge and another *v.* Harris and another
Handyside & Co. (Lim.) *v.* Gentry
Tomkinson and another *v.* Balkis Consolidated Co. (Lim.)
Gregory *v.* Casseldon
Brown *v.* Hawkes (Q. B. Crown Side)
Nash *v.* Cunard Steamship Co. (Lim.) (Q. B. Crown Side)
Hick *v.* Rodocanachi, Sons & Co. and others
Mercantile Investment and General Trust Co. (Lim.) *v.* International Co. of Mexico
Brinkworth *v* Pentelow
Rhymney Railway Co. *v.* Bute Docks Co.
Lovering *v.* City of London and Southwark Subway Co.
Bishop *v.* Southern Counties Deposit Bank
Brace *v.* Abercarn Coal Co. (Lim.) (Q. B. Crown Side)
Huggins *v.* London and South Wales Coal Co. (Q. B. Crown Side)
Challoner *v.* Vaughan
Cross *v.* Roberts
Pinto and another *v.* Trott & Co.
Thomas *v.* Searles and another (first issue)
Same *v.* Same (second issue)
Kirkman *v.* British Shipowners Mutual Protection Association (Lim.)
Tinkler *v.* Smith and another
Le Messurier *v.* Taylor
Parkyn and another *v.* F. Campbell & Co.
Grazebrooke *v.* Weatherby and others
Lloyd's Bank (Lim.) *v.* Passey

*From the Queen's Bench Division.*

New Trial Paper.

1891.

Kilpin *v.* Knill and another
Bendit *v.* Goldberg
Worswick *v.* A. C. W. Hobman & Co.
Wilkinson *v.* Offord
Daye *v.* Krauss
Smith *v.* North Metropolitan Trams Co.
Stockings *v.* Lambeth Waterworks Co.
Butler *v.* Birnbaum & Son
Crichton (trading, &c.) *v.* Saunders
Walter *v.* Everard
Greening *v.* Ingram
Cotton *v.* Palmer (extrix. &c.)
Comfort *v.* Betts
Hembry *v.* Morgan and another
Knollys *v.* Mudford and another
Same *v.* Croes and another
Same *v.* Goulden (consolidated actions)

*From Probate, Divorce, and Admiralty Division (Admiralty).*

For Hearing.

(*With Nautical Assessors.*)

1890.

Owners, Masters, and Crews of Steamships Inverness, Flying Scud, Heather Bell, and Spurn *v.* Owners of Ship Accomac, Cargo and Freight
Owners of Ship Accomac, Cargo and Freight and Owners of Ship Albert Edward and others *v.* Owners of Ship Accomac, Cargo and Freight

1891.

Owners of Eloy Palacios and Cargo *v.* Owners of Homewood and Freight
Owners of Homewood *v.* Owners of Eloy Palacios
G. B. Vassals and others *v.* Owners of Boston City
Owners of The Star of England *v.* Owners of The Vesper
Owners of Eaton Hall *v.* C. B. Theobald (captain of H.M.S. Rupert
Teeside Iron Engine Works Co. (Lim.) *v.* C. C. Duncan
Owners of Ship Sudbourne and others *v.* Owners of Ship Mangalore

*From the Queen's Bench Division, sitting in Bankruptcy.*

1891.

In re Cameron and others, ex parte Debtors and others
In re H. R. Wallis, ex parte Board of Trade
In re T. R. Coffey, ex parte Board of Trade
In re A. Spencer, ex parte T. A. Beasley (trustee)
In re L. J. Twyne, ex parte Debtor
In re J. Best, ex parte Lewis (trustee)
In re A. Webber, ex parte S. Slater

*From the Queen's Bench Division.*

Interlocutory List.

1890.

Giffard *v.* Mayor, &c. of Wolverhampton

1891.

In re an Arbitration between J. Knight and Tabernacle Permanent Building Society and Arbitration and Building Societies Acts
Regina *v.* Justices of Lancaster (Q. B. Crown Side)
Same *v.* Same
Hollewell and another *v.* Rawstorn
Same *v.* Scott & Co.

SUMMARY OF APPEALS.

| | Final | Interlocutory | Total |
|---|---|---|---|
| From the Chancery Division | 28 | 7 | 35 |
| From County Palatine Courts | 3 | — | 3 |
| From the Queen's Bench Division | 61 | 6 | 67 |
| From the Probate, Divorce, and Admiralty Division, Admiralty with Assessors | 7 | — | 7 |
| From the Queen's Bench Division sitting in Bankruptcy | 7 | — | 7 |
| New Trial Paper | 15 | — | 15 |
| Totals | 121 | 13 | 134 |

# HIGH COURT OF JUSTICE.

## CHANCERY DIVISION.

*Easter Sittings*, 1891.

## CAUSES FOR TRIAL OR HEARING.

(*Set down to Thursday, March 26, inclusive.*)

Motions, Petitions, and Short Causes will be taken on the usual days, as stated in the Easter Sittings Paper.

Mr. Justice Chitty will take Witness Actions on the following days—viz. April 21, 22, 23, 28, 29, 30. His Lordship will sit in Chambers every Monday during the Sittings. In the weeks when Non-Witness Actions are taken Further Considerations will be taken on Tuesdays. In the weeks when Witness Actions are taken, Further Considerations will not be taken on Tuesdays, but may be taken on Saturdays.

Mr. Justice North will take Adjourned Summonses, specially, on the following days—viz. April 8, 9, 14, 15, 16, 21, 22, 23, in addition to the ordinary days stated in the Sittings Paper. At present Mr. Justice North has not fixed any days for Witness Actions.

Mr. Justice Stirling will take Witness Actions on days to be appointed by his Lordship, after the commencement of the Sittings. His Lordship will sit in Chambers every Monday during the Sittings.

Mr. Justice Kekewich will commence Witness Actions on Tuesday, April 14. The case of Savory & Moore *v.* London Electric Supply Corporation (Lim.). Motion treated as Trial and advanced by Order is fixed for that day, and two other cases of a like character are fixed for Tuesday, April 21. His Lordship will sit in Chambers every Monday during the Sittings.—Liverpool and Manchester Business will be taken as follows: Motions on days appointed for Motions. Petitions, Short Causes, and Adjourned Summonses, on Saturdays. Summonses in Chambers on Friday afternoons, Liverpool and Manchester Summonses being taken on alternate Fridays, commencing with Liverpool Summonses on Friday, April 10.

Mr. Justice Romer will take Witness Actions every day in the order as they stand in the Cause Book.

Adjourned Summonses will be taken as follows: Mr. Justice Chitty, with Non-Witness Actions, except Procedure Summonses, which (if any) are taken every Saturday; Mr. Justice North, on Fridays and Saturdays; Mr. Justice Stirling also on Fridays and Saturdays; Mr. Justice Kekewich on Saturdays.

N.B.—The above note as to Adjourned Summonses is subject to alteration as their Lordships may direct.

## Before Mr. Justice Chitty.

*Causes for Trial (with Witnesses).*

Freemantle *v.* Lafitte
Thompson *v.* M'Murdo
Morris *v.* Bebro
Same *v.* Same
M. Melacrino & Co. *v.* B. M. Melacrino and others
Ramuz *v.* Earl Sondes
Sampson *v.* Royal Aquarium and Summer and Winter Garden Society (Lim.)
In re Robert Millard, dec.
Millard *v.* Millard
Birmingham Canal Navigations *v.* Tupper & Co.
Guardians of St. Saviour's Union *v.* Stanhope Co. (Lim.)
Ratcliff *v.* Jowcss
In re W. E. Jones, dec.
Jones *v.* Greenwood
Inventions Trust Association (Lim.) *v.* Cole & Co.
In re Baroness Craignish, dec.
Craignish *v.* Hewitt
Lodge *v.* Ainley Sons & Co.
Nichols *v.* John Lewis & Co.
Boursot *v.* Boursot
Midland Railway Co. *v.* Metropolitan Railway Co.
Pink *v.* Pink
Hubbard *v.* Elverston
Matthews *v.* Sanders
In re Robson, dec.
Robson *v.* Hamilton
Defence Vessel Construction Co. (Lim.) *v.* Scott
Garnett *v.* Carver
In re Gyles, dec.
Gyles *v.* Collinson
Barlow *v.* Gyles
In re Gyles, dec.
Gyles *v.* Collinson
Reid *v.* Whiteley
In re Whitchurch, dec.
Cotton *v.* Prowse
Croydon Ironmongery Co. (Lim.) *v.* Davies
Skelton *v.* Schwabe
Lindsay *v.* Curtis
Richards *v.* Unett, Moore, Bayley & Co.
Warren *v.* Central Permanent Building Society
Bonham (married woman) *v.* Ellis
In re Earl of Caithness, dec.
Buchanan *v.* Sinclair
George *v.* Greener
Royal Exchange Assurance and others *v.* Norton
Beecham *v.* Thompson
Gunnell *v.* Woods
Brear *v.* Hirst
De Stafford *v.* Neville
Bliss *v.* Hart and another
Cleworth *v.* National Provident Institution
Nickalls *v.* Phillps
Aston *v.* Grazebrook
In re R. Fell, dec.
Fell *v.* Fell
In re G. Freeland, dec.
Freeland *v.* Freeland
Hamerton *v.* Bex

Jackson, Clayton & Co. v. Baker
Copping v. Gilmore
Watson v. Hawthorn
Leak v. Ross
Thomas v. Gillard
Wood v. Dunn
Howard v. Goode
Savage v. Jessup
Belanzchi v. Zirzinia
Thornton v. Union Discount Co. of London
Stephens v. M'Kellar
Wintle v. Oldridge
Ogilvie v. Blything Union Rural Sanitary Authority
Barker v. Pybus
Eastwood & Co. v. Craig
Wenham Co. (Lim.) v. Champion Gas Lamp Co.
Acme Wood Flooring Co. (Lim.) v. J. S. Vigers
Yeoman v. Robinson
De la Mare v. Mayor, &c. of West Ham, Essex
Landseer v. Zeffert
Van Buch v. Watson
Perceval and another v. Van Buch
Peachey v. Serle
New Wire Wove Roofing Co. (Lim.) v. Humpage
Hayman v. Cooper
Clark v. Smith
Carter v. Walter
Smith v. Rowbotham
Rowbotham v. Wilson
Ward v. Keen
North v. Abbey Mills Distillery (Lim.)
Sutton v. Gillings
Kite v. Bell
Marquis of Bute v. Barry Docks and Railways Co.
Hill & Paddon v. Fuller
Bailey v. Fuller
Fuller v. Hill & Paddon
Same v. Bailey
S. Kidd & Co. (Lim.) v. Perry
Allen v. Clydesdale Bank (Lim.)
In re Swain, dec.
Swain v. Bringeman
Patent Enamel Co. (Lim.) v. Baugh
Bew v. Gale
Webster v. Puleston
Meek v. Traver
Marquis of Aylesbury v. Darling
Spalding v. FitzGeorge
Green v. Wyatt
Delvallé v. Palmer
In re R. J. Smart, an infant, ex parte Stoner
Same, ex parte Gregory
L. Hirsch & Co. v. Dean Swift
Faithfull v. Millar
Molineaux v. Gartside
In re Thomas Bateman, dec.
Bateman v. Bateman
Uniacke v. Scott
Scott v. Uniacke
Soppitt v. Whiting
Layton v. Patent Lithographic Zinc Plate Co. (Lim.)

*Causes for Trial (without Witnesses).*

Walker v. Walker
Same v. Same
Same v. Same
Same v. Same
Same v. Same
In re S. Lawson, dec.
Birt v. Hinton
In re J. Taylor's Estate
Greenwood v. Taylor
In re C. Alderson's Estate
Alderson v. Reed
Dickens v. Lang
In re R. Sayle's Estate
Clark v. Sayle
In re G. Schreiber's Trusts
Hanson v. Mount (ex parte Settlement Trustees)
Baring v. Lord Ashburton
In re Boratynski's Trusts
Boratynska v. Arnould
Sovereign Life Assurance Co. v. Adam (ex parte Ehrhart)
In re W. Lory's Trusts
Lory v. Lory
In re Dolphin's Settlement Trusts
Dolphin v. Dolphin
In re Robert Aldred (ex parte Metropolitan Board of Works)
In re Dugdale's Estate
Dugdale v. Dugdale
Rhins v. Berkley
In re S. Kidd & Co. (Lim.) (ex parte J. H. Chapman)
In re W. Smith, dec.
In re R. Smith, dec.
Smith v. Smith (ex parte Executors and Trustees)
In re W. J. Barron & Sons
In re E. Budd, dec.
Scott v. Budd
Hartley v. Cooper
In re M. J. Sartoris's Estate
Sartoris v. Sartoris
In re J. R. Schweder's Estate
Oppenheim v. Schweder
In re Bingemann & Walmesley's Contract and Vendor and Purchaser Act, 1874 (ex parte Purchaser)
In re Bingemann, dec.
Bingemann v. Bingemann
In re Allen, a Solicitor (ex parte West)
J. H. Taylor v. Taylor
In re G. Baynham, dec.
Hart v. Mackenzie
In re T. H. Gloyne's Estate
Clarkson v. Rawsthorne (Order 55)
Levy v. Lyon
Same v. Same
In re W. Ostle's Estate
M'Mullon v. Redfern (Order 55)
In re J. B. Lousada's Estate
Ponting v. Lousada
In re R. H. Millett, dec.
Millett v. Marriott
Salmon v. Cheswright
In re W. S. Lewis, a Solicitor, ex parte Jane D. Moir
In re F. J. Edlmann
Edlmann v. Edlmann
Mockford v. M'Donald
Dibb v. Walker
In re J. C. B. Hadson, dec. and Conveyancing Act, 1881
Boulderson v. Inderwick
In re Joseph Hudson, dec.
Bell v. Hudson
In re Lindley, dec.
Lindley v. Lindley
In re Sovereign Life Assurance Co. (Salter's claim)
In re C. Blackburn, dec.
Smith v. Cook
In re J. F. G. Cook's Estate
Ayer and others v. Wrightson and others
In re W. Shawcross's Estate
Thackeray v. Coe.

*Further Considerations.*

In re W. B. Taylor, dec.
Stephenson v. Taylor
In re W. Evans, dec.
Evans v. Evans
In re S. Lang, dec.
Battaley v. Proctor
In re John Betts, dec.
Jones v. Butt
Forster v. Forster
In re G. J. Lang, dec.
Stephens v. Stephens
In re Redman, dec.
Redman v. Barter
In re A. Evans, dec.
Evans v. Randall

## BEFORE MR. JUSTICE NORTH.

*Causes for Trial (with Witnesses).*

Bentinck v. London Joint Stock Bank (Lim.)
In re Sharpe
In re Bennett
Masonic, &c. Assurance Co. v. Sharpe
Chester v. Harris
A. Pirie & Sons (Lim.) v. Goodall & Son
Commercial Bank of Scotland (Lim.) v. Sanders
Burgess v. Van Hoydonck
Matthews v. Martin
Tippett v. Strutt
Thomson v. Hughes
Stuckey's Banking Co. v. Cohen
Lindoe v. Alexander
Leveson-Tower v. Jarrett
National and Provincial Bank of England (Lim.) v. Daniel
In re M'Murdo
Penfield v. M'Murdo
Bright v. Eckersley
Walker v. Higgins
People's Co-operative, &c. Building Society v. Shaw
Showell v. Perrins
Merridew v. Morris
Hamilton v. Hamilton
Crawshay v. Cartland
In re Crawshay
Walker v. Crawshay
Capel v. Brown
Tilden v. Bond
In re Rendle
Rendle v. Rendle
Danks v. Jones
Taylor v. Taylor
In re Bliss
Bliss v. Bliss
Automatic Weighing Machine Co. (Lim.) v. National Exhibitors' Association (Lim.)
Jensen v. Hilder
Booty v. Goodwin
Lincoln Brick Co. (Lim.) v. Handley
Oldham v. Metherell
Wilson v. Queen's Club (Lim.)
Alliance Pure White Lead Syndicate (Lim.) v. M'Ivor's Patents (Lim.)
Morris, Wilson & Co. v. Coventry Machinists' Co. (Lim.)
Viney v. Lewis
Tims v. Schell
Schell v. Cutler
Thesiger v. York
Lloyd v. Clingo
Belsey v. Brooks
Westinghouse Brake Co. (Lim.) v. Williamson
Norton v. Burr
T. & W. Smith v. Bullivant and others
Brett v. Bowles
Fielding v. Earl Northbrook
Beaumont v. Provident Assurance Co. (Lim.)
Ward v. Langdon
Langham v. Hedges & Abell
In re Stevens
Stevens v. Stubbington
Faull v. Harding
In re Clench
Draper v. Clench
In re J. Cooper
Cooper v. Cooper
Byers v. Gray
Lawrence v. Edge
Day v. Pyke
Bolton v. National Land, &c. Co. (Lim.)
Webb v. Harden
Kennedy v. Smith
Fairfax v. J. Lyons & Co. (Lim.)
Robinson v. Trust and Investment Corporation of South Africa (Lim.)
Douglas v. Gerald & Co. (Lim.)
Helbert, Wragg & Co. v. Ransford & Co.
Mainwaring v. Cyclone Pulveriser
Church v. Gilford (Bonsall third party)
In re Lee
Lee v. Dickinson
Val de Travers, &c. Co. (Lim.) v. Neuchatel Asphalte Co. (Lim.)
Dance v. Hope
Yates v. Agnew
Hanbury v. Jewell
In re MacMahon
Phillips v. MacMahon
Garnett v. Wigley
Block v. Edwards
Allen v. Union Discount Co. of London (Lim.)
British Water Gas Syndicate (Lim.) v. Nottingham and Derby Water Gas Co. (Lim.)
In re Milnes
Milnes v. Milnes
Coxon v. Schofield
Laybourn v. Gridley
M'Bryne v. Kay
Mara v. Brown
Grylls v. Biederman
Bunnalls v. Rodd
Attorney-General ex-relat. Barnett Local Board v. Vestry of St. James and St. John, Clerkenwell
In re Boyce
Boyce v. England
Baird v. East Riding Club and Race Course Co. (Lim.)
In re Raisbeck
Keenlyside v. Leefe
Law Property Assurance, &c. Association v. Wilson
Pegler v. Drake-West
Morris v. Speyer
London Printing, &c. Alliance (Lim.) v. Cox
Harris v. Hackett
In re Coningham
Coningham v. Coningham
Speyer v. Morris
Hartley v. Jones
Choudens Fils v. Lago
Vennell v. Meakin
Rothwell v. Abrahams
In re Cann
Symington v. Cann
Universal Stock Exchange (Lim.) v. Stevens

*Causes for Trial (without Witnesses).*

Swaffield v. Robinson
Nicholay v. Development and Investment Co. (Lim.)
Wilkinson v. Ellison
Brougham v. Theobald
In re Sykes
Deane v. Duffield
Lands Trading Co. (Lim.) v. Rathbone
Harrington v. Heaven
Cotton v. Pemberton
Bartlett v. Carlton Engineering Co. (Lim.)

*Adjourned Summonses.*

Elliott v. Steel
In re Barton-upon-Humber and District Water Co. (Lim.) and Co.'s Acts
In re Burfield
Dean v. Burfield
In re Wright
Whitehead v. Stares
In re Corsellis
Bawtree v. Harrison
In re Radcliffe
Radcliffe v. Bowes
Badeley v. Consolidated Bank (Lim.)
In re Harris
Fitzroy v. Harris

Harper v. Eyre
In re Thomas
Richard v. Thomas
In re Rees
Williams v. Lloyd
Brown v. Clark
In re West
West v. West
Haseldine v. Haseldine
Same v. Same
Kennedy v. Smith
In re Miller
Bevan v. Miller
In re Northage
Ellis v. Barfield
In re Portuguese Consolidated Copper Mines (Lim.) and Co.'s Acts
Hamilton v. Brogden
In re Brace
Welch v. Colt
In re Allan
Havelock v. Havelock-Allan
In re Same
Same v. Same
In re Staffordshire Joint-Stock Bank (Lim.) (in liquidation) and Co.'s Acts
In re Brymer
Brymer v. Brymer
In re Tod-Heatley & Hobson and Vendor and Purchaser Act, 1874
In re C. E. Withall, &c.
In re Sir J. Heron
Willert v. Lady Heron
In re Price
Wyndham v. Fowle

In re Hannah
Watt v. Hannah
In re Derbyshire
Derbyshire v. Downs
In re Rumball
Rumball v. Charrington
In re Nockells
Nockells v. Thornton
In re Fitzgerald
Jones v. Bowling
Allen v. Union Discount Co. of London
In re Irwin
Saul v. Irwin
Fawkes v. Fox
In re Price
Price v. Saunders
In re Fitzgerald
Fitzgerald v. Martin
In re Eardley & Meir
Brett v. Hawthorn
In re Johnson
Moore v. Johnson
In re T. Ponsford
In re Raynor & Lee and Vendor and Purchaser Act, 1874
In re J. Dunlop, &c.
In re Same
In re Yates
Bostock v. D'Eyncourt
In re Evans
Jenkins v. Thomas
In re Wise
Leeke v. Wise
Litchfield v. Jones
In re Rawlins
Rawlins v. Todd

*Further Considerations.*

Bedford v. Drakeford
Wood v. Gregory

Guardians of Pontypridd Poor Law Union v. Howells

## Before Mr. Justice Stirling.

*Causes for Trial (with Witnesses).*

In re J. Davis
Joseph v. Davis
Hedger v. Hedger
In re Jenninge
Jennings v. Jennings
Dodd v. Scholding
Burton v. Dodd
Armstrong v. Owray Gold Mining Co. (Lim.)
Edwards v. Beckett
Keighley, Maxsted & Co. v. Bakewell
In re Fox
Fox v. Fox
Hill v. Bishton
In re Hodgson
Thompson v. Wilson
Wilson v. Thompson
In re Nesbitt
Nesbitt v. Freeman
Baring v. Abingdon
Heathcote v. Blair
Abbott v. Howard
In re Park
Cole v. Park
Park v. Cole
Brunton v. Red Moss Works Co.
Coombs v. Wilks
Lloyd's Bank (Lim.) v. Keen
In re Casey's Trade-marks, &c. and Patents, &c. Act
Stewart v. Casey
Duke of Sutherland v. Heathcote
Jones v. Merionethshire, &c. Building Society
Froude v. Wilberforce
Western Counties Railway Co. v. Anderson & Co.
Rugby Portland Cement Co. v. Rugby and Newbould Cement Co. (Lim.)
Adney v. Adney
Vernall v. Reed
Cunliffe v. Bellite Explosives (Lim.)
Best v. Dodd

Farbenfabriken Vorm Fried Bayer & Co. and others v. Bowker
Hampton v. Davis
Wrensted v. Eede
Wagner v. Costerlits
Jones v. Wemyss
In re MacIvor's Patent & Co.'s Acts
Lewis v. Oldroyd
Lloyd v. Fox
In re Heywood
Heywood v. Heywood
Williams v. Gregory
In re Carruthers
Talbot v. Carruthers
Simeon v. Freshwater, &c. Railway Co.
Wroath v. Coathupe
Newton v. Cohen
Bank of British North America v. Anderson & Co.
Young v. Harris
Twyeould v. Chamber Colliery Co. (Lim.)
Coombs v. J. Jones & Son
Render v. Macpherson
In re Wells
Molony v. Brooke
Radway v. Titmas
Sykes v. Crust
Norfolk v. Harvey
Fritchley v. Marshall
In re Walsh
Underwood v. Halden
Cunningham v. Todd
Willcox v. Black
Crowder v. Cooper
Same v. Same
Beecham v. Fisher
Farr v. Bristol Sublimed Lead, &c. Co.
Jackson v. Snell
Lampard v. St. George's House, (Lim.)
Foster v. Rowe

In re Edgar
Edgar v. Edgar
In re Bowman
Bowman v. Bowman
Alexander v. Miller
Field v. Nichols
Pearson v. Petroyitch
In re Bridger
Jones v. Armfield
Reade v. Hall
Wood v. Hamblet
Bailey v. Barnes
Sugden v. Cridlan
Earl de la Warr v. King
Schreiner v. Bormard
Holdsworth v. Hull, &c. Railway Co.
Same v. Same
Freeman v. Penn
Baxter v. Brodhurst
President, &c. of St. George's Hospital v. Rumney
Svertchkoff v. Huth
Lord de Ramsay v. Powell
Walker v. Turner
Brown v. Vince
Sibley v. Bingham-Cox
Swift v. Copeland
Brown v. Brown
West of England Paper Mills Co. (Lim.) v. Gilbert
In re Cash
Cash v. Hancock

Barnett, Bouvet & Co. v. Whalley
In re Lauretta
Kiddle v. Lauretta
Fearnley v. Clydesdale Bank (Lim.)
Lloyd v. Collings
Harris v. Harris
Trimble v. Wall
Bevan v. Wall
Taylor v. Waddyn
Folkard v. Carter
In re J. S. Smith
Smith v. Smith
Clanton v. Vickers
Bird v. Goodwin
White v. Swaine
In re Gas Lighting Improvement Co. (Lim.)
In re Linton
Linton v. Read
Lilly v. Ellam
Meux v. Thomas
Times & London Printing Alliance, &c. (Lim.)
Rough v. MacIvor's Patents (Lim.)
Nelson v. Wortham
Goodrham v. Goodrham
Beddoe v. Jones
Isaacs v. Isaacs
Woodman v. Knowles
Robinson v. Partridge

*Causes for Trial without Witnesses and Adjourned Summonses.*

In re Blumberg & Co. (Lim.) and Co.'s Acts
Robertson v. Hartopp
Lowther v. Caledonian Railway Co.
In re Broughton
Barnard v. Stockton
Wills v. Lycett
In re C. F. Bacon and Vendor and Purchaser Act, 1874
Cooper v. Burrard
In re Cochrane
Sharrod v. Mather
In re Same
Same v. Same
In re Thompson
Thompson v. Thompson
In re Speakman
Speakman v. Bond
In re Liversedge
Boden v. Liversedge
In re Warren
Randleson v. Randleson
Black v. Black
Ward v. Hyam
In re Gater
Gater v. Hely
In re Wickham
Markwick v. Wickham
Bruzard v. Franqueville
In re Eccles
Carr v. Eccles
In re Clavering, Bart. and Statute of Limitations Act, 1882
De Fontaine v. Attorney-General
In re Martyn
Green v. Mitchell
In re Missouri Estates Railway and Iron Co. (Lim.)

In re Cunningham to Trayring and Vendor and Purchaser Act, 1874
In re Wheeler
Chaffey v. Brading
In re Mervin
Mervin v. Crossman
In re Wilks's Estate
Child v. Bulmer
In re Russell
Russell v. Shoolbred
Smith v. Belch
In re Richmond
Watson v. Watson
In re Hobson
Appach v. Weldon
In re Clutterbuck and others, infants
Philbeam v. English
Greenwood v. Sutcliffe
In re National Pure Water Engineering Co. (Lim.) & Co.'s Acts (Dr. Fyfe's case)
In re W. Rogers, &c.
In re Gootoo and Invekwane Infants, &c.
Guardians of the Poor of Tendring Union v. Dowton
In re Wyatt
White v. Ellis
Hudson v. Lavington Bros.
Fenton v. Ford
In re Allen
Allen v. Allen
In re Mason
Mason v. Mason
Whiteley v. Ackroyd
Lloyd's Bank (Lim.) v. Neale
Weatherley v. Layton

*Further Considerations.*

In re Foster
Foster v. Butt
Adams v. Wood
In re Pride
Shackell v. Colmett
In re Harris
Harris v. Baker

In re Rieder
Dobell v. Tonlon
In re Fasenmeyer
White v. Merrill
Palmer v. Hargrave
In re Fitchett
Simmins v. Fitchett

## Before Mr. Justice Kekewich.

*Causes for Trial (with Witnesses).*

Sykes v. Burr
Bentinck v. Cape Breton Co. (Lim.)

Hanley and Bucknall Coal Co. (Lim.) v. North Staffordshire Railway Co.

Sanderson v. Allen
In re Metropolitan Coal Consumers' Association (Lim.) and Co.'s Acts, ex parte Edwards
Horsman v. Shorney
In re Paul Elwell
Elwell v. Elwell
Gray v. Purves
Holland v. Skidmore
Lloyd v. Margrave
Nuttall v. Hargreaves
Beard v. Margrett
Margrett v. Beard
Haley v. Metcalfe
Jones v. Steamship Cairngoun (Lim.)
Edwards v. Covell
Campbell v. Skewis
London, Brighton, and South Coast Railway Co. v. Reeves
Lewis v. Morgan
Blackman v. Fysh
Baily v. Icke
Bellite Explosive (Lim.) v. Bellite Co. (Lim.)
Sawkins v. Stratford, &c. Junction Railway Co.
In re Whiteley and Roberts, arbitration, &c.
Brandon v. Viscount Bury
Godfrey v. Walker
Denney v. Frisby
Alcock v. Smith
Dawson v. Church
In re Parker
Lowe v. Parker
Nicol v. Charsley
Horwood v. Milkins
Leach v. Gough
Manns v. Howard
Benson v. D'Arcy
In re Lyle & Kinahan's Trade-Mark, &c.
Greenwood v. Turner
Coulson v. Lock
Savoy Publishing Co. (Lim.), &c. v. O'Reilly
Bendall v. A. D. Selfe & Co.
Duncan v. Baird
Wood v. Lamplough
Motum v. Wilmot
D'Anson v. Turner
Lewis v. Ellis
Richards v. Whitham
Marsden v. Thorne
In re Dunk
Dunk v. Dunk
Wright v. Cauler
Oliver v. Hall
Smith v. Tasker
In re Baker
Baker v. Baker
In re Metropolitan Coal Consumers' Association (Lim.) and Co.'s Acts
Bruff v. Howard
Metropolitan Coal Consumers' Association (Lim.) v. Shadbolt
Cooke v. Smith
Secretary of State for India v. British Empire Mutual Life Assurance Co.
Thomas v. Gillard
Burra v. Philips
In re Hewit
Lawson v. Duncan
In re Crosland
Sykes v. Mallinson
Dyke v. Rutherford
Edison and Swan United Electric Co. (Lim.) v. Woodhouse & Rawson United (Lim.)
In re Perry
Walker v. Walker
Stengel v. International Commercial Co. (Lim.)
Shepherd v. Mason
Smyrke v. De Peyer
Provan v. Paterson
Castle v. Stone
Cooksedge v. Metropolitan Coal Consumers' Association
Upton v. National Mercantile Bank
Harrison v. Southwark and Vauxhall Water Co.
Matthews v. Wells
Perry v. White
Tavner v. Martin
Clinch v. Clinch
Same v. Same
Cipri, trading, &c. v. Metal Recovery Co. (Lim.)
Mackenzie v. Sanders
Van Heck v. Isaacs
Hickman v. Harris
M'Dowall v. Sanders
Dale v. Fortescue
Cowney v. Thomson
Watling v. Watling
Banks v. Scovell
Jope v. Pountain
Cameron v. Dandicolle & Gaudin (Lim.)
Savory & Moore v. London Electric Supply Corporation (Lim.)
Mapleson v. Lago
Wilkins v. Clydesdale Bank (Lim.)
Same v. Same
Jahncke v. R. Bell & Co. (Lim.)
Beecham v. Clue
Williams v. Jones
Petre v. Ferrers
Nettlefolds (Lim.) v. Reynolds
Same v. Same
Hazlehurst v. Rylands
Burdett & Harris v. Gorton
Robertson v. Robertson
Hall v. Hall
Driggs Ordnance Co. v. Driggs, Schroeder, &c. Co.
Falk v. Falk
Cameron v. Stretton, Hilliard, Dale & Newman
Whitaker v. Whitaker
Allison v. City and South London Railway Co.
New Skegby Colliery Co. (Lim.) v. Dodsley
Cowood v. Vernon
Lowson v. Wheatley & Sons
Howell v. Broomhead
Lane-Fox v. Kensington and Knightsbridge Electric Lighting Co.

*Point of Law.*

Blaiberg v. Medhurst

*Causes for Trial (without Witnesses).*

Smith v. Rogers
In re Wynn
Wynn v. Wynn
In re Hunter
Hunter v. Hunter
Hingston v. Hingston
Page v. Tunks
Headland v. Fallows
Scadding v. Burial Board for St. Pancras
Shepherd v. Webb
Larkin v. Lloyd

*Adjourned Summonses.*

In re Withington
Clays v. Corkling
In re Stephens
Warburton v. Stephens
In re Wythes
West v. Wythes
Wythes v. West
In re Same
Same v. Same
Same v. Same
In re Metropolitan Coal Consumers' Association (Lim.) and Co.'s Acts, ex parte Cunningham
In re Atherton and Settled Land Act, 1882
In re Longmire
Comrie v. Longmire
In re Chubb
Finney v. Messent
In re J. Reynolds, &c. and Vendor and Purchaser Act, 1874
Smith v. Rogers
In re Hughes
Williams v. Owens
In re Tooting Independent Chapel, &c. and Charitable Trusts Acts
In re Garland
Garland v. Mead
In re W. C. Smith and others and Settled Land Act

*Further Considerations.*

London, Chatham and Dover Railway Co. v. South-Eastern Railway Co.
In re Russell
O'Donoghue v. Bussell
Bussell v. Bussell

## Before Mr. Justice Romer.

*Causes for trial (with Witnesses).*

In re Fuller, Smith & Turner and Trade-marks Act, &c.
Howard v. Golland
J. B. Orr & Co. (Lim.) v. J. B. Orr
Gisborne v. Shipping Appliances Co. (Lim.)
Rickett v. Bennett
Martin v. Hemsworth
Cummins v. Sargent

*Transferred for trial or hearing only, pursuant to Order, dated January 27, 1891.*

In re Parry
Hunt v. Parry
In re Pierce
Hunt v. Parry
Crump v. Minter
Laing v. Walker
Canning v. Stone
In re Mountain
Beckett v. Mountain
Sykes v. Wigfield
Faulkner v. Stevens
In re Owen
Owen v. Allman
In re Giles
Real and Permanent Advance Co. (Lim.) v. Giles
Whateley v. Rippon
Rippon v. Brushfield
Hardwick v. Morton
Zuccato v. Young
Wilkinson v. Griffiths
Turney v. Turney
Stephenson v. Ovington
Moore v. North-West Bank (Lim.)
Davies v. Gilson
In re Aspinall
Hudson v. Warburton
Collinson v. Hudson
Llewellyn v. Simpson
Mineral Residues Syndicate v. Levant Mine Adventurers
Cross v. Mein
Potter v. Glover
Robertson v. Hughes
Fourth City, &c. Building Society v. Wood
Smith v. Bowler
Phillips v. Jones
Wigan v. Hoppe
Lockyer v. Powell
Davies v. Plain
Singleton v. Mitchell
Oppenheimer v. Quinn
Redfarn v. Prime
Same v. Same
Sir W. G. Armstrong, Mitchell & Co. (Lim.) v. Pitkin
In re Price
In re Edwards
In re Price
Price v. Pentypool Gas and Water Co. (Lim.)
King v. Harry
Turner v. Elliott
Hill v. Bischofswerder
Crossley Brothers v. Andrews & Co. (Lim.)
Andrews & Co. (Lim.) v. Crossley Brothers
Colman v. Colman
Jones v. Beard
Hartley v. Dearden
Wilkinson v. Jennings

## SUMMARY.

| | | | |
|---|---|---|---|
| 1.—Mr. Justice Chitty—Witness Actions | | 99 | |
| | Non-Witness Actions, including Summonses | 43 | |
| | Further Considerations | 8 | |
| | | | 150 |
| 2.—Mr. Justice North—Witness Actions | | 98 | |
| | Non-Witness Actions | 9 | |
| | Adjourned Summonses | 50 | |
| | Further Considerations | 3 | |
| | | | 160 |
| 3.—Mr. Justice Stirling—Witness Actions | | 114 | |
| | Non-Witness Actions, including Summonses | 45 | |
| | Further Considerations | 8 | |
| | | | 167 |
| 4.—Mr. Justice Kekewich—Witness Actions | | 110 | |
| | Point of Law | 1 | |
| | Non-Witness Actions | 9 | |
| | Adjourned Summonses | 14 | |
| | Further Considerations | 2 | |
| | | | 136 |
| 5.—Mr. Justice Romer—Witness Actions | | | 51 |
| Total Causes and Matters for Hearing in the Chancery Division | | | 664 |

## QUEEN'S BENCH DIVISION.

*Easter Sittings*, 1891.

### SPECIAL PAPER.

FOR JUDGMENT.

Metropolitan Railway Co. *v.* Fowler

FOR ARGUMENT.

*Set down February* 14, 1891, *due February* 21, 1891.

Mayor, &c. of Tunbridge Wells (acting, &c.) *v.* County Council of Kent

*Set down February* 20, 1891, *due February* 26, 1891.

Borrowman, Phillips & Co. *v.* Wilson

*Set down February* 21, 1891, *due February* 27, 1891.

Ocean Steamship Co. *v.* National Steamship Co.

*Set down February* 24, 1891, *due March* 3, 1891.

Gough *v.* Mayor, &c. of Liverpool

*Set down February* 27, 1891, *due March* 5, 1891.

In re an Arbitration between Mordey, Jones & Co. and Great Britain Steamship Small Damage Association (Lim.)

*Set down March* 11, 1891, *due March* 19, 1891.

Salaman *v.* Warner and others

*Set down March* 16, 1891, *due April* 7, 1891.

Same *v.* Same

*Set down March* 19, 1891, *due March* 24, 1891.

Same *v.* Same

*Set down March* 24, 1891, *due March* 29, 1891.

Cleaver & others *v.* Mutual Reserve Fund Association

*Set down March* 26, 1891, *due April* 10, 1891.

Reeves *v.* Butcher.

### OPPOSED MOTIONS.

FOR JUDGMENT.

Joyner *v.* Weeks (heard before Wills, J., and Wright, J., on January 19 and 20, 1891)
Heineman & Co. *v.* Hall & Co. (heard before Cave, J., and Charles, J., on March 5, 1891)

FOR ARGUMENT.

Cristord *v.* West Lancashire Railway Co.
In re M. R. E. Brandreth—Stand over till notice given to La wSociety
Assicurazioni Generali and others *v.* SS. Bessie Morris Co. (Lim.) and another
West and others *v.* Marks and another
Cave *v.* Leslie and others
Aitken *v.* Batchelor
Fowler and another *v.* Bowles (Bowles, claimant)
In re Adolphus Herman Louis, an unqualified person, ex parte Incorporated Law Society
Morgan *v.* Harrison
Ross *v.* Bourke
Giddy and another *v.* Benham
Dreyfus *v.* Biedermann
Penberthy *v.* Venezuelan Austin Gold Mining Co. (Lim.)
Snell, Son & Greenip *v.* Foakes
Barlow and another *v.* Forbes, Munn & Co.
Haughton *v.* Hartmann and others
Juicey & Co. *v.* Allan & Co.
In re an Arbitration between Williams and Stepney
Milissich *v.* Spottiswoode
In re a Solicitor, ex parte Incorporated Law Society
In re a Solicitor, ex parte Incorporated Law Society
In re a Solicitor, ex parte Incorporated Law Society
In re a Solicitor, ex parte Incorporated Law Society
In re a Solicitor, ex parte Incorporated Law Society
Trotter *v.* Fox
Day *v.* Ross
Dean *v.* Bayly
Williamson and others *v.* Pilbrow and another
Parsons & Co. *v.* Davies
Thompson & Bedford Co. (Lim.) *v.* Parry & Co.
Wakeley, Bros. & Co. *v.* Tull
Percival *v.* Burraud
Cullum *v.* Strousberg
In re Arbitration between Baylis and Burr
Emmett & Co. *v.* Watters and others
Lloyd *v.* Craddock
Rawlins *v.* Burton, Yeates & Co. and others
Laidlaw & Son *v.* Nanson
Bryant and another *v.* Lorimer (trading, &c.)
Lotinga *v.* Curtice and another
Bennett *v.* Board of Guardians of the Union of Daventry
Sutton *v.* Whytell and others
Lewis *v.* Lovell
Bennetts *v.* Ludlow and another
Marcoso *v.* Thomson
Schneider *v.* Edelstein and another
Giles *v.* Goldberg
Commercial Bank *v.* Strousberg
Gordon *v.* Sheather
Central Bank of London (Lim.) *v.* Foster
Burton *v.* Mears
Burt and another *v.* Gray and others
Roche *v.* Rogers
M'Kean's Size Co. *v.* Weichsel
In re Arbitration between Chaudefield and Barker & Co.
West Riding Union and Banking Co. *v.* Ramsden and others
Reimann *v.* Keenan
Foote and another *v.* Wilkinson
Sambas Exploration Co. (Lim.) *v.* Nersessian
Salaman *v.* Warner and others
Persian Investment, &c. Co. *v.* Mikayl Khan
Ungar *v.* Sugg and others
Same *v.* Same
Grey *v.* White
Chaffers *v.* Esher
Lee *v.* British Equitable Life Assurance Co.
Beaujeu *v.* Smyth
Same *v.* Same
Rowles *v.* King
Hind *v.* Raikes and others
In re a Solicitor, ex parte Beddall
Prichard *v.* Morton
Bottomley *v.* Dean & Son
Pascoe *v.* Bengal Baragunda Copper Co.
Walford *v.* Prince Steam Shipping Co. (Lim.)
Sheen *v.* Link
In re a Solicitor, ex parte Incorporated Law Society
In re Arbitration between Marshall & Co. and Hicks Bros.
Harvey *v.* Bentley
Guinea Coast Gold Mining Co. *v.* Irvine and others
Dugmore and another *v.* Nelson and others
Fountain and others *v.* Same
Hamond and others *v.* Same
King *v.* Fowler and another
Dan Rylands (Lim.) *v.* Wohlgemouth & Co.
Green and another *v.* Martinne
Williams *v.* Clydesdale Bank (Lim.)
Rockett *v.* Clippingdale and Thornhill
Jamieson *v.* Britton and another
Boot *v.* Harris and others
Lewis *v.* Shaw and another
Edinburgh Ballarat Gold Quartz Mine (Lim.) *v.* Herivel
Wainwright and another *v.* Powis
National Whole Meal Bread and Biscuit Co. (Lim.) *v.* Stiven
Price *v.* Richardson
In re a Solicitor, ex parte Incorporated Law Society
Nugent and others *v.* Leonard
Nevill & Co. (Lim.) *v.* Briton Ferry Steel Co. (Lim.)
Bridcut *v.* Duncan & Sons
Cawley & Co. (Lim.) *v.* Wilkinson
Baron Dynevor and others *v.* Neath Harbour Commissioners
Sheen *v.* Link
Elise & Co. *v.* De Crespigny
Horner *v.* North Metropolitan Tramways Co.
Hale *v.* Fiatau
Reynolds *v.* Soltykoff
Adamson *v.* Gilbert
Cutler & Sons *v.* Kionne (Aird & Sons, garnishee)
Metropolitan and Birmingham Banking Co. *v.* Dodds and others
Tuppenney *v.* New
Jones *v.* Hutchinson
Union Bank of Australia (Lim.) *v.* Trower
Bellyse *v.* M'Ginn
Westcott and another *v.* Blumann & Stern (Lim.) (Schibaeff & Co. (Lim.) claimants)
Campbell and another *v.* Von Buck
Phillips, Son & Vallings *v.* Fowler & Co. (Leeds) (Lim.)
National Whole Meal Bread, &c. Co. *v.* Morris
Oldman and another *v.* Grimmer
Challinors and another *v.* Wright and others
Boyce *v.* Williamson
Bonney *v.* Hunt
Steamship Albany Co. (Lim.) *v.* Proctor, Sons & Co.
Capital and Counties Bank (Lim.) *v.* Castiglione
Bohringer *v* Cloete
Pallister *v.* Bolokow, Vaughan & Co.
In re Neale, a Solicitor
North Wales Gold Exploration Co. *v.* Seaver and others
Same *v.* Same

## CROWN PAPER.

### For Judgment.

Somersetshire (Wells)—In re Agricultural Holdings Act, 1883 Gough and others v. Gough and others— (argued January 29; *coram* Cave, J., and Williams, J.)
Middlesex—Regina v. H.M. Secretary of State for War (ex parte Mitchell) (argued February 26 and March 25; *coram* Cave, J., and Charles, J.)
Yorkshire (Halifax)—Regina v. Judge of County Court of Yorkshire holden at Halifax and Bairstow (ex parte Sutcliffe) (argued February 9 and 10; *coram* Pollock, B., and Charles, J.)

### For Argument.

Metropolitan Police District—Fortescue v. Vestry of St. Matthew, Bethnal Green
London—Jones and others v. Dobson and others
Salford—Hancock v. Haynes
Middlesex (Clerkenwell)—Reason v. Lewis
Surrey (Kingston)—Wimbledon Local Board v. Underwood (Simmons, claimant)
Monmouthshire—Bound v. Lawrence
Worcestershire (Great Malvern)—Jones v. Foley and another
Monmouthshire—Regina v. Carnegy and others, Justices, &c. and overseers of Llanfoist (ex parte Abergavenny Rural Sanitary Authority)
Northumberland (North Shields)—Taws v. Knowles
Shropshire (Shrewsbury)—Wardle v. Wanstall and another
Yorkshire (Doncaster)—Lamb v. Great Northern Railway Co.
Carlisle—Regina v. Dixon, Esq. and another, Justices, &c. (ex parte Dunn)
London—Brighton Guardians v. Strand Union
London—Williams v. Line
Middlesex (Clerkenwell)—Clark v. Finsbury Park Brick and Tile Co.
Metropolitan Police District—Regina v. Bros, Esq. Metropolitan Police Magistrate, and Jacobson (ex parte Allery)
London—Webb v. Sutton
Surrey (Wandsworth)—Bishop v. Taylor & Co. (Harris, claimant)
Middlesex (Clerkenwell)—Isaacs & Co. v. Spero
Warwickshire (Birmingham)—Ebrey v. Rowbotham
Middlesex (Bloomsbury)—Manning and others v. Hine
Middlesex (Clerkenwell)—Haynes v. North Metropolitan Trams Co.
Metropolitan Police District—Fletcher v. Fields
Kent (Greenwich)—Diprose v. Norfolk (Norfolk, claimant)
London—Regina v. Governor, &c. of Bank of England (ex parte Terrell)
Cheshire (Chester)—Jones v. Turner
Surrey (Wandsworth)—Erwin v. Wilson (Brackley, claimant)
Staffordshire (Lichfield)—Wellings v. York (York, claimant)
Surrey (Southwark)—Bransgrove v. Woodward and another
London—Kutner v. Phillips
Lancashire (Liverpool)—Clarke & Co. v. Widdowson (Palmer, claimant)
Surrey (Wandsworth)—Farnfield v. Lavers
Middlesex (Whitechapel)—Mills v. Steward
Glamorganshire (Merthyr Tydfil)—Knight v. Jones
Shropshire (Shrewsbury)—Bevington v. Marriott
Essex—Guardians of Cardigan Poor Law Union v. Guardians of West Ham Poor Law Union
Middlesex (Westminster)—Great Western Railway Co. v. White & Co.
Middlesex (Shoreditch)—Brown v. Lilley (Chopping, claimant)
Middlesex (Brompton)—London General Omnibus Co. (Lim.) v. Aspinall & Co.
London—Pollock v. Glover (James, claimant)
Middlesex (Brompton)—Newman v. Cave and another
Cardiganshire (Aberystwith)—Evans v. Daniel and another
Monmouthshire (Dolgelly)—Lloyd and others v. Williams and others
Dorsetshire—Pitt-Rivers v. Glasse
Surrey (Croydon)—Bourne & Co. v. Wall (Wall, claimant)
Leicestershire (Market Harborough)—Williamson v. King
Middlesex (Clerkenwell)—Hoare v. Niblett
Middlesex—Allchurch and another v. Hendon Union
Durham (Darlington)—In re Building Society's Acts (Broad's appeal)
Glamorganshire (Swansea)—Legg v. Oystermouth Local Board
Glamorganshire (Swansea)—Bryan v. Atlantic Patent Fuel Co.
Sussex (Brighton)—Moul and another v. Groenings
Cheshire (Macclesfield)—Cooney v. Globe Cotton, &c. Co.
Devonshire—Dames v. Bond
Northamptonshire—Inwood v. Potter
Metropolitan Police District—Moir v. Williams
Lancashire (Preston)—Crown Corn, &c. Manure Co. v. Knight
Manchester—Caminada v. Hulton
Manchester—Same v. Same
Manchester—Same v. Same
Manchester—Same v. Same
Aberystwith—Regina v. G. Williams, Esq. and others, Justices, &c. (ex parte J. Williams)
Lancashire—Same v. Guthrie, Esq. Justices, &c. (ex parte Taylor)
Middlesex (Brompton)—Bird v. Fenton
Bedfordshire (Leighton Buzzard)—Green v. Gordon
Lancashire (Manchester)—Wilson and others v. Statham
Devonshire (Exeter)—Ashford v. Franklin
Aberdare—Gery v. Black Lion Brewery Co.
Lancashire—Accrington, &c. Tram Co. v. Campbell
Newport—Hale v. Rice
Sussex (Eastbourne)—Everett v. Paxton
Surrey (Croydon)—Fox v. Stevens
Glamorganshire—Regina v. Powell, Esq. and others, Licensing Justices, &c. (ex parte Roberts)
London—Lange v. Barton
Middlesex (Bloomsbury)—Cusack and another v. London and North-Western Railway Co.
Monmouthshire—Regina v. Colonel Byrde and others, Justices, &c. and Pontypool Gas Co. (ex parte Williams)
London—Sipf v. Brown and Holt
Durham—Regina v. Justices for the County of Durham (ex parte Maughan)
Lincolnshire (Parts of Lindsey)—Same v. Justices for the Parts of Lindsey (ex parte Evison)
London—Barlow v. Terrett
Devonshire—Regina v. Bowring, Esq. and others, Justices, &c. and Stentiford (ex parte Fenton)
Devonshire—Same v. Same
Carnarvonshire (Portmadoc)—Rowlands v. New Welsh Slate Co.
Glamorganshire—Regina v. Fowler, Esq. Stipendiary Magistrate for Swansea (ex parte Crabb)
Flintshire—Same v. Birch, Esq. and others, Justices, &c. (ex parte Galliard)
Chester (Birkenhead)—Bedford & Co. v. Holt (Holt, claimant)
Leicestershire (Leicester)—Coltman v. Davis, Moore & Co.
Cumberland (Cockermouth)—Towerson v. Jackson
Northamptonshire (Wellingboro')—Austin and another v. Goodman and another
Southampton—Regina v. Freshwater, &c. Railway Co. (ex parte Tatham)
Dorsetshire—Smith v. Davy
London—Vestry of Fulham v. Flew
Surrey (Southwark)—Hughes v. North Metropolitan Tramways Co.
Middlesex (Brompton)—London and Westminster Loan Co. v. Tabraham
London—Spaul v. Baker
Glamorganshire (Cardiff)—Hacquoil & Co. v. Tapson & Co.
Birkenhead—Elliott v. Osborne
Staffordshire (Wolverhampton)—Norton & Co. v. Dalby
Surrey (Croydon)—Hood v. Fletcher
Surrey (Southwark)—Minshaw v. London Metallic Capsule Co.
Warwickshire (Coventry)—Sidney v. Taylor
Yorkshire (Sheffield)—In re Estate of C. H. Hill, dec.
Yorkshire (West Riding)—Regina v. Goole Local Board (ex parte Foster, Earle and another)
Cardiganshire (Lampeter)—Hughes v. Gilbert
Somersetshire (Axbridge)—Seaton v. Hole
Hampshire—Regina v. Judge of County Court of Southampton and Fisher & Son (Lim.)
Middlesex (Whitechapel)—Ward and Wife v. North Metropolitan Tramways Co.
Hertfordshire (Bishop's Stortford)—Gibbons v. Proqter
Metropolitan Police District—City and South London Railway Co. v. London County Council
Glamorganshire (Swansea)—Ystradgynlais, &c. Colliery Co. v. Hughes & Co.
Metropolitan Police District—London County Council v. Candler & Son
Northumberland—Gibson v. Lawson
Metropolitan Police District—Smith v. Francis
London—Loader v. London and India Docks, &c. Committee
Glamorganshire (Swansea)—Haynes and others v. Kneeshaw, Lupton & Co.
South Shields—Kennedy v. Cowie
Hampshire (Portsmouth)—Dyson and another v. Dyson and another
Cheshire (Stockport)—Cowen v. Smethem
Kent (Gravesend)—Regina v. Huggins, Esq. and another, Justices, &c. and Humphreys
Sussex—Smith v. Fovargue
Middlesex (Whitechapel)—Davies v. North Metropolitan Tramways Co.
Plymouth—Curran v. Treleaven
Cheshire (Congleton and Sandbach)—Parrott v. Perry (Perry & Son, garnishees)
Middlesex (Clerkenwell)—Crestman v. Stephens
Glamorganshire (Merthyr Tydfil)—Harman v. Rees, Powell and others
Gloucestershire (Bristol)—Ball v. Baker
Lancashire (Liverpool)—Nelson & Co. v. M'Leod & Co.
London—White v. Bird
Lancashire—Fecitt v. Walsh
London—Barnes v. Gibb & Co.
Middlesex (Clerkenwell)—France v. Dutton (Dutton, claimant)
Lancashire (Liverpool)—Boumphrey v. Houghton & Co.
Metropolitan Police District—Cohen v. Lakeman
Yorkshire (West Riding)—Regina v. Wilkinson, Esq. and others, Justices, &c. and others (ex parte Leeds Union)
London—Regina v. Judge of City of London Court and Hirschman
Lancashire (Oldham)—Central Mill Co. v. Mortimer
Yorkshire (West Riding)—Mayor, &c. of Sheffield v. Wortley Union and others
Cumberland (Cockermouth)—Atkinson v. Flimby Colliery Co.
Brecon—Nott and another v. Davies
Cheshire (Stockport)—Turner and another v. Tonge and another
Durham (Darlington)—Henderson v. North-Eastern Railway Co.
Yorkshire (Huddersfield)—Whiteley v. Clough

St. Helens—St. Helens and District Trams Co. (Lim.) *v.* Wood
St. Helens—Same *v.* Same
Surrey (Lambeth)—Rathbone, the younger *v.* Long and another
Worcestershire (Dudley)—Marsh *v.* Great Western Railway Co.
Yorkshire (Leeds)—Kendall *v.* Kirk & Sons
Middlesex (Whitechapel)—Braidman *v.* Frost
London—Hast *v.* Lea Bridge, Leyton, and Walthamstow Trams Co.
Newcastle-upon-Tyne—Connor *v.* Kent
Surrey (Southwark)—Dalgleish *v.* Watson
Middlesex (Shoreditch)—Lane *v.* Ewin Bros.
Lancashire (Liverpool)—Blues *v.* Harrison & Co.
Carnarvonshire (Carnarvon)—Owen & Son *v.* Iles & Co.
London—Savage *v.* Taunton
Middlesex (Marylebone)—Williams *v.* Metropolitan Railway Co. and Metropolitan District Railway Co.
Middlesbrough—Sampson *v.* Harris
Surrey (Lambeth)—Heath *v.* O'Brien
Yorkshire (Sheffield)—Flanagan *v.* Armitage and another
London—Peach *v.* Makings
Kent (Bromley)—Neville and Wife *v.* Hall
Cumberland (Whitehaven)—Graham *v.* Cleator Iron Ore Co.
Middlesex (Brompton)—Shattock *v.* Rintoul, jun.
London—Regina *v.* Bird, Esq. and others, justices, &c. (ex parte Jones)
Surrey (Kingston)—Bec Land, House, &c. Investment Co. *v.* Sim
Devonshire (Exeter)—Michelmore *v.* Harding
Warwickshire (Birmingham)—Price and another *v.* Lovegrove
Surrey (Southwark)—Matthews *v.* Dawson
Northumberland—Spraggon *v.* Carling.
Middlesex (Brentford)—King *v.* Overton (Notley claimant)
London—Digby *v.* Robertson

## REVENUE PAPER.

CAUSES FOR HEARING.

Attorney-General *v.* Mayor, &c., of Hythe and another
Same *v.* De Burton and others
Same *v.* Chapman & White

CASES AS TO INCOME-TAX AND CORPORATION DUTIES.

FOR ARGUMENT.

Whitehead, appellant, and Wilson (Surveyor of Taxes), respondent
In re Duty on the Bootham Ward Strays, York

Motions for Attachment for Contempt, 9

### *Divisional List.*

SUMMARY.

| | |
|---|---|
| Special Paper | 10 |
| Opposed Motions | 128 |
| Crown Paper | 171 |
| Revenue | 14 |
| Total | 323 |

**The following Courts will sit until Saturday, April 11, for the trial of the following classes of actions:—**

Two Courts for Middlesex Special Juries.
One Court for Middlesex Common Juries, after the cases to be taken by the Railway Commission.
One Court for London Special Juries. A Second Court will sit after the Bankruptcy Matters are disposed of.
Two Courts for Actions without Juries.

## MIDDLESEX.

SPECIAL JURY ACTIONS.

Actions beyond No. 1129 in this List will not be taken before Monday, April 13.
The following Numbers will be in the List for Trial on Tuesday, April 7: Nos. 1103 to 1244, both inclusive.

1103 Smith *v.* Bottomley and others
1207 Willey *v.* Great Northern Railway Co.
1222 Barnes *v.* Batchelor and anr.
1234 Sherwood *v.* Lavington
1235 Pringle and another *v.* Burraston and another
1238 Roberts & Co. *v.* Jones
1243 Krell *v.* Russell, Cordner & Co.
1244 Satchwell *v.* Perks
1255 M'Ausland *v.* Johnston and another
1266 Smee *v.* Law's Dairy Co.
1276 Hansard Publishing Union *v.* Kelland and another
1280 Coburn *v.* Great Northern Railway Co.
1284 Nevill *v.* Smith
1286 Styles *v.* Vestry of St. George, Southwark, and others
1287 Boehmer *v.* Baxter
1294 Heatall *v.* Burrup and others
1325 Humphrey *v.* Leuville
1328 Martin *v.* Carter & Co.
890 Bird *v.* Swatherbridge and another
1067 Jay *v.* Delap
1132 Roberts and another *v.* Cuddon & Co.
1339 Papworth *v.* Punchard and others
1089 Nott *v.* Mile End Vestry
19 Hannay's Patents Co. (Lim.) *v.* Harden Star, &c. Co.
23 King and another (April 9) *v.* Sedgwick and another
39 Walker *v.* Brown
50 Dawes *v.* Pilcher
71 White *v.* Moignard
87 Cameron *v.* Buller
98 Wilkinson *v.* Clark
139 Williams *v.* Bourke, Sandys & Co.
204 Wynne, Roberts & others *v.* Manning and others
288 Morgan *v.* Tennant
574 Terry *v.* Hallett
636 Whitney *v.* Moignard
740 Tyrrell *v.* Lyon
781 Wiedemann *v.* Walpole
806 Dean *v.* Read & Campbell
841 Wade Gery and another *v.* Harrington
917 Head *v.* Easton and Church Hope Railway Co.
943 Clement *v.* Richards
974 Figgis *v.* Bruce
1005 Thompson and others *v.* Horsell
1009 London Electric Supply Corporation (Lim.) *v.* Friese, Green & Collings
1035 Newell *v.* Corporation of Liverpool
1129 Greenfield *v.* Midland Railway Co.
1161 Zapp & Bennett *v.* Ruddiman, Johnston & Co. (Lim.)
1165 Palmer *v.* Reliance Mutual Life Assurance Society
1181 Gordon *v.* Sheather
1197 Pearce *v.* Barnett
1225 School Board for London *v.* Johnson
1247 Emden *v.* Tod-Heatly
1291 Gladstone *v.* Kearney
1315 Worley *v.* Hindley
1334 Wath-upon-Dearne Main Colliery Co. *v.* Wakefield and Barnsley Union Bank and another
1338 Tuppeney *v.* New
1345 James and others *v.* Land and Water and others
1352 Lord Penrhyn *v.* Licensed Victuallers' Newspaper Co. and another
1358 Gilbert *v.* Perryman
1371 Holloway *v.* Barrow
1372 Bates *v.* Dickson
1397 Alldred *v.* West Metropolitan Trams Co.
1398 Amstell and another *v.* North Metropolitan Trams Co.
1405 Clarke *v.* Tebb
1413 Foster *v.* Kelland
1433 Wigg *v.* Eidmans
1443 Chapman *v.* Lawson
1444 Noakes *v.* Swancott
1448 Parker *v.* Balls and another
1454 Allen *v.* Kelland and another
1458 Webb and another *v.* Taylor and others
1460 Anderson *v.* Dodsworth
1487 Memory *v.* Annesley and others
1493 Reynolds and others *v.* Fox and others
1495 Mara *v.* London and North-Western Railway Co. and others
1497 Fenwick *v.* Trench
1507 Stumore *v.* Campbell and others
1508 Gillespie *v.* Salmon and others
1518 Guinness, Mahon & Co. *v.* Heritage
1521 Lowry *v.* Hulbert
1525 General Stock Exchange (Lim.) *v.* Cronheim)
1536 Dodsworth *v.* North-Eastern Railway Co.
1546 Mappin *v.* Murray, Robertson & Co.
1551 British Water Gas Syndicate *v.* Nokes & Stammers
1557 Lovekin *v.* Fitz Payne
1566 Torkilson *v.* Claymore Steamship Co. (Lim.)
1567 Emberson *v.* South-Eastern Railway Co.
1575 Steward *v.* West Metropolitan Trams Co.
1580 Harry *v.* West Metropolitan Trams Co.
1592 Civil Service Mutual Furnishing Association (Lim.) *v.* Knowles
1597 Ranken and another *v.* Fox and others
1604 Shalless *v.* North Metropolitan Trams Co. (Lim.)
1611 De Pass *v.* Lady Lister Kaye
1612 Vallancey *v.* Beevor
1641 Jenkins *v.* Toulmin, Smith & Fuller
1649 Baghino *v.* Clamond Gas Co. (Lim.) and others
1651 Griffith *v.* Labouchere
1655 Crompton & Co. (Lim.) *v.* Phillips
1660 Emery *v.* Bateman and others
1661 Robinson *v.* Same
1662 Stewart and another *v.* Booth Brothers
Rashley *v.* Same
1664 Clarke *v.* Stratton, Gentry & Co.
1670 Barber *v.* Army and Navy Co-operative Society (Lim.)
1671 Bellard *v.* North Metropolitan Trams Co.
1687 Richardson *v.* Livesey
1688 Rawson and another *v.* Birmingham Gazette Co. (Lim.)
1689 London and Edinburgh Shipping Co. *v.* East London Water Co.
1720 Langfield *v.* Allen
1722 Cottrell *v.* Lloyd and another
1724 Eriksson *v.* Douglas
1732 Sharp and another *v.* North Metropolitan Trams Co.
1735 Dawes *v.* Petty and another
1736 Taylor *v.* London and North-Western Railway Co.
1739 Botterell *v.* Fitt
1744 Green *v.* Archer
1752 Collins *v* Houghton
1758 Morris *v.* Jones & Co.
1760 Hill's Waterfall Estate, &c. Co. *v.* Benjamin
1769 Trachtenberg *v.* Binswanger
1770 Same *v.* Newgass and others
1771 Eyre *v.* Paddington Vestry
1797 Morling *v.* Dainty and others
1801 Pearse *v.* Taylor
1808 Heal *v.* Crosland
1815 Investment Registry, &c. (Lim.) *v.* Beaumont
1819 Brunlees *v.* Dickson
1821 Usher *v.* Roberts
1837 Smart *v.* Burton
1845 Bertie *v.* Ireland
1849 Marshall *v.* Burgoine
1852 Colbourne *v.* Southwark, &c. Trams Co. (Lim.)
1855 Gwynne *v.* Shippey
1856 Loibl *v.* London and St. Katherine Docks Co.
1858 Brown *v.* Sadler
1860 Douthwaite *v.* Great Northern Railway Co.
1885 Glasier and Wife *v.* Hastings, &c. Omnibus Co. (Lim.)
1886 Sansoms *v.* Rothschild
1901 Coombs *v.* Barber and others
1912 Boyton *v.* Williams
1920 Nelson *v.* Chapman
1925 Nobel *v.* Stewart

1986 Same v. Same
1987 Cowley v. Soames
1988 Bauman v. Isaacs
1990 Nobel v. Stewart
1998 Uxbridge v. Galsworthy
1992 Perry v. London Street Trams Co.
1971 Hawker v. Attenborough and others
1978 King v. Lewis
1981 Scovel v. Publishing Co. (Lim.) and others
1987 Lee-Smith v. Commercial Trust, &c. (Lim.)
1999 Linton v. Mackenzie
2001 Commercial Trust and Agency Co. (Lim.) v. Smith
2002 Hamerton v. Flatau
2003 Dicker v. Lacoma, Yonell & Co.
2004 Minter v. Hilton and others
2020 Craig v. London Street Trams Co.

## COMMON JURY ACTIONS.

Actions beyond No. 1306 in this List will not be taken before Monday, April 13.

1359 Harris v. Newby
1548 Gumner v. Gidley.
1549 Gidley v. Gumner
1015 Harrow v. Guarantee Society
1289 Cox v. Read & Co.
1574 Hardy v. Barker & Co.
1581 Lagenbach v. Crist
1584 Lockhart v. Powdrill
1239 Vince v. Andrews
1344 Lane v. Vickers
1588 Whatford v. Rogers
1560 Cross & Sons v. M'Connell
1590 Gathard v. Rowe
1596 Mollett v. Smith
1622 Harford v. Jones
1632 Banks and another v. Kelly and another
1652 Carroll v. Bone
1653 Sharp v. Diprose
1658 Wright v. M'Rae
273 Oseki v. Lee
406 Dale v. Coffin
825 Lloyd v. Mekersley
1151 Wilson v. Proprietors of the Labour Elector
1269 Olney v. Gerridge
1274 Dovaston v. Watson
1303 Virgoe, Middleton & Co. v. Peapes and another
1304 Allston & Co. v. Same
1305 Doubleday, Son & Co. v. Same
1306 J. H. Buckingham, Son & Co. v. Same
1321 Pickup v. Talbot
1398 Heitzmann v. Gowenlock
1408 Maddock v. Simpson & Co.
1462 Guinness & Co. v. Langham
1494 Gipps v. London and North-Western Railway Co.
1586 Levy & Co. v. Taylor
1642 Jones v. Dunkley
1662 Perdrey v. Sparks
1666 Lockhart v. Bunn
1669 Hutchings v. Pullen
1672 Loveland v. Hagger
1674 Pape v. White Lead Co. (Lim.)
1675 Rees v. Vallentine, Robinson & Co.
1686 De la Fosse v. Edwardes
1690 Freedman v. Percival
1691 Willson v. Cochrane
1702 Remandas v. O'Connor
1705 Warwick v. Goulding
1707 Jackman v. Baxter
1714 Hurley v. London General Omnibus Co.
1728 Carter v. Gems
1730 Stuart v. Morley
1750 White v. Law
1761 Schouten v. Hill and others
1763 Nash v. Brown
1764 Simpkins v. Same
1774 Buchler & Co. v. London and North-Western Railway Co.
1779 Price v. Crouch and another
1780 Same v. Ackermann
1788 Dowden v. White
1790 Bartlett v. Hasdicke
1791 Bonnamaur Aime v. Same
1792 Smith v. Atlas Mineral Water Co.
1799 Dimbleby v. Hoby & Co. (Lim.)
1800 Naylor v. Stanley and others
1802 Hounsell v. Land and Water (Lim.)
1803 Patten v. Jones
1804 Escott v. Southern
1811 Campbell v. Dagnall
1824 Ellis v. Grant
1825 Green v. Same
1829 Cannon v. Neighbour
1850 Studd v. Victoria Steamboat Association (Lim.)
1862 Harris v. North London Tramways Co.
1867 Abadie v. Baudouin
1871 Wright v. Barwell
1873 Hill Bros v. Wilson & Co.
1876 Biggs v. Healey
1880 Horsfall v. Howard
1883 Rayner v. Richards & Co.
1894 Reynolds v. Graham

## ACTIONS WITHOUT JURIES.

Actions beyond No. 1252 in this List will not be taken before Monday, April 13.

The following Numbers will be in the List for Trial on Tuesday, April 7: Nos. 1121 to 1261, both inclusive.

1121 Morris v. Slade & Mank
1190 English, South American and Spanish Publishing Co. v. Johnson
1196 Danube Collieries, &c. Co. v. Ward
1208 Lewis v. Gastrell
1213 Airey v. Fiddimore
1219 Clee v. Cobb
1225 Payne-Gallwey v. Fraser and Fraser
1229 Miller v. Vidall and another
1236 Woodhouse Park, &c. (Lim.) v. Hall
1245 Jones v. King
1254 Champion & Brotherhood
1257 Rose v. Forster
1260 Emden v. Marsden
1261 Rodham v. Dodds
1268 Baumwoll Manufactur Von Carl Scheibler v. R. L. Gilchrest & Co. and another
1268 Wilson v. Christie
1273 Clulow v. Housley
1277 Croner v. Ward and others
1278 Green and another v. Martinne
1282 Arnold v. Heffer
1292 Brown v. Clifton
1299 B. Verity & Sons v. Terry
863 Woolford's Trustee v. Levy & Co.
886 Red Reef Gold Mining Co. (Lim.) v. North
960 M'Nay v. Alt
963 Ward v. Jones and another
988 Simpson and others v. Cleveland Extension Railway
1019 Tubbs v. Tubbs
1307 Moir v. Lyon
1312 Holdstock v. Richardson
1314 Brown v. Wright and another
1316 Paddington Land and Building Society v. Aaron
1317 Johnston v. Bellairs and another
1318 Arthy v. Harrison
1322 Oswalt & Co. v. Harris
1331 National Guardian Assurance Co. (Lim.) v. Lee
1335 Quick v. Armstrong
1336 Brimall v. Bennett
1340 Freeman v. Freeman
682 Conservators of River Thames v. Leonard
742 Forbes v. Brunetti and another
818 Braithwaite v. Middleton SS. Wharf Co.
1018 Levy & Sons v. Bensuade
1347 Strong v. Kirby
368 Kleman v. Hope
382 Lucas v. Regent's Canal, &c. Co. (Lim.)
634 Fenton v. Thompson and others
734 North Staffordshire Pneumatic Pulverizer Co. v. Burton
835 Young v. American Telephone Co.
1099 Bicknell v. Horsfall
1126 Whitmore v. Meade
1215 Spencer v. Tucker
70A Snow v. Colonna
352 Crowther v. Turner
681 Orengo v. Levy
777 John v. Vickers
1237 Tarn v. Cloete and others
1350 Gwyn v. Fletcher
613 Watkins v. Smith
1206 James v. Beeper
1252 Edwards & Co. v. Ellery & Lund
1353 Hoare and another v. Oronzo
1354 Lepard & Smiths v. Walker
1356 Samworth v. Powell
1366 Saffery and another v. Newman
1360 Hedger v. Payne and another
1364 National Standard, &c. Investment Co. v. Williams
3 Boyd v. Farrar
21 Tilt Cove Copper Co. (Lim.) v. Comptoir d'Escompte and others
41 Edwards v. Bumpus
72 Head v. Bumpus
138 Rudd v. Owen
321 Groth v. British Tanning Co. (Lim.)
388A Benson and another v. Dames
666 Watkins v. Chaney
711 Belinson v. London and Provincial Marine Insurance Co.
789 Elise & Co. v. Le Crespigny
912 Lafone v. Ronaldson & Co.
945 Kilkivain Mines (Lim.) v. Appleby
950 Fraser v. Genoa Waterworks Co. (Lim.)
1031 Bishop of Bangor and others v. Parry
1102 Jenner v. National Provincial Bank of England (Lim.)
1140 Delta Metal Co. (Lim.) v. Maxim-Nordenfeldt Gun, &c. Co. (Lim.)
1166 Dore v. Fletcher
1176 Mitchell v. De Veysey and another
1180 Murphy v. London, Edinburgh and Glasgow Assurance Co. (Lim.)
1200 Peat v. Webster
1205 Lambourn Valley Railway Co. v. Billups
1216 Tripp v. Hall
1250 White & Sons (Lim.) and others v. Batey & Co. (Lim.)
1300 Native Dog Creek, &c. Co. v. Earle
1319 Jenner v. Thomas and another
1365 Schaap, Hilburn & Co. v. Jackson
1378 St. George's Hospital v. Stein
1379 Lee v. Barry Dock and Railways Co.
1380 Lyle v. Annesley
1385 Van Knoop v. Moss and others
1394 Keynes v. Offord
1399 Guiterman & Co. v. Dreyfus
1401 Woolford & Sons and another v. Weatherall
1403 Radford v. Crane
1404 New Westminster Brewery Co. v. Rothschild
1407 Daniel v. Walker
1409 Wilson & Whitworth v. Ilcs
1412 Société Générale de Paris v. Cheque Bank (Lim.)
1414 Levy v. Jessop
1415 Real and Personal Advance Co. v. Westminster Advance, &c. Bank
1418 Beilby v. Frejus Oil Co. (Lim.)
1421 Jones v. Whitlock
1429 Davis v. Ellenborough
1431 Steamship Insurance Syndicate v. Mortgage Insurance Corporation
1439 Lazarus v. Dixon
1440 Lawton v. Tucker
1445 Carlin v. Corsellis
1446 Harper v. Henderson
1449 Plumbly v. Schotborgh
1452 Oxley v. Howard
1453 Budd v. Barnes
1455 Walmisley v. Helby
1457 Deli Bedagei Tobacco Plantations (Lim.) v. Martin
1458 Wills v. Freeman
1466 Hubbard v. Staunton
1468 Allbutt v. Detroit Breweries (Lim.)
1470 Sanderson v. Condie
1471 Scott v. Same
1472 Aplin and others v. Herzberg and another
1474 Thorne v. Miller
1475 Bolling and Lowe v. Birdseye & Co.
1476 Levy v. Roberts
1477 Bone v. Bird
1480 Pocock and another v. Thorn
1483 Goslin v. Agar
1486 Middleton v. Baines & Co.
1498 General Stock Exchange &c. Co. v. Teale
1503 Peek v. Cock
1504 Middlesex Joint Stock Banking, &c. Co. (Lim.) v. Berry
1505 Hamerton v. Bex
1509 Abud v. Mansfield
1511 Buckley v. Brodie
1515 Waterloo House and Swan and Edgar (Lim.) v. Baker
1517 Seaton v. Maxwell
1523 Wightman & Co. v. Leuville
1524 Cookson v. Barker
1529 Kitchin v. Beckwith
1531 Robinson v. Dennis
1537 Harvey v. Sherwood
1540 Osborn v. Griffith
1541 Thompson v. General Stock Exchange, &c. Co. (Lim.)
1544 Oppenheim v. Neild
1553 Hargan v. Kirby and others
1556 Hill v. Adams
1562 Clayton v. Crisp
1563 Grose v. Wadge
1564 Cole v. Howell
1565 Ackland v. Ackland
1571 Lilley v. Smith
1578 Norton v. Burr and another
1583 Lamplough v. Harries
1589 Harrod v. Elliott and others
1593 Hogarth v. Nanson
1594 Jackson v. Crowther
1595 Lavington v. Richardson
1598 Bertrand v. Escarl
1600 Hirst v. Page

1602 Radford & Co. v. Brown, Cork & Co.
1605 Castle v. Payer and others
1606 Wightman v. Barrow
1613 Quartermaine v. Blumson
1614 Curtis v. Hoare
1616 Beasley v. Bull
1619 Boecher & Co. and others v. Henley's Telegraph Works (Lim)

SUMMARY.

Actions entered for Trial to April 7, 1891.

| | |
|---|---|
| Middlesex—Special Jury | 250 |
| Common Jury | 205 |
| London—Special Jury | 68 |
| Common Jury | 51 |
| Without Juries | 628 |
| Total | 1,203 |

NOTE.—This Summary shows the total number of actions for trial up to and inclusive of the above date, and includes the actions contained in the foregoing printed Lists.

## LONDON.

### SPECIAL JURY ACTIONS.

Actions beyond No. 2150 in this List will not be taken before Monday, April 13.

The following numbers will be in the List for Trial on Tuesday April 7: Nos. 12 to 674, both inclusive.

12 Leadville Mines v. Green
178 Harris-James v. New Terras Tin Mining Co.
294 R. R. Dobell & Co. v. Watts, Ward & Co.
416 Low v. Low
674 Hornoastle v. Smith
803 Lamb v. London and India Docks Joint Committee
578 Glyn, Mills, Currie & Co. v. Seaward Bros.
1028 Cole & Co. v. Same
911 M'Fariane v. Lonargan
1081 Dobson v. Cottam
1283 Mora, Ona & Co. v. Watts, Ward & Co.
1456 Gjersoe v. Southampton Naval Works (Lim.)
1569 Davis v. Zambesi Gaza Concessions Co. (Lim.)
1609 Kirschbaum and another v. Decker & Co.
1618 Reich & Co. v. Gardiner
1703 Dangar, Grant & Co. v. Gospel Oak Iron, &c. Co.
1777 Aktiebolaget - Bodtraakfors v. Smith & Co.
1789 Johns v. Fuller and another
1806 Fuller v. Cooper and another
1813A Jeffrey v. Crawford and others
1828 Sanders v. New Westminster Brewery Co.
1831 Horsnell v. Great Eastern Railway Co.
1842 Nelson, Donkin & Co. v. Lomer & Co.
1864 Adamson v. 'Bayonne' SS. Co. (Lim.)
1900 Neilans v. Cuthbertson
1907 Wilks & Co. v. O'Hagan
1909 Bewick and others v. Sllati River, &c. Co. (Lim.) and others
1919 Marten v. Munich Assurance Co. (Lim.)
1984 Honischer & Co. v. Cresswell & Co.
1989 C. Churchill & Co. (Lim.) and others v. National SS. Co. (Lim.)
1992 Evelyn v. Hurlbert
2007 Naylor v. Daws and others
2009 Clark v. Alderson
2015 Stanton v. Freebody
2025 Clubb v. London, Chatham, and Dover Railway Co.
2037 Urling v. Nordaas
2055 Scott v. Union Discount Co.
2069 Marchioness of Huntly v. Bedford Hotel Co. (Lim.)
2088 Central Bank v. Hawkins and another
2097 Foster v. Grosvenor & Co.
2117 Smith & Wife v. Bailey and another
2138 Ames v. Great Western Railway Co.
2474 Bannister v. Same
2150 Flynn v. Worthington & Co.
2155 Were v. Darby & Co. (Lim.)
2158 Farmer v. Poulter & Sons (Lim.)
2175 Dinn v. O'Malley and the Star
2192 Hogarth v. Staley, Radford & Co.
2212 Pinto v. Avies
2224 J. & C. Harrison v. Dreyfus & Co.
2228 Redfern, Alexander & Co. v. McKeone & Co.
2240 Vickers v. Gardiner
2282 Standard Bank of South Africa v. Marcus
2282A Calvert v. Inglis
2289 Wilson, Sons & Co. (Lim.) v. 'Lanarkshire' Ship Co. (Lim.)
2299 Marx & Co. v. Moxon, Alger & Co.
2322 Marten v. Munich Assurance Co. (Lim.)
2338 Brown, Janson & Co. v. Ward, Hawkins and others
2339 Blackater v. Paul
2352 Lilly, Wilson & Co. v. Mark, Whitwell & Sons
2389 Crown Accident Insurance Co. (Lim.) v. Scottish Accident Insurance Co. (Lim.) and others
2403 Sir W. Gordon Cumming, Bart. v. Wilson and others
2449 Bourke, Sandys & Co. v. Vivian
2452 Steinfeld v. Morris
2455 Maclay and another v. Hine Brothers
2467 Miln v. Easton
2488 Bolitho and others v. Guy and others
2506 Austin v. Alexander, Maw & Co.

## LAW STUDENTS SOCIETIES.

DEBATING. — The ordinary weekly meeting of this society was held at the Law Institution, Chancery Lane, on Tuesday, March 24, Mr. Wheeler in the chair. The subject for discussion: 'That all *bonâ fide* communications made by trade protection societies in answer to inquiries are privileged' was opened by Mr. Rupert Blagden; Mr. E. H. Thirlby and Mr. John J. Seager opposed.—The debate having been declared open, the following gentlemen spoke: In the affirmative, Messrs. Crawford, Aston, Meadmore, Windsor, Watkins, and Reed; in the negative, Messrs. Parkes, W. C. Arnold, F. E. Arnold, Windsor, and Harcourt.—Mr. Blagden replied.—On the motion being put to the meeting, it was carried by a majority of seven.—The subject for discussion at the next meeting of the society on Tuesday, April 7, is: 'That it is inadvisable to interfere with the present relationship between owners and occupiers of house property as to the incidence of local taxation.'

LIVERPOOL.—The next meeting of this association will be held on Monday, April 6. The chair will be taken at 5.30 P.M. by Sydney Style, Esq., Solicitor. Subject for discussion: 'Does the present system of appointing trustees require any alterations such as those proposed by the Public Trustee Bill and the Trust Companies Bill?' Mr. E. Mather in the affirmative; Mr. J. Hood in the negative.

ILLEGAL ARREST.—At the County Court at Swansea, on March 25, Judge Williams gave his decision in the case of *Rigby & Bowden* v. *Hindle*, plaintiffs, having sought to recover damages for being illegally arrested whilst serving on the ship Starlight at Savannah. His Honour found that Captain Hindle induced the justices of the peace to sign a warrant upon which the men were imprisoned for larceny, but were not afterwards brought before the judicial tribunal, but were taken on board the ship in irons. Believing Bowden's description of what he had been subjected to, being compelled to sleep in a place swarming with vermin, he assessed the damages at 20*l.* and costs.

THE CORONER AS INTERPRETER.—Without prejudice to the capacity for office displayed by lawyers in other spheres of usefulness, we have always maintained that the functions of the coroner can best be exercised by a medical man. The subject-matter comes naturally within his proper sphere of thought. Provided, in addition, as he must be, with an appropriate knowledge of law, his position is really that of an expert, and his judicial opinion of necessity reliable in a corresponding degree. Moreover, his very familiarity with medical technicalities is in his favour. A somewhat amusing illustration of this latter point occurred a few days ago at an inquest in Chelsea, where the descriptive terms employed by a medical witness were as Greek to a jury of workmen until they were properly translated into good coroner's English. We do not for a moment pretend that it is expedient or necessary for medical men in giving evidence to confine themselves to a technical nomenclature. In this matter, if in anything, simplicity is the essence of good expression. It is obvious, however, that whatever care is taken to observe this desirable clearness of speech, the need of explanation must arise from time to time, and with it the medical coroner's opportunity.—*Lancet.*

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means: it is first-rate, and has been of the utmost service to me.' Post free, 4*d*. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## CALENDAR OF THE COUNTY COURTS.

### From April 6 to April 11.

| No. of Circuit | His Honour | April 6 | April 7 | April 8 | April 9 | April 10 | April 11 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Birkenhead | — | Warrington | Leigh | — |
| 8 | Judge Heywood | — | Manchester | Manchester | Manchester | Manchester | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | — | — | — | Middlesbrough | Stockton-on-Tees | — |
| 19 | Judge Barber | Derby | Derby | Belper | Chesterfield | Chesterfield | — |
| 28 | Judge Jordan | Stoke | Newcastle | Lichfield | Uttoxeter | Tunstall | — |
| 47 | Judge Powell | — | Lambeth | Woolwich | Lambeth | Greenwich | — |
| 55 | Judge Machonochie | Shaftesbury | Wincanton | Crewkerne | Yeovil | Salisbury | — |
| 58 | Judge Edge | — | Exeter | Exeter | Exeter | Newton Abbot | — |

## NOTICES FOR THE WEEK.

### Rota of Registrars.

Monday, April 6.—Court of Appeal No. 2: Mr. Godfrey. Mr. Justice Chitty: Mr. Farmer. Mr. Justice North: Mr. Lavie. Mr. Justice Stirling: Mr. Pugh. Mr. Justice Kekewich: Mr. Pemberton. Mr. Justice Romer: Mr. Clowes.

Tuesday, April 7.—Court of Appeal No. 2: Mr. Leach. Mr. Justice Chitty: Mr. Bolt. Mr. Justice North: Mr. Carrington. Mr. Justice Stirling: Mr. Beal. Mr. Justice Kekewich: Mr. Ward. Mr. Justice Romer: Mr. Jackson.

Wednesday, April 8.—Court of Appeal No. 2: Mr. Godfrey. Mr. Justice Chitty: Mr. Farmer. Mr. Justice North: Mr. Lavie. Mr. Justice Stirling: Mr. Pugh. Mr. Justice Kekewich: Mr. Pemberton. Mr. Justice Romer: Mr. Clowes.

Thursday, April 9.—Court of Appeal No. 2: Mr. Leach. Mr. Justice Chitty: Mr. Bolt. Mr. Justice North: Mr. Carrington. Mr. Justice Stirling: Mr. Beal. Mr. Justice Kekewich: Mr. Ward. Mr. Justice Romer: Mr. Jackson.

Friday, April 10.—Court of Appeal No. 2: Mr. Godfrey. Mr. Justice Chitty: Mr. Farmer. Mr. Justice North: Mr. Lavie. Mr. Justice Stirling: Mr. Pugh. Mr. Justice Kekewich: Mr. Pemberton. Mr. Justice Romer: Mr. Clowes.

Saturday, April 11.—Court of Appeal No. 2: Mr. Leach. Mr. Justice Chitty: Mr. Bolt. Mr. Justice North: Mr. Carrington. Mr. Justice Stirling: Mr. Beal. Mr. Justice Kekewich: Mr. Ward. Mr. Justice Romer: Mr. Jackson.

## OBITUARY.

The Earl of Milltown died at the Imperial Hotel Torquay, on March 24. The deceased, who was the seventh Earl of Milltown, was the third son of the fourth earl, and was born in 1837. He graduated B.A. in the University of Dublin in 1858, was called to the Irish bar in 1860, and last year succeeded his brother in the title. He has twice been Chamberlain to the Lord Lieutenant of Ireland.

Mr. James Winkworth Winstanley, barrister-at-law, who died on Sunday, March 29, at his residence, Hove, Brighton, aged seventy-five, was registrar of the Chancery Court for the County Palatine of Lancaster for about thirty years. Mr. Winstanley was called to the bar on June 11, 1839, and retired from the registrarship about ten years ago. A son of Mr. Winstanley is registrar for the Manchester District of the Chancery Court.

Mr. Thomas Richard Tucker Hodgson, clerk of the peace for Birmingham, died on March 31, at his residence, Hunton Hill, Gravelly Hill. The deceased gentleman, who was upwards of eighty years of age, had been in delicate health for some months past. He was admitted a solicitor in 1835, and in 1847 was elected to serve on the Birmingham Town Council, of which body he was for many years an active member, being appointed an alderman, and, in 1855, mayor. He was one of the first mayors of the borough to give municipal entertainments. He was elected deputy clerk of the peace in 1864, and clerk of the peace in 1868.

Mr. Edward Waugh, solicitor, Cockermouth, who represented that borough from 1880 until it was disfranchised in 1885, died somewhat suddenly at his residence, The Burroughs, Papcastle. He was a justice of the peace for Cumberland, an alderman of the county council, and from time to time held many offices of trust and responsibility in the county. He was in his seventy-fifth year.

## HONOURS AND APPOINTMENTS.

The Lord Chancellor has appointed Mr. G. Harris Lea, of the Middle Temple and Lincoln's Inn, to be the Judge of the Suffolk County Court (Circuit No. 33), in succession to the late Sir Francis Roxburgh, Q.C.

The Queen has approved of the appointment by the Home Secretary of Mr. Alexander Henry, of the Northern Circuit, to the Recordership of Carlisle, in succession to the late Mr. Leofric Temple, Q.C. Mr. Henry was called to the bar at the Middle Temple in 1866.

Mr. John Moodie (of the firm of Moodie & Mills), of 30 Basinghall Street, E.C., has been appointed a Commissioner for Oaths. Mr. Moodie was admitted in 1881.

Mr. Henry Warren Jones, M.A. (of the firm of Nicol, Son & Jones), of 39 Lime Street, E.C., has been appointed a Commissioner for Oaths. Mr. Jones was admitted in 1873.

Mr. Frank William Brazil (of the firm of Sandom Kersey & Knight), of 52 Gracechurch Street, E.C., 12 High Street, Deptford, and Kelso Cottage, Morden Hill Lewisham, has been appointed a Commissioner for Oaths' Mr. Brazil was admitted in 1884.

Mr. Arnold Austin (of the firm of Austin & Austin), of 8 Union Court, Old Broad Street, E.C., has been appointed a Commissioner for Oaths. Mr. Austin was admitted in 1877.

Mr. Arthur James Isard, of 14 Queen Street, Cheapside, E.C., has been appointed a Commissioner for Oaths. Mr. Isard was admitted in 1885.

Mr. Walter Edmund Brook, of 3 Clement's Lane, E.C., has been appointed a Commissioner for Oaths. Mr. Brook was admitted in 1885.

Mr. William Lovell, M.A. (of the firm of Lovell, Son & Pitfield), of 3 Gray's Inn Square, has been appointed a Commissioner for Oaths. Mr. Lovell was admitted in 1884.

Mr. Charles William Inman (of the firm of Wontner & Sons), of St. Paul's Chambers, Ludgate Hill, E.C., has been appointed a Commissioner for Oaths. Mr. Inman was admitted in 1879.

Mr. Arthur Herbert Onslow, of Cheltenham, has been appointed a Commissioner for Oaths. Mr. Onslow was admitted in 1884.

Mr. Arthur George Symonds (of the firm of Symonds & Son), of Dorchester, has been appointed a Commissioner for Oaths. Mr. Symonds was admitted in 1883.

Mr. Alfred Henry Thorn, of Ironbridge, Salop, has been appointed a Commissioner for Oaths. Mr. Thorn was admitted in 1888.

Mr. Frederick Williams Bayley, of Newcastle-under-Lyme, has been appointed a Commissioner for Oaths. Mr. Bayley was admitted in 1885.

Mr. William Dawber Lord, of Hull, has been appointed a Commissioner for Oaths. Mr. Lord was admitted in 1884.

Mr. Arthur William Barnes (of the firm of Barnes & Son), of Lichfield, has been appointed a Commissioner for Oaths. Mr. Barnes was admitted in 1884.

Mr. John Jones Morris (of the firm of Brease & Co.), of Blaenau Festiniog, has been appointed a Commissioner for Oaths. Mr. Morris was admitted in 1880.

Mr. C. E. Bonner, B.A., of Spalding, has been appointed a Commissioner for Oaths. Mr. Bonner was admitted in 1885, and is the registrar of the Spalding County Court.

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An Apology from a Judge.—At the conclusion of the Liverpool Assizes yesterday Mr. Justice Day said he had to withdraw and apologise for some remarks he had made in his charge to the grand jury condemning the arrangement of the cells in St. George's Hall beneath the Courts in which prisoners were detained pending trial. He had since making the remarks personally visited the cells at the instance of the corporation, and found no ground for complaint, and his observations had been founded on misapprehension.

The Law of Pawn.—An interesting legal question arose at Salford on March 25. Some months ago William Edwards pledged a watch worth 7*s.* with a pawnbroker named Riley. At the same time a watch worth 5*l.* was pawned by another person, and the shop assistant, while giving the proper tickets to the contracting parties, by a misadventure placed the corresponding check tickets on the wrong watches. Consequently, when Edwards went to redeem his 7*s.* timepiece, the shopman handed him the one worth 5*l.* Riley now charged him with stealing the watch, and he was committed for trial. A conviction in a precisely similar case was appealed against some years ago, when fourteen judges were equally divided in opinion as to whether the retention of the watch amounted to a larceny.

The Hearing of Probate and Matrimonial Causes.—The following are the arrangements made for hearing probate and matrimonial causes during the ensuing Easter sittings—viz. causes for hearing before the Court itself will be taken on Monday, April 13, to Saturday, April 18; Monday, April 27, to Saturday, May 2; Monday, May 11, to Friday, May 15 inclusive, in the following order: (1) Undefended matrimonial causes; (2) defended matrimonial causes; and (3) probate causes. Matrimonial and probate causes will also be taken between April 8, 11, 20, and 25, and May 4 and 9, when Admiralty cases are not ready, of which notice will be inserted in the daily lists from time to time. Jury causes will not be taken during the Easter sittings. Summonses will be heard at chambers at 10.15, and motions will be heard in Court at 11.30 on Tuesday, April 7, and on every succeeding Tuesday during the sittings.

Presumption of Life.—It is proposed by the Lord Advocate to alter the law of Scotland as regards presumption of life. At present the rule, briefly stated, is that, after the expiration of seven years from a person's being heard of, the Court can grant the income of his property to the person entitled to succeed: and, after fourteen years' absence, the capital of movable estate; and, after twenty years' absence, any heritable estate. The proposal of a Government bill introduced by the Lord Advocate is that, when a person has disappeared and has not been heard of for seven years, the Court, on the petition of persons entitled to property on his death may, after such procedure and inquiry by advertisement or otherwise as it may direct, find that the person has disappeared and find what was the date on which he was last known to be alive, and further find that on the facts proved he died at some specified time within seven years after the date on which he was last known to be alive. Where there is no sufficient evidence that he died at any definite date, the finding will be that he is to be presumed to have died exactly seven years after the date on which he was last known to be alive. Thereupon it will be competent to the petitioner to 'make up titles' and to enter into possession of the property and sell or dispose of it, just as if the missing person had actually died at the date fixed on. However, nothing in the bill is to entitle anyone to any part of the intestate movable succession of a person who has disappeared, if this latter was not a domiciled Scotchman at the date at which he is proved or presumed to have died. Notwithstanding a judgment of the Court, the person who has disappeared, or any person claiming superior title through him, is to be entitled to demand the property or the price thereof, if sold, including the income accrued thereon, 'all so far as not *bonâ fide* spent or consumed,' from the person taking possession in this way or from anyone acquiring it from him by gratuitous title. But after a further space of thirteen years this claim will be barred. The bill is not intended to apply to any claim under a policy of assurance upon the life of a person who has disappeared.

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## BIRTHS.

On March 21, at Cornwall House, Dorchester, the wife of Gustavus Phelps Symes, Solicitor, of a son.

On March 25, at Roseneath, Hoylake, Cheshire, the wife of T. F. Squarey, Barrister-at-Law, of a son.

On March 23, the wife of Thomas H. E. Foord, of Forest Hill, Kent, and Philpot Lane, E.C., Solicitor, of a son.

On March 29, at Polmear, Camelford, the wife of H. H. M. Lawrence, Solicitor, of a son.

## MARRIAGES.

On March 28, at Healington, York, John Arthur Nicholson, of York and Osbaldwick, Solicitor, to Mary Gertrude, younger daughter of Francis Carr, of Healington.

On March 31, at the Parish Church, Horsham, Sussex, Alexander Claude Forster Boulton, of Osgoode Hall, Toronto, Barrister-at-Law, to Florence Marian, only child of Henry Harms, of Hurstleigh, Horsham.

On March 31, at the Parish Church, Knighton, Leicestershire, James Brush, second son of the late Martin Boshell, of Bogotá, Colombia, to Mabel (May), second daughter of Thomas Watts, Solicitor, Leicester.

On March 31, at the Parish Church, Sonning, Berks, Arthur Wilberforce Bird, Solicitor, Bristol, youngest son of Edward Wheler Bird, of Tyndall's Park, Clifton, Bristol, late Madras Civil Service, to Alice Laura, only surviving daughter of George Shackel, of Erleigh Court, Reading.

## DEATHS.

On March 25, Jemima Lock, widow of the late James Muirhead, Esq., Advocate, and Professor of Civil Law at the University of Edinburgh, only surviving daughter of the late Georga Eastlake, Esq., of Plymouth, Admiralty Law Agent and Deputy Judge-Advocate of the Fleet, aged 62.

On March 25, at Hastings, Matilda, widow of the late J. D. Marsden, Esq., Solicitor, formerly of Friday Street, Cheapside, and Edmonton.

On March 28, at 2 Hyde Park Mansions, Elizabeth Ann, wife of J. H. Nelson, Esq., Barrister-at-Law (late M.C.S.), aged 51.

On March 29, at his residence, Hove, Brighton, James Winckworth Winstanley, late of Riverside, Chester, Barrister-at-Law, J.P., aged 75 years.

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# The Law Journal.

*SATURDAY, APRIL* 11, 1891.


## 'OBITER DICTA.'

Sir James Stephen's dignified farewell to the judges and the bar forms a pathetic close to his brilliant judicial career. We deeply regret that failing health has prematurely brought about his retirement and inflicted on the country a loss of judicial strength which can hardly be repaired. We cannot but deplore also the unnecessary pain which must have been caused to a sensitive and generous nature by much that has appeared in the press during the past few weeks, and we rejoice in being able to think that no word of ours can have contributed to that suffering.

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We print elsewhere an article by the learned editor of the 'Annual Practice' upon the question of the necessity for the appointment of an additional judge. We quite agree with our contributor that a readjustment of the duties of the judicial staff upon the principle of interchangeability might, at any rate, temporarily meet the difficulty, and we think the experiment might well be tried.

---

On Tuesday, the opening-day of the Easter Sittings, there were only ten judges of the Queen's Bench Division sitting in Court. Mr. Justice Wright was at chambers. The three absentees were Mr. Justice Denman, Mr. Justice Wills, and Mr. Justice Charles. On Wednesday the two last-named judges were sitting, but Mr. Justice Lawrance was absent, and the Lord Chief Justice sat in Appeal Court I., so that there were again only ten judges available for the Courts of the Queen's Bench Division.

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Rumour is, of course, busy with some favoured names in connection with the vacancy upon the bench of the Queen's Bench Division caused by the retirement of Mr. Justice Stephen. It is thought by some that it will be filled by the appointment of Mr. Bosanquet, Q.C., of the Oxford Circuit. There can be but little doubt, however, that Mr. Henn Collins, Q.C., is considered by the bar generally to possess greater qualifications for the judicial office, but the appointment of Mr. Bosanquet would doubtless be regarded as satisfactory, and his claims would seem to be at least equal to those of Mr. Gully, Q.C., or Mr. Bigham, Q.C., who have also been mentioned in the *Times* in connection with the appointment. Mr. Bosanquet went the Northern Circuit as commissioner of assize during the sitting of the Parnell Commission.

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'Justices sit to grant licenses, not to suppress public-houses,' writes 'Amicus Cauponum' in his pointed comments on *Sharp* v. *Wakefield* and its results (see *ante*, p. 310), which we print elsewhere. 'Will you tell me,' asks he, 'that it would be a legal and regular exercise of a judicial discretion to reduce the number of houses which did the least business?' 'Nux ecce,' as Persius might say, 'facillima frangi!' Most undoubtedly such a reduction, as being founded on a principle applicable to licensing (though, perhaps, an unsound one), would be in conformity with the exercise of a judicial discretion. Amongst refusals to renew which would not be in the exercise of a judicial discretion we may mention refusals grounded on the redness of the hair of the applicant, or on his persistent neglect to take off his hat to the parson of the parish, or on his being a member of an association for the support of political principles distasteful to the majority of the licensing justices. We incline to think, however, that tied houses might be extinguished in the exercise of a judicial discretion, and also, though with great doubt, that all female licensees might be judicially swept away, for the Legislature seems to have evinced a clear

preference for males in allowing (see section 51 of the Licensing Act, 1872) 'the defendant *and his wife* to give evidence in all cases of summary proceedings under that Act.'

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MR. CHAMIER has kindly favoured us with a correction, which we print elsewhere, of an *obiter dictum* last week (*ante*, p. 222) as to the date of the commencement of the Tithe Act. In addition to 1 & 2 Vict. c. 69, s. 11, the amending Act referred to by Mr. Chamier, our readers may refer to 2 & 3 Vict. c. 62, s. 10; 3 & 4 Vict. c. 15, s. 13; and 5 & 6 Vict. c. 54, s. 3 (which enactments, however, do not fix any other dates for payment of tithe than January 1 and July 1 or April 1 and October 1), and to the very special 3 & 4 Vict. c. 15, s. 1, which appears to admit of half-yearly days of payment other than these. It may be added that, in the many cases in which the tithe is only *collected* annually, it is *payable* within the meaning of the Act on the half-yearly dates originally fixed under the Tithe Commutation Acts.

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THE Tithe Act, 1891, now (see *ante*, p. 222) in operation, contains one provision of pressing importance to landlords and their agents. We refer to subsection 6 of section 2, the effect of which seems to be that, in the majority of cases where tithe is payable, that is, in all cases where the contract of tenancy binds the tenant to pay the tithe, a certain 'notice of such liability' will have, for the future safety of the landlord, to be served *by every landlord on every tithe-owner* to whom tithe is payable in respect of the land demised. The subsection, omitting immaterial words, is as follows: 'Where the occupier . . . is liable under any contract made before the passing of this Act to pay the tithe rent-charge, and is consequently liable' [see section 1, subsection 2] 'to pay the amount thereof to the owner . . . the owner *shall serve notice of such liability on the owner of the tithe rent-charge* . . . Any owner of the lands who fails to serve such notice as aforesaid on the owner of the tithe rent-charge shall not be entitled to recover from the occupier any sum which he has paid on account of tithe rent-charge as aforesaid, unless and until he has, after notice to the occupier of his application for the same, obtained from the County Court a certificate that there was good and sufficient cause for the failure to give such notice, and that the occupier has not been prejudiced thereby.' It is not clear within what time the notice ought to be given. It is required, with a view to serving the occupier with notice of application, for a receiving order to be made by the County Court in favour of the tithe-owner. Perhaps the Rules of Procedure to be made under subsection 7 of section 2 'by the Lord Chancellor after consultation with the Rule Committee of County Court Judges' may throw some light on the matter, for it is by one of these forthcoming rules that the manner of service on the occupier in addition to the owner is to be 'prescribed.'

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IT is impossible to exaggerate the importance of the decision in *Barrow* v. *Isaacs*, 60 Law J. Rep. Q. B. 179, which we report this month. The facts were simply these. The plaintiff had sued in ejectment for breach of covenant against underletting without his consent, the breach having arisen out of pure negligence on the part of the defendant's solicitor, the underlessee having been a person to whose respectability and solvency no objection could have been taken, and no damage having been done to the plaintiff by the underletting. Yet Mr. Justice Day, and subsequently the Court of Appeal, declined to grant any relief against the forfeiture. The breach of the covenant against assigning or underletting without leave of the lessor is one of those excepted from the operation of section 14 of the Conveyancing Act, but the Court does not rest its judgment on that ground. 'If the sole objection of granting relief in the present case were the negligence of the defendant's agent,' observed Lord Esher, 'I should, notwithstanding that negligence, come to the conclusion that the Court ought to relieve against this forfeiture, but I do not think that this is a case of mistake. It is a case of mere forgetfulness, and as I think this is not a mistake, then the case does not come under any of the heads under which equity will grant relief.' The judgment of Lord Justice Kay, in which Lord Justice Lopes concurred, proceeds on the ground that the defendant was responsible for the negligence of his solicitor, and the authorities cited in that judgment seem to show conclusively that no 'head of equity' under which relief could be given existed in the case. Mr. Bolton, Mr. Warmington, and Mr. Cobb, who have backed the Conveyancing Act Amendment Bill, by which it is proposed that the exception of breach by assigning or underletting without consent from the operation of the law of relief should be abolished, must very greatly rejoice in *Barrow* v. *Isaacs*, for a greater case of hardship has seldom occurred.

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*Stevens* v. *Marston*, which we also report this month (60 Law J. Rep. Q. B. 192), decides two questions of great difficulty and interest upon the construction of the Bills of Sale Acts. It was there held by the Court of Appeal (1) that a distress on the goods of a publican-tenant for money owing by him to a brewer-landlord in pursuance of a clause of the contract of tenancy was illegal, inasmuch as the clause constituted 'a license to take possession of personal chattels as security for a debt,' within section 4 of the Bills of Sale Act, 1878, and the contract had not been registered as a bill of sale; but (2) that the contract itself was not invalidated by the invalidity of the distress clause. It is noticeable that the case originally came before Mr. Justice Denman, who, somewhat doubting his own decision in *Pullbrook* v. *Ashby*, 56 Law J. Rep. Q. B. 376 (which is now affirmed), had left the parties to move for judgment. On both points we think the judgment unimpeachably correct. On the first point there does not seem to be any authority, except *Pullbrook* v. *Ashby* and *Hughes* v. *Little*, 55 Law J. Rep. Q. B. 503, but it is impossible to see how the fact that the debt is a future one can prevent the clear words of section 4 of the Bills of Sale Act, 1878, from operating. On the second point there is abundance of authority (see *Baker* v. *Hedgecock*, 57 Law J. Rep. Chanc. 889, and the cases there cited), in addition to *In re Burdett*, 57 Law J. Rep. Q. B. 263, and *In re Yates*, 57 Law J. Rep. Chanc. 697, cited in the judgment. If the Court had decided otherwise on this second point the consternation amongst the lessors of tied houses would have been only second to that excited by *Sharp* v. *Wakefield*, for every lessee of a tied house would have had to be asked to assent to a new lease.

We printed last week (*ante*, p. 230) ten formal objections to the Public Trustee Bill formulated by the Sheffield District Incorporated Law Society. Some of them—for instance, the first, that officers of a public department cannot satisfactorily transact trust business which is of a kind 'which essentially requires personal knowledge of the circumstances of each case, and tact and delicacy of management'—have very great force in them; but we cannot agree with others, especially the second, that 'there is no evidence that any legislation whatever is required.' The foundation of certain trust companies and the comparative success which they have already achieved show, we think, beyond a doubt that the present haphazard system is not satisfactory. One reform is urgently needed, as we have frequently pointed out in these columns (and we observe that the committee of the Birmingham Law Society are of the same opinion), and that is, that executors and trustees should here, as in the United States and the colonies, be *primâ facie* entitled to remuneration out of the fund which they administer. It would not, of course, follow that they would in every case accept this remuneration. Where the estate was small and the beneficiaries poor, they would almost as a matter of course decline it. But numerous cases occur where enormous sums are administered for the benefit of comparatively rich persons by comparatively poor ones without any remuneration and with unceasing worry and vexation. Solicitors can obviate such a state of things in the case of wills by insisting on a sufficient legacy to an executor in every case until the law is altered as it ought to be.

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We are glad to see that the *Times* is fully alive to the importance of the *Jackson Case*. It now appears to be absolutely necessary to reconsider our whole law of marriage and the relationship of the sexes. The law of breach of promise, by which a man must perform his promise at the risk of his life; the law of the nubile age, by which marriage between a boy of fourteen and a girl of twelve is valid, and the consent of parents or guardians, though nominally required, may be easily misrepresented to exist—a point which we hope to see dealt with by the Bishop of London's bill to amend the Marriage Act of 1823; the law of liability of a husband for his wife's debts and torts; the law by which a married woman alone of all debtors is exempt from imprisonment, when she can pay her debts but will not; and, lastly, the law of divorce, by which a woman may leave her husband for no reason, good or bad, the day after marriage, with no remedy but a judicial separation—all these and many more points in our law of marriage require immediate and careful consideration and revision.

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In the case of *The Burnley Equitable Co-operative and Industrial Society* (*Lim.*) v. *Casson*, 60 Law J. Rep. M. C. 59, the Court had to consider the question whether a contract of apprenticeship is necessarily a personal one. The defendant had bound himself by deed to the society to serve them as an apprentice for seven years to be instructed in a certain trade. The society was registered under the Industrial and Provident Societies Act, 1876 (39 & 40 Vict. c. 45). The Court were of opinion that the contract of apprenticeship is not always a personal one, and held that it was no objection to the validity of the deed in question that the society was a corporation incapable of giving personal care and instruction to the apprentice. The only authority in favour of the contention that the contract is necessarily a personal one, is a passage in Bacon's Abridgment, tit. 'Master and Servant (E),' but Mr. Justice Hawkins, in giving the considered judgment of the Court, said: 'I can find no case in which anything has been said against the validity of an apprenticeship indenture merely upon the ground that the master to whom the apprentice was bound was a corporation. The corporation in such a case undertake nothing except to give the best instruction they can through their managers.'

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Another of the numerous decisions upon the General Order made under the Solicitors' Remuneration Act, 1881, is reported in the April number of the Law Journal Reports under the title of *The Earl of Aylesford* v. *Earl Poulett*, 60 Law J. Rep. Chanc. 204. In this case the trustees of large family estates, in exercise of a power conferred upon them by a special Act of Parliament, mortgaged the fee-simple for 232,000*l.* for the purpose of paying off the debts of the late tenant-for-life, who had mortgaged his life-interest for 192,000*l.* to the same mortgagees. The mortgagees retained the latter sum out of the advance, paying over the balance of 40,000*l.* only to the trustees. The same solicitors acted for the mortgagees in these transactions; and the questions raised in an action against the trustees of the settlement was, whether the mortgagees' solicitors were entitled to charge the scale fee on the whole amount of the second statutory mortgage, or whether this mortgage was to be treated as a further charge within rule 10, in which case the plaintiff did not object to allow the scale-fee on the 40,000*l.*, though this was more than would have been allowed according to schedule II. The case forms no exception to the difference of judicial opinion which has so frequently occurred in the construction of the orders and rules, Mr. Justice North holding that the mortgage ought to be treated as a further charge merely, while the Court of Appeal reversed his decision. 'The second mortgage,' said Lord Justice Lindley, 'is an entirely new mortgage, made under statutory authority and under the circumstances described in the Act. It is in truth and in substance a new mortgage. It is not a mortgage on the same property, if we understand by the word "property" that over which the mortgagees had their security, for their mortgage was only on the life estate. It is not by the same parties. In my opinion it is neither more nor less than a new mortgage. It is true it is a further charge in the sense that only 40,000*l.* was advanced in money, but that does not make it a further charge within rule 10.' The difference in the remuneration, according to the construction adopted, was that between 455*l.* and 145*l.*; but, apart from the amount involved, the case is of general importance to solicitors with reference to their remuneration when one mortgage is paid off by means of money raised by another mortgage and the same solicitors act for the mortgagees on each occasion.

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There appears to be ample authority for Mr. Justice Chitty's decision in *Lawrence* v. *Edwards* (Notes of Cases, p. 51), that the office of parish clerk is a tem-

poral one. Therefore his lordship was right in holding that he had jurisdiction to grant an injunction restraining the defendant in that case from acting as parish clerk. The authorities, although not very numerous, range from *The Case of a Parish Clerk*, decided in the reign of James I. (reported 13 Co. Rep. 70), down to *Tarrant* v. *Haxby*, 1 Burr. 367. The temporal nature of the office of parish clerk is also shown by *Rex* v. *Warren*, Cowp. 370, and *Rex* v. *Davies*, 9 D. & R. 234, where it was laid down that a *mandamus* would lie to a clergyman to restore a parish clerk who had been deprived of his office without sufficient cause. In *Lawrence* v. *Edwards* the plaintiff had obtained an *interim* injunction restraining the defendant from receiving the emoluments of the office of parish clerk. It appeared that the rector of the parish had been adjudicated bankrupt, and a writ of sequestration was issued. The bishop then appointed and licensed a stipendiary curate to perform the ecclesiastical duties of the parish. During the sequestration the office of parish clerk became vacant, and the curate, considering himself the minister for the time being, within canon 91, appointed the defendant to be parish clerk. Subsequently the bankrupt rector appointed the plaintiff to the same office. On December 5 last Mr. Justice Chitty decided that the appointment of parish clerk had been rightly made by the rector, notwithstanding the sequestration, and granted the *interim* injunction referred to (*vide* LAW JOURNAL, 1890, Notes of Cases, p. 155). The plaintiff then sought to have the defendant restrained from acting as parish clerk, and, as we have before stated, Mr. Justice Chitty gave the plaintiff the relief he asked for.

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MANY thinkers like Mr. Herbert Spencer and Mr. Auberon Herbert (the spoiled child of politics, as, we think, the *Saturday Review* once called him) are disposed to believe that we attempt far too much by legislation, and no doubt the billmongers in Parliament do aim at very minute interference with men's affairs. But we are far behind our American cousins. Bailie Nicol Jarvie, in Scott's novel, thought that suicide ought to be put down. The New York Legislature, it appears, is of opinion that blindness ought to be put down, for it has recently passed an Act for the prevention of that affliction. The Act declares that 'should any midwife or nurse, having charge of any infant in this state, notice that one or both eyes of such infant are inflamed or reddened at any time within two weeks after its birth, it shall be the duty of such midwife or nurse having charge of such infant to report the fact in writing, within six hours, to the health officer or some legally qualified practitioner of medicine of the city, town, or district in which the parents of the infant reside.' Health officers and doctors in the State of New York will certainly have no sinecure, as it is tolerably certain that, either from crying or some cause not necessarily connected with the eyesight, every child's eyes will be more or less 'inflamed or reddened' at some period within two weeks of its birth; and we should imagine that redness or inflammation are by no means the only symptoms of approaching blindness. And if the symptoms of blindness are to be so noted, why not those of every human infirmity—deafness, and dumbness, and even every form of intellectual weakness? It will be interesting to discover whether any good will arise from this specimen of legislative wisdom.

'OUIDA' writes at length to the *Times* to protest against the dramatisation of novels. It should be pointed out that the required alteration of the law of copyright in this respect was recommended by the royal commissioners of 1878 without a single dissentient voice, and that a clause to carry out the alteration suggested by those commissioners is embodied in Lord Monkswell's bill to consolidate and amend the Law of Copyright, which now stands for second reading in the House of Lords. The *Little Lord Fauntleroy Case*, 57 Law J. Rep. Chanc. 689, in which Mrs. Burnett obtained a victory over her dramatiser, was a very peculiar one, whole sentences from the novel having been copied into the drama; and it must not be supposed by novelists, or others interested in the reform of the law of copyright, that because in one of the last and best known of the contested cases a novelist happened to be successful the law does not require alteration.

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## IS AN ADDITIONAL JUDGE NECESSARY?

THE number of witness actions in the list for trial in the Chancery Division at the commencement of Hilary Sittings was 515, those in the present list (for Easter Sittings) number 472, to be disposed of in thirty-four working days.

The president of the Incorporated Law Society describes the existing state of things as 'scandalous,' and a deputation from that body has waited upon the Lord Chancellor for the purpose of pressing upon him the necessity of appointing an additional judge of the Chancery Division, and the *Times* and most of the legal journals support this view of the situation.

Is this the true solution of the difficulty? If it is, the public will not grudge any extra cost necessary for the proper administration of justice. But it is the object of the writer to show that by the application to the whole of the legal machine of a principle which at present is only applicable to part, the existing judicial power can be so utilised as to make any further addition unnecessary.

The work of the Law Courts varies in amount and direction. Sometimes all the Courts are full of business; at other times, and far more frequently, some divisions will be overburdened whilst others are comparatively unoccupied. The congestion is never general, but partial only; never permanent, but temporary.

Now, the probability of this occasional and partial congestion of business seems to have been foreseen and provided, so far, at least, as the judicial and official staff of the Supreme Court is concerned.

For example, the judges of the Court of Appeal may, when their own special work is concluded, at the request of the Lord Chancellor, sit and act as judges of the High Court (Judicature Act, 1873, s. 51). The judges of each division of the High Court may sit and act on behalf of other judges of that Court, and the officers of the central office are to be interchangeable one with another, and are to be liable to perform the duties of each other as occasion may require (Judicial Officers Act, 1879, s. 12).

Again, in dealing with judicial officers outside the scope of the Judicature Acts, the same principle is kept in view, and the Lords of Appeal in Ordinary are, subject to the performance of their duties as to hearing appeals in the House of Lords, to sit and act as mem-

bers of the Judicial Committee (Appellate Jurisdiction Act, 1876, s. 6).

Now, it is submitted that it is the principle of 'interchangeability of duties' which furnishes a key to the present difficulty. You have excess of power in one part of the machine, deficiency of it in another. This principle should enable you to transmit the power from the place in which it is in excess to the place where it is wanted. To see how this works out, it will be necessary to examine a part of the legal machine.

The existing Court of Review may be divided into two tribunals—the final and the intermediate Court of Appeal. The final Court consists of two branches, the House of Lords and the Judicial Committee of the Privy Council; the intermediate Court, of the Court of Appeal established by the Judicature Acts.

The constitution of the branches of the final Appellate Court is as follows: For the hearing and determination of appeals in the House of Lords there must be present not less than three 'Lords of Appeal' chosen from the following persons: the Lord Chancellor, the Lords of Appeal in Ordinary, and peers of Parliament holding or who have held high judicial office.

The members of the Judicial Committee of the Privy Council are very numerous, consisting of the persons qualified to sit therein by the 3 & 4 Wm. IV. c. 41, and amending Acts. The Court is generally composed of from three to five of the following judges: the Lord Chancellor, the ex-Chancellors, Lords of Appeal, Lords of Appeal in Ordinary, and other persons who hold or have held 'high judicial office.'

Including the Chancellor and the ex-Chancellors, it may be said that the judicial staff of the final Court of Appeal consists of about thirteen persons, whose united salaries or pensions amount to upwards of 50,000*l.* per annum.

The intermediate Court of Appeal consists of the Master of the Rolls and five ordinary judges (Lords Justices of Appeal). The Lord Chancellor and the Presidents of Divisions are *ex-officio* judges. But the ordinary working staff of this Court consists of six judges, whose united salary is 31,000*l.* per annum.

It appears, therefore, that the judges of the final Court of Appeal (House of Lords and Privy Council) are double the number of those in the intermediate Court of Appeal, and that the cost of the judicial staff in the former Court is considerably larger than that of the latter.

Then as to the amount of business disposed of in these Courts respectively. During the year 1890 the House of Lords sat 113 days, the Judicial Committee ninety-six, making the total of the sittings of the final Court 209. The intermediate Court of Appeal sat, in each of its branches, 197 days, making a total of 394.

A rough but sufficient standard of comparison is also obtained by comparing the number of cases reported in the final Court of Appeal with those reported in the intermediate Court. Such a comparison shows that during the year 1890 the number of cases reported in 15 App. Cas. amounts to forty-two, whilst those reported in the intermediate Court of Appeal number 158; and it must be remembered that a larger proportion of the cases heard in the final Court is reported than of those which are heard in the intermediate Court.

Now between the final Court of Appeal and the intermediate Court there is no provision for 'interchangeability of duties.' The Lord Chancellor, it is true, is president of the Court of Appeal, and occasionally, when his other duties will allow of his doing so, and occasion requires, sits in that Court. But between the staff of the final Court of Appeal and that of the intermediate Court of Appeal there is no power of rendering mutual assistance.

Therefore, when the comparatively small amount of work which goes before the House of Lords and the Judicial Committee is disposed of, or when there is an occasional 'break' in that work, the Lords of Appeal and the Lords of Appeal in Ordinary are left, so far as judicial work is concerned, in a state of enforced idleness.

It is obvious that if, when their own special duties were discharged or suspended, these distinguished judges were enabled to sit with or for the Lords Justices of Appeal, or with or for the Justices of the High Court, in the same way as the Lords Justices may by the provision of the Judicature Act now do, a very large amount of judicial power would become available. During Hilary Term, 1890, which consisted of sixty-four working days, the House of Lords sat twenty-seven days and the Privy Council thirty-six, making in all sixty-three days, about seven judges being employed during that time. During the same period the Court of Appeal (six judges) sat upwards of 180 days. If the four Lords of Appeal in Ordinary, one of the ex-Chancellors, and the members of the Judicial Committee could have availed themselves of this principle during that term, it is certain that there would be no arrears in the Chancery or any other Division.

A very slight alteration would meet the difficulty. A short Act of Parliament, following the principle of section 51 of the Judicature Act, 1873, and enabling all persons holding or having held 'high judicial office' as defined by the Appellate Jurisdiction Acts, 1876 and 1887, at the request of the Lord Chancellor to sit and act as judges of the Supreme Court, would be all that would be required.

This would be a temporary remedy sufficient to meet the present difficulty, but the true cure for this and many other evils in the administration of justice lies deeper, and cannot be dealt with in this article.

Thomas Snow.

## LOAN OR PARTNERSHIP.

The recent admirable Act codifying the law of partnership, which came into operation on January 1 in this year, has not interfered much with the law previously in force as to a loan to a partnership in return for which the lender receives a share of the profits, as declared by Bovill's Act (28 & 29 Vict. c. 86). While community of profit is declared to be a *sine quâ non* of a partnership by section 1 of the new Act, section 2 provides that a receipt of a share of profits does not of itself make the receiver a partner. Omitting the other subsections, we pass to section 2, subsection 3 (*d*), which enacts that 'the advance of money by way of loan to a person engaged or about to engage in any business or a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the businesses or liable as such, provided that the contract is in writing, and signed by, or on behalf of,

all the parties thereto.' That is substantially a re-enactment of a similar clause in Bovill's Act, except that the requirements as to signature are new. However, the late Master of the Rolls held, in *Pooley* v. *Driver*, 46 Law J. Rep. Chanc. 466; L. R. 5 Chanc. Div. 458, that an unsigned contract was not a contract in writing required by the Act. For the future, not only the ostensible partners have to sign it, but all the parties must do so or have it signed on their behalf. The first thing to be noticed is that the loan must be to a person, not to a business. If the loan is to a business, it is probably in reality an advance of capital, which the pretended lender is willing to put into the concern, and to risk the loss of, provided that he is not made subject to the other liabilities of the borrower. An illustration of this may be found in *In re Megevand, ex parte Delhasse*, 47 Law J. Rep. Bankr. 65; L. R. 7 Chanc. Div. 511, where, upon the evidence, Lord Justice Baggallay said: 'However much the parties may have intended it, I cannot consider that this was a loan within the provisions of the Act, and for this reason: the Act expressly provides only for a case in which the loan is made "to a person engaged or about to engage in any trade or undertaking," and, according to my view of the agreement in this case, this was not a loan made to the two ostensible partners, but a loan made to the business. It was made by Delhasse to himself as well as to the two partners, and this imposed on him, as on them, an equal obligation of bearing any loss in respect of it.' Reference was made in the agreement in that case, which was treated by the Court as the articles of partnership, to Bovill's Act, but that was not allowed to interfere with the general result of the agreement. Otherwise, it would become a matter of common form for partners simply to declare in their articles that they were not partners, and thus they would be able to obtain the advantages without the correlative liabilities of a partnership. *Pooley* v. *Driver* is an instance of a similar abortive attempt. Two deeds were employed there, the first being between the two ostensible partners, and the second, which was never executed, being between those two partners and the lenders, and referring to Bovill's Act. The substance of the deeds is summarised by Sir George Jessel as follows: 'That they (the ostensible partners) should contribute certain shares of the capital, and should give their services in order to carry on the business; that the rest of the capital should be contributed by other persons who were disposed to come forward under the provisions of the Act to which I shall call attention presently . . . and then that the capital should be divided in certain proportions, giving everybody who put in 500*l*. . . . a share in the capital in proportion, and a share in the profits indefinitely. When the partnership is wound up this capital is to be paid back preferentially. The contributors were to take their share of the profits; but if it turned out that, on taking a final account, the profits of any years which had been paid, being added together, exceeded the total profits made from the business, the contributors were to pay back the excess, not exceeding in any event the amount they had contributed, and of course not exceeding in any event the amount they had received in profits.' There were also certain other provisions which an ordinary dormant partner would have had. Indeed, in both the cases to which we have referred there was an attempt to make a man practically a sleeping partner as long as all things went well with the partnership; but if they took a bad turn, then he was to claim for himself the position of a creditor who took the chance of profits instead of specified interest. The danger of being treated as a partner, and, therefore, of being held liable for the borrower's debts contracted on account of the partnership, causes Mr. Morris, in his 'Patents Conveyancing' (1887), p. 31, to suggest that, 'in view of the construction which the Court might, adversely to a lender, put upon an agreement so as to hold him liable as a partner, it seems safer, in his interest at least, not to give him as interest a share of the net profits in specie, but some percentage on the principal moneys dependent on the amount of net profits.' Discretion may be the better part of valour, but this would not in all cases carry out the intentions of the parties. Besides, the Act speaks of a lender receiving 'a share of the profits,' and, as is pointed out in Professor Pollock's fifth edition of his 'Digest of the Law of Partnership,' p. 16: 'The true doctrine, as laid down in recent authorities, and now declared by the Act, is that sharing profits is evidence of partnership, but is not conclusive. We have to look not merely at the fact that profits are shared, but at the real intention and contract of the parties as shown by the whole facts of the case.' If, for instance, a wealthy person wishes to help a friend less well off to bring out and work a patent, for which the former is to receive a share of profits in lieu of interest, he must take care that a loan is made for which the patentee is personally liable (Pollock, p. 17), so that, if the patent business came to grief, the patentee would still be responsible for the money. He should be careful, too, to have no further control over the business than a mortgagee would naturally have, for it is now 'decided that persons who share the profits of a business do not incur the liabilities of partners, unless that business is carried on by themselves personally or by others as their real or ostensible agents' (Lindley, 5th edit. p. 30); so that, if he had further control, he would run the risk of the patentee being held to be his agent.

## LEGISLATIVE PROGRESS.

THE House of Commons met on Monday, after the Easter recess, and has accompliahed in that short period the following items of work:—

Third readings:—

The Army Schools Bill.
The Electoral Disabilities Removal Bill.
The Savings Bank Bill.
Merchandise Marks Bill.
The Assessment of Taxes (Regulation of Remuneration) Bill passed through committee.
The Public Health (London) Law Amendment and Consolidation Bills, having been read a second time, were referred to the standing committee on law.

Second readings:—

The Presumption of Life Limitation (Scotland) Bill.
The Returning Officers (Scotland) Bill.
The Charities Recovery Bill.
The Rating of Machinery Bill (No. 2).
The Hares Bill.

New bills:—

To Provide for the Holding of Fire Inquests.
To Enable Local Authorities to Acquire Land.
To Provide for the Trial of Civil Cases in the City of London.

To Extend the Park Regulation Act, 1872, to Ireland.

To Amend the Act of 47 & 48 Vict. c. 22 (Loans to Schools and Training Colleges).

These bills were introduced and read a first time.

Bill withdrawn:—

Crofters Holdings (Scotland) (No. 2).

# Reviews.

## FROST ON PATENT LAW AND PRACTICE.

*A Treatise on the Law and Practice relating to Letters Patent for Invention.* With an Appendix of Statutes, International Convention, Rules, Forms, and Precedents, Orders, &c. By ROBERT FROST, Barrister-at-Law. London: Stevens & Haynes. 1891.

THIS book is an attempt to bring within a reasonable compass the law relating to patents. Hitherto, until the recent appearance of Mr. Lewis Edmunds's work on the same subject, the field cannot be said to have been too well occupied. It is not our intention to institute any comparison between the two, but, having noticed the former at some length, in justice to the present author we have carefully examined the book before us, and have no hesitation in saying that it will undoubtedly be found useful by patent lawyers. It contains a very clear exposition of a complicated subject. The first chapter, under the head of the Patentee, refers briefly to the early history of legislation, and deals with the question of who is entitled to take out letters patent for an invention. Next in order the subject-matter is considered, and the questions of Novelty and Utility follow in appropriate sequence, a separate chapter being devoted to each. Then come the Specification and its amendment. Chapter VII. points out the mode of applying for a patent, and Chapter VIII. deals with assignments, Chapter IX. with licenses, and Chapters X. and XI. with the revocation and extension of letters patent. Chapter XII. relates to the now familiar principle, first embodied in the Act of 1883, of restraining by action the issue of threats of legal proceedings, a most valuable and necessary weapon in the hands of the 'person aggrieved,' and the last chapter is reserved for the consideration of the action of infringement. The appendix contains the Acts, rules, and forms, and a short collection of useful precedents. A capital index concludes the book. Few practice-books contain so much in so reasonable a space, and we repeat that it will be found generally useful by practitioners in this important branch of the law.

## CHALMERS AND HOUGH ON BANKRUPTCY.

*The Bankruptcy Acts, 1883 to 1890.* With Rules, Forms, Scales of Costs, Fees, and Percentages, Board of Trade and Court Orders, and the Debtors Act, 1869, Deeds of Arrangement Act, 1887, &c., and a Commentary thereon. By his Honour Judge CHALMERS and E. HOUGH, Inspector in Bankruptcy, Board of Trade. Third Edition. London: Waterlow & Sons (Lim.). 1891.

THE authors of this work, in the preface to the present edition, tell us that they have adhered to the original scheme of the work, which was to make it a handy, practical guide to the Acts, rules, and forms, without attempting to produce a complete treatise on the law of bankruptcy. The various amending Acts and the new rules, forms, &c., have now been added to the work. By far the most important of these additions is the Bankruptcy Act of 1890, and in the preface we have a short sketch of the Parliamentary history and general effect of this measure. The repealed sections of the Act of 1883 are printed in italics, the reason assigned being that 'it may often be important to compare the repealed with the substituted enactment.' It must, however, be borne in mind that it has been decided by Mr. Justice Cave (since this work appeared) that in all cases where the adjudication has been made under the Bankruptcy Act, 1883, the bankrupt has a right to have his application for discharge dealt with under the old law. Section 28 of the Act of 1883 is, therefore, still of considerable practical importance. After the ordinary table of cases we are encountered by a formidable list of considerably over a hundred Bankruptcy cases overruled or discussed since the Act of 1883. This will probably be found of considerable value to the student of bankruptcy law. The book throughout is carefully edited and will prove of service to practitioners.

## WILLIAMS ON WILLS.

*Wills and Intestate Succession.* A Manual of Practical Law. By JAMES WILLIAMS, B.C.L., M.A., of Lincoln's Inn, Barrister-at-Law, Fellow of Lincoln College, Oxford. London: Adam & Charles Black. 1891.

THIS work is the first of a series of similar manuals. It is believed, the author says in his preface, 'that these manuals will be found of service to lawyers and laymen.' Let us consider the case of the laymen first. To some extent this work will be useful and interesting to them. There is a great deal of information in it carefully collected, beginning with a history of succession generally, in which the antiquarian aspect of the subject is not neglected. The testaments of Adam and of the Twelve Patriarchs were, we are told, at one time received as of at least apocryphal authority, and Eusebius asserts that Noah made a will disposing of the whole world. So far, moreover, as more recent transactions are concerned, we must give Mr. Williams considerable credit for his work. It is, however, too technical in its language for the ordinary reader, and on several pages, beginning at p. 86, we have whole sections of the Wills Act set out *verbatim*. If now we look at the book from the point of view of the lawyer, its obvious defect is the almost complete absence of authority. The concluding chapters of the book give some interesting information on the subjects of conflict of laws and succession to property in Scotland and Ireland.

A NEW LAW COURT.—It having been found that, when all the judges of the Queen's Bench Division are sitting, there was not sufficient accommodation for them, an additional Court has been formed out of the large room facing the bar library, situate up the staircase, opposite Appeal Court I., hitherto used as an arbitration-room. This room has been fitted up with a raised bench and a witness-box, and for the present counsel and others engaged in the Court will be accommodated with chairs instead of the regulation seats. Should it be found suitable for the purpose, it is intended to make this a permanent Court.

# Correspondence.

## *SHARP* v. *WAKEFIELD* AND ITS RESULTS.

SIR,—I congratulate you on the accuracy with which (in the LAW JOURNAL for June 7, 1890, p. 345) you forecasted the decision in the House of Lords. It is refreshing to meet a lawyer who understands the legal difference (for some purposes) betwixt ale and beer. I have read the LAW JOURNAL regularly for the last twenty years, and I can certainly affirm that it has never wavered on the question of the absolute discretion of licensing magistrates under 9 Geo. IV. c. 61. Now that the House of Lords has affirmed the judgments of the Courts below, the controversy is at an end. No one could have listened to the discussion in the Lords without being reminded of Juvenal's line: 'Si rixa est ubi tu pulsas, ego vapulo tantum.' It was obvious that the object of the appellants was not so much to reverse the judgment of the Court of Appeal as to get the question of jurisdiction authoritatively and finally settled, with such *dicta* mitigating the severity of the blow as the good nature of the noble and learned lords could be induced to contribute.

I observe with pleasure that you grasp the practical importance of the recent judgment. How is the new jurisdiction (for *new* it is in fact, if not in law) to be administered? Justices sit to grant licenses, not to suppress public-houses; and the number of public-houses within a given radius is important only from the point of view of public order, of which the justices of the peace are the guardians. If a given house is a public nuisance, it ought to be suppressed. If it is an orderly and well-conducted house, the license ought not to be taken away simply because the justices think the neighbourhood might get on with a smaller number. Directly the test of order is applied the difference between one house and another becomes apparent. But suppose a district (and I have known several) where, though the houses are as plentiful as blackberries, all are so well managed that the police have no complaint against any one of them. Will you tell me that it would be a legal and regular exercise of judicial discretion to reduce the number of houses by shutting up those which did the least business?

The truth is that the powers conferred on justices to license alehouses were never intended to be used for the purpose of dislicensing them in the absence of disorder. I invite you, sir, to follow this question up, as I am quite certain that at the next general annual meeting for the provinces a tremendous effort will be made by the prohibitionist agitators to get at the unpaid magistracy in the interest of 'temperance;' the publicans will then discover what value is to be attached to the appeal to quarter sessions. AMICUS CAUPONUM.

Temple: April 6.

## THE MIDDLESEX REGISTRY.

SIR,—Irrespective of the circumstance that Lord Truro recently died, I have for some time past been collecting final materials, not only to complete my long-promised book (the greater portion of which has been in MS. for many months), but for the information of the Incorporated Law Society; and it seems a suitable moment to ask you to publish this summary.

It will be remembered that the results of my several actions were: (1) To fix the fees; (2) to settle that an enfranchisement deed was registrable; (3) the mode of execution of the memorial; (4) that oaths could be administered outside by Chancery commissioners; (5) the like by Judicature Act commissioners; (6) that oath could be indorsed, and need not be by affidavit; and (7) that a solicitor's clerk sufficiently described himself as of the place of business of his master. I will, therefore, number the further points in consecutive order; and let me say that the officials are aware that I intend to publish this letter.

I asked the following questions: (8) Does the registry ever undertake official or other searches and give certificates of the result, and, if so, at what cost? If not, could and would the registry entertain a proposal in this direction? (9) Is a uniform charge of 1*s.* made for searching the Parliamentary index, and is the fee 1*s.* per name or 1*s.* per transaction, and has any, and what, alteration in practice taken place since 1883? The like as to the private index at 2*s.* 6*d.*? (10) What is the average time before a deed is returned to a person registering with the indorsed certificate thereon, and what is the average fee charged for expediting such return? (11) Is there any reason why the registry should not be open from 10 till 5 for the transaction of all classes of business?

The following answers were received: (8) The registry does not make official general searches, and, after careful consideration and consultation with practical men, the difficulties appear to be so enormous that it is not proposed to reopen this question. (9) Charges of 1*s.* and 2*s.* 6*d.* respectively are uniformly made for searching the Parliamentary and lexicographical indexes in one interest, which may include more than one name—*e.g.* in the case of trustees. I am not aware of any change since 1883. (10) In the ordinary course of things a registered deed with the certificate thereon is returned after the expiration of three clear working days—*e.g.* a deed left on Monday is ready for return at 10 o'clock on the following Friday morning. Half-a-crown is the uniform expedition fee, and, in the ordinary course, we endeavour to have the deed ready by 12 o'clock on the following morning. (11) It is not proposed to alter the hours, because the examination of the memorials has to be completed and the index for the next day prepared after the office is closed.

I replied thus: (9) Rightly or wrongly, the separate parish calendar contemplated by section 6 of the Act does not actually exist. I submit, however, that it will be conceded that the profession ought not to pay a larger fee for a search than would be payable if such separate calendar did exist. If this be admitted, it would appear by section 11 that 1*s.* and no more for a complete search in such calendar would have been payable, such 1*s.* covering not only the names of the parties to the last transfer, but to any previous transfer should the solicitor searching think it needful (as, for example, is the practice of the London County Council) to verify the dealings for, say, the last thirty years. I observe that you admit that 1*s.* covers more than one name in the case of trustees, but do I understand that in practice you would not allow me for 1*s.* to search in the names of thirty distinct and separate vendors' dealing with one particular messuage, if by chance such messuage should have changed hands once a year? I observe that whatever argument applies to the Parliamentary index is applied in practice to the half-crown index. (10) Will you please tell me what was the total

number of memorials registered during the last official year, and the proportion which were expedited at an additional cost of 2*s.* 6*d.*? (11) This answer would apparently assume that the same official who takes the oath completes the index. Similar work is classified and carried out independently during the same hours in more than one other public office, and with all respect I ask you to reconsider this answer.

The reply was as follows: (9) It is possible that your contention respecting the one-shilling index may be well founded, though I should be of opinion that it is by no means unlikely that the practice indicated in my last answer would not be held to be unreasonable. With regard to the half-crown index, which is on a different footing, I have no hesitation in adhering strictly to the confinement of the search to each distinct interest. (10) Number of memorials taken in 1890, 35,054; expeditions paid on, 1,288. (11) This matter had received my careful attention before you first communicated with me, and I gave a considered answer, which I must ask you to kindly allow me to adhere to.

I will not here comment on the foregoing correspondence, which I shall in due course bring before the committee of which I am honorary secretary.

Francis K. Munton.

95A Victoria Street, E.C.: April 8.

## THE TITHE ACT.

Sir,—Your *obiter dictum* in the Journal for last week may mislead many who are not tolerably familiar with the Tithe Acts.

You have apparently overlooked 1 Vict. c. 69, s. 11, which places the April and October tithes on the same basis as the January and July ones.

There is no doubt that the tithes due this April 1 must be collected according to the new Act.

Stratton, Cornwall: April 6. E. Chamier.

# Unreported Cases.

## COUNTY OF LONDON SESSIONS.

### VALUATION LIST TOTALS.

On April 3, in the case of *The London County Council* v. *The Parishes of St. Giles-in-the-Fields and St. George, Bloomsbury*, Sir E. P. Edlin, chairman, sitting at Clerkenwell, delivered the following considered judgment of the Court: In this case we have refused to alter the totals in the valuation list in the manner required by the litigant parties, and, the appellants having stated that we are bound to do so, and declared their intention of applying for a *mandamus*, we have thought it desirable to state more fully our reasons for that refusal. It should have been unnecessary to remind the parties that we are sitting here as a Court of Appeal to perform judicial functions, not as clerks to adopt without question agreements in obedience to their behest. We can well understand that in the adjustment of many differences it might be more convenient to the parties to disregard detail and particular errors, and agree upon an alteration of values in bulk; but when there has been a joinder of issue as to each particular error alleged, it is difficult to see how that could be accepted as a judicial decision. In assessment appeals at the suit of private individuals or public companies, it frequently happens that before the hearing mutual concessions are made, and the parties agree together as to what are the proper values, &c. In such cases the Court gives effect to the mutual agreement by a simple correction of the figures, and, it may be, also of the 'description' or 'class' in the valuation list; and it is obvious that the entire entry, as so corrected, presents a complete adjudication. The case now before us is of an entirely different character. The appellants are a public body authorised to levy rates and require contributions payable out of rates, and they have presented a petition to this Court complaining of the valuation by the assessment committee of the united parishes of St. Giles-in-the-Fields and St. George, Bloomsbury; and in the particulars furnished in the 'case' accompanying their petition they have set forth the several hereditaments which they allege are under-assessed, and also certain other properties which they allege are not assessed—that is to say, which have been altogether omitted from the valuation list. The former are fifty-three in number, and comprise premises of various kinds—shops, Meux's Brewery, Novelty Theatre, hall, public-houses, baths, offices, &c. In respect of each of these distinct properties, the appellants present their own valuation, and it appears therefrom that the under-assessments of gross values by the committee amount to 10,053*l.*, and the under-assessments of ratable values to 7,376*l.* Then with regard to the properties not assessed (twenty-eight in number), separate valuations have also been made by the appellants, showing omissions of 3,435*l.* in gross and 2,854*l.* in ratable values. Therefore upon this appeal, if we look only at the several assessments specified, irrespective of the proper deduction to be made from gross value in order to fix the ratable value, eighty-one distinct issues are raised. The respondent committee assert their ability to answer the appellants' case in detail, and to support their own valuations, and they allege also that the appellants have not furnished figures. In point of fact the appellants had furnished figures, showing, with regard to each property respectively, the required alterations in, or additions to, the list. What has transpired since the respective cases were lodged we know not, but when the appeal first came on for hearing we were asked to determine it by simply erasing the present totals in the valuation list, and substituting therefor other figures, which would involve an addition in St. Giles's parish of 6,240*l.* to the total gross, and 5,208*l.* to the total ratable value; and in St. George's an addition of 350*l.* to the gross and 292*l.* to the ratable value, without making any entry in the valuation list that would show in respect of which properties, whether as to those under-assessed or those not assessed, nor, if referable to the former only, in respect of which of the present assessed values these additions to the totals are made. This we declined to do. Such an erasure of the arithmetically correct totals and substitution of other figures would present a manifest incongruity on the face of the valuation list. It is now desired that we should simply subjoin an additional amount—the one agreed upon—for 'gross' and 'ratable' respectively, and write thereunder the desired new totals 'as agreed.' It seems to us that this also would be insufficient and not less unsatisfactory. The statute empowers the Court to confirm or alter the valuation list, so far as it is questioned by the appeal, in such manner as we think just; and we do not think that the mere inscription of one total for another, thus avoiding all reference to the questions raised under both heads, would meet the just requirements of this case. In short, we cannot accept the agreement, in the form in which it is here presented, as in itself a proper one, or as sufficiently precise and explicit to enable us to determine the questions raised upon this appeal. There being several similar appeals awaiting trial, it may be as well that I should add a few words. It is not to be inferred

that in every case such as this we should require the several corrections, constituting the total of the alterations agreed upon between the parties, to be specified with distinct reference to the particular assessments impugned; although, if an agreement be arrived at after due consideration of each alleged error, there ought not to be any difficulty in furnishing that information; and when non-assessments as well as under-assessments are complained of—as in this case—the simple insertion of one additional sum, possibly intended to relate in part to both, but not shown to be referable to either, would be the less defensible. If the Court abstained from exercising judgment and dispensed with supervision, the parties might agree upon deductions for repairs and insurance in excess of the maximum allowed by the statute; and practically in no appeal against totals would it be necessary for the appellants to specify particular errors or omissions; a general impeachment of the total of the value in a parish or union would suffice to effectuate an agreement for an unexplained addition to it. The case of *The Fulham Union and St. Mary Abbott's*, cited by the appellants' counsel, has no bearing upon what we have here to consider; nor is the objection to the entry prescribed for us in this case answered by pointing out that the alteration of the totals would not affect the ratepayers whose assessments were impugned. It would not, apart from the rest. It would, I presume, subject the ratepayers, as a body, to a heavier poundage to meet the increase in the parochial contribution arising from the unappropriated addition to the total in the valuation list. Inequality in assessments is a ground of appeal, and were it only in view of future valuations, intermediate or quinquennial, every ratepayer may justly claim to be informed what are the properties in his parish which the assessment committee publicly admitted were either underestimated or altogether omitted. The pleadings filed in this Court are not open for inspection by ratepayers; nor, were this otherwise, would those in the present case throw any light on the proposed alteration in the totals. Mr. Avory was not correct in saying that it had become the duty of the County Council to 'revise' the list—that is the statutory duty of the assessment committee; but, of course, the larger the parish totals constituting the metropolitan valuations upon which contribution has to be levied *pro ratâ* for general county purposes, the smaller would be the nominal rate upon the whole required to produce it; and in this practical effect of an increase in the valuations may be seen the importance attached to these appeals. Every assessment committee in the county—nay, more, every ratepayer in the metropolis—might have appealed to this Court upon the same grounds as the present appellants have done; and it may be that, but for this proceeding on the part of the County Council, others would have undertaken the task. Hence the greater reason that the judgment should be intelligible to all persons interested, and be directly pertinent to the issues raised.—Mr. Avory said that in the event of the parties desiring to move a higher Court in this matter the question might arise whether this case had been called on.—The learned chairman said it had not come on in its order, but he thought it must be taken to have been called on by mutual consent.—Mr. Avory appeared for the appellants; Mr. Buckmaster for the respondents.

## COUNTY COURT.

### BREACH OF WARRANTY—SALE OF COW.

At Bakewell County Court, on Thursday, March 12, before his Honour Judge Barber, the case of *Bramwell* v. *Wardman* was heard. His Honour: This was an action for an alleged breach of warranty on the sale of a cow. The facts proved at the trial were shortly these: On October 4, 1890, the defendant called on Mr. Charles Kidd, a farmer living at Rowsley, and saw two cows belonging to Kidd among a job lot of cattle. After a little bargaining the defendant bought the cow in question and a smaller one, giving 10*l.* for them, and remarking they were both screws, as unquestionably they were; the former, described as a hollow-faced one, the result of illness, was far the worse of the two. The defendant took the two cows to his own farm. The plaintiff, who never had a cow of his own before, met the defendant in Winster on October 11, and told him he wanted to purchase a cow; the defendant said he had one, just the very thing to suit him. They went to the defendant's field and saw the two cows the defendant had purchased about a week before. The bigger of the two, he said, was an honest cow; was poor only because fed on poor land among ducks and geese, and would be quite well if placed on good pasture land. The negotiations were continued till they reached the public-house, and in the presence of Arthur Kenworthy and others he said that the cow was an honest one, and its poverty-stricken appearance was due entirely to its having been poorly fed. On October 13, when the cow was delivered to the plaintiff, the same representations were repeated in the presence of two other witnesses. The purchase-money, 11*l.* 10*s.*, was then paid. The plaintiff treated it well, but on November 17 it became much worse, and was seen by a veterinary surgeon, who found that she was suffering from tuberculosis of long standing, and was in a most unsound condition. The other witnesses fully corroborated the evidence of the witness Kenworthy, saying that defendant stated that the cow was 'honest, but poor.' I need not detail the other evidence, but the only inference I can draw from it is, that the defendant did say, over and over again, that the cow was an honest one, and that he had attributed its poor condition to the right cause. I am quite satisfied that the defendant did represent that the cow was honest and sound when he knew it was not so, and that he misrepresented the cause of its ill condition. The only point which I thought deserved a little consideration was, is the plaintiff debarred by his own *laches* and acquiescence from relief to which he would otherwise be clearly entitled? Under the circumstances and considering the dishonest trickery practised on the plaintiff, I think that he is entitled substantially to the relief he claims—*i.e.* 11*l.* 10*s.*, the purchase-money paid for the cow, and the 2*l.* the veterinary surgeon's fee. But I must punish him a little for his folly, by not allowing him anything for keep of the cow. Of course the defendant must pay the plaintiff's costs.—Ainsworth for the plaintiff; Potter for the defendant.

## RETIREMENT OF MR. JUSTICE STEPHEN.

IN the Court of the Lord Chief Justice, before Lord Coleridge (Lord Chief Justice of England), Lord Justice Bowen, Lord Justice Lindley, Mr. Baron Pollock, Mr. Justice Hawkins, Mr. Justice Cave, Mr. Justice Vaughan Williams, Mr. Justice Grantham, Mr. Justice Lawrance, Mr. Justice Wright, and Mr. Justice Jeune on April 7, it having been announced that Mr. Justice Stephen would take his leave of the bar on his retirement from the bench, the Court was crowded in every part with members of the bar, comprising all the leaders, among them Sir R. Webster (the Attorney-General), Sir E. Clarke (the Solicitor-General), Sir Henry James, Q.C., M.P., Sir Charles Hall, Q.C., M.P., Mr. Finlay, Q.C., M.P., Mr. Haldane, Q.C., M.P., Mr. Gainsford Bruce, Q.C., M.P., Mr. Waddy, Q.C., M.P., Mr. Addison, Q.C., M.P., Mr. Reid, Q.C., M.P., Mr. Ambrose, Q.C., M.P., Mr. Bigham, Q.C., Mr. Henn Collins, Q.C., Mr. Murphy, Q.C., Mr. Lumley Smith, Q.C., Mr. Aspland, Q.C., Sir Walter Phillimore Q.C., Mr. Crackanthorpe, Q.C., Mr. F. M. White, Q.C., and a host of others, with as many members of the junior

bar and the general public as could find room. All the officers of the Court also attended, the masters of the Crown Office, the Queen's Remembrancer of the Exchequer, the Masters of the High Court, &c. At eleven o'clock the above-mentioned judges, headed by Lord Coleridge, who was accompanied by Mr. Justice Stephen (who, having already retired, appeared without his robes), came into Court and took their seats on the bench, the Lord Chief Justice putting into his own seat the retired judge and seating himself by his side, Lord Justice Bowen sitting on the other side, and the other judges grouped around them standing.

The Attorney-General then rose, the whole bar rising with him and standing while he spoke, and addressed their lordships in these words: My Lord, Mr. Justice Stephen,—It was with great regret we saw the announcement that you would to-day take your leave of the bar, with which you have been so long connected, and it falls to my lot, on behalf of the profession, to offer to you the expression of our regret in bidding farewell to you as a judge. In doing so it may not be inopportune to recall one or two incidents of your long and distinguished career. Coming from the University (Cambridge) and the College (Trinity Hall) which claim so many of our distinguished judges, you joined the circuit (the Midland) to which have belonged in our time so many members of the bench—Lord Field, Mr. Justice Mellor, Mr. Justice Hayes—to say nothing of those who are now on the bench, and some of whom now attend to take part in this farewell. It is unnecessary for me to remind so many who remember it of your career at the bar on that circuit. But one incident in your career is, so far as my knowledge goes, without precedent, and deserves a passing notice. It is not in this country alone that you have rendered distinguished public service. For four years you served as Legal Member of the Council of India, and, following the example of your great predecessor Macaulay, you rendered valuable service in codifying and improving the law of our great Indian Empire. When, after your period of office had expired, you returned to active work at the bar, your brethren found that they had still in you an able rival and antagonist, one whose experience and knowledge had been only ripened by change of scene and change of work. And when, in 1879, it pleased Her Majesty to select you for the judicial office you have since filled, I need not say how universal was the feeling of approval and congratulation which hailed your appointment. And since then, for more than twelve years, you have fulfilled the duties of that office from which you now retire. I need not remind your brethren of the bench, nor the members of the profession, nor the public whom you have served, of the value to the bench of your profound knowledge of and vast experience in the criminal law, your practical experience in its administration, and your knowledge of matters of business and keen insight into legal principles. We learn with regret that failing health has induced you to determine to retire from judicial work. We deeply regret the cause, but we honour and esteem the man who, as soon as he became aware that any question might be raised as to his absolute or unimpaired capacity to fulfil his duties, determined that he would no longer retain his post, nor allow such a question to be raised, however he might think himself able to discharge the duties of the office. We cannot follow you into your retirement, but we are sure that you cannot long be in want of an avocation or a pursuit. Your fertile mind, we are well assured, will again enrich the storehouse of literary wealth to which you have already made so many valuable contributions. We wish you many years of restored health to enjoy your well-earned repose, and you will be able to realise from this crowded assemblage the feelings by which you are accompanied in your retirement—feelings to which I have given some feeble expression—and you must be well assured that you carry with you into your retirement our regard, our respect, and our esteem.

The learned judge, at the conclusion of this address, remained some moments silent, evidently unable to find immediate utterance for the feelings by which he was oppressed. After some moments, the Lord Chief Justice and Lord Justice Bowen rising and remaining standing, with the other judges and the bar, while he spoke, the learned judge, in a low tone of voice, marked by deep and suppressed emotion, spoke as follows: My lords, Mr. Attorney-General, gentlemen of the bar: I have come here for the purpose of wishing you 'Good-bye,' and I just wish to say a few words as to the causes which led to my retirement. I myself had very little expected to have to take such a step; indeed, it never entered into my mind, except so far as every man must look forward to the ultimate conclusion of his career. However, not very long ago I was made acquainted, suddenly, and to my great surprise, that I was regarded by some as no longer physically capable of discharging my duties. I made every inquiry to ascertain what grounds there were for this impression, and I certainly rejoice to say that no single instance was brought to my notice in which any alleged failure of justice could be ascribed to any defect of mine. I consulted physicians of the highest eminence, and they told me that they could detect no sign whatever of decay in my faculties, and that, therefore, it was not a matter of immediate necessity in the public interest that I should retire. But they told me at the same time that they thought it would be well, for my own sake, that I should do so, and that opinion they grounded upon the state of my health. I communicated their decision to the Lord Chancellor, and with his sanction I determined to retire, as I now do. I should have thought it unbecoming of any person in my position to strive to hold on to his office to the last possible moment, even although at the time I had no doubt as to my capability for discharging my duties. I could not have done so under any circumstances; and accordingly I avoided all occasion for any further discussion on the subject after I received the intimation which I have mentioned. I wish to add this remark as to my own feelings on the subject. So far as I am conscious of my own condition of mind and body, I do not think that retirement would be necessary; but I have thought it right and becoming to take that step out of respect for the office which I have held, and because I feel it to be important not only that its duties should be well discharged, but that there should be no question as to their being so discharged. These are the grounds upon which I have thought it right, with regard to my own reputation and the public good, that I should cease to hold the office which I have held for more than twelve years. I have more to say, and what more I have to say it is by no means easy for me to say in the presence of so many whose faces are so familiar to me, and so many of whom are so dear to me, and have long been so. I have always felt—though I never was yet in a position to feel it with so much keenness as I do now feel it—that there is a fellowship which pervades every branch of the profession to which we all belong, and especially those who have the honour to sit on the judicial bench. During the years which I have sat here, I have found myself a member of a society which, I think, hardly can be equalled elsewhere. I have been, and hope I shall be for the rest of my life, the intimate friend of many around me. I have been, I believe, perfectly friendly with all. I do not think there is a single member of the profession towards whom I have other than friendly feelings. Enmities are doubtful things; one hardly knows, perhaps, always who is absolutely one's friend or one's enemy. But I am not conscious of having any unkind feeling against any member of the profession, and I have no im-

pressions of relations not perfectly satisfactory with the very large number of persons with whom at one time or another I have been brought in contact. Of course, in the office I have held it is not possible but that mistakes should occur, and under the present system opportunities for bringing forward everything in the nature of complaints against any person in such a position are easily used, and have, I believe, been used against me. But, whatever may have been the result, and in whatever instances I may have been appealed against, and my judgments reversed, or in whatever other way what I have said or done has been called in question, I can affirm with absolute certainty that nothing has been done in relation to me of which I have had any unkind recollection. As I have already said—and I say it again—I believe the mutual understanding between the bench and the bar is one of the great advantages of the present constitution of English society, and long may it continue so; long may it be true that, while the bar supply the keenest and most impartial criticism of the bench, the bench can rely with the greatest confidence upon the kindness, the respect, and the support—the moral support—of the bar who practise before them. I do not remember in the course of the twelve years during which I have sat on the bench—I do not remember any dissension between me and any members of the bar which has left on my mind any sense of bitterness. I do not remember ever to have been treated with disrespect in the exercise of my judicial functions; certainly nothing has occurred at variance with that feeling of fellowship and goodwill which, as I have said, pervades the profession, and of which what the Attorney-General has said has been an expression. I do not desire to make a tragedy of this occasion, nor to dwell on those feelings with which I leave the seat on the bench by which my ambition has been fully gratified. My feelings towards my friends in the profession have been very strong, and I am now conscious of having sustained a part which I shall look back to with feelings of gratitude, in whatever may be left to me of life. I have now said what came into my mind to say on this occasion, and I will only add these words, with more feeling than, perhaps, may be supposed—'God bless you all, every one of you!'

These words the learned judge uttered with evident emotion and sat for some moments silent, quite subdued by his feelings. He then rose slowly, shook hands warmly with Lord Coleridge and Lord Justice Bowen on each side of him, and then went out of Court, shaking hands with such of the judges as he passed, and so retired.

## BAR STUDENTS' EXAMINATIONS.

### EASTER, 1891.

As the result of a general examination of students of the Inns of Court, held at Lincoln's Inn Hall, on March 17, 18, 19, and 20, 1891, the Council of Legal Education have awarded to the following students certificates that they have satisfactorily passed a public examination:—

ACTON, EDWARD, of the Inner Temple.
ALADE, OLUSOMOKA ROTIMI, of the Inner Temple.
ALLISON, CHARLES S., of the Inner Temple.
ATTENBOROUGH, CHARLES L., of the Inner Temple.
BAIRD, JOHN S., of Gray's Inn.
BARTLEY, DOUGLAS C., of the Inner Temple.
BAUMBACH, JOHN G., of the Inner Temple,
BERENS, RICHARD, of the Inner Temple.
BRANCH, CHARLES C., of the Inner Temple.
BROADBRIDGE, FREDERICK, of Lincoln's Inn.
BULAKI, RAMA, of the Middle Temple.
BUSHELL, FREDERICK E., of the Middle Temple.
CASPERSZ, CHARLES P., of the Inner Temple.
CHAND, LALA PARKASH, of Lincoln's Inn.
CLARKE, WILLIAM J. T., of the Inner Temple.
COLBECK, WILFRED B., of the Inner Temple.
COLVILLE, HON. GEORGE C., of Lincoln's Inn.
CONNER, DANIEL H., of the Inner Temple.
COOKE, THOMAS P., of the Inner Temple.
CRUMP, BASIL W., of the Middle Temple.
DAMIAN, ANTHONY G., of Gray's Inn.
DICKINSON, THOMAS L. D., of Lincoln's Inn.
DOCTOR, FRAMROZE PESTONJI, of the Middle Temple.
DODSON, GEORGE, of the Inner Temple.
DU CANE, ARTHUR G., of the Inner Temple.
DUGDALE, JOHN A., of the Inner Temple.
EVAN-THOMAS, CHARLES H., of the Inner Temple.
FITZGERALD, JOHN F. V., of the Middle Temple.
FOTHERGILL, SYDNEY R., of Lincoln's Inn.
FULTON, DAVID, of the Middle Temple.
GALLOP, REGINALD G., of the Inner Temple.
GEDGE, CECIL B., of the Inner Temple.
GILKS, FREDERICK W., of the Inner Temple.
HANNEN, HENRY A., of the Middle Temple.
HAQ, SHAIKH MAZHARUL, of the Middle Temple.
HARKISHEN, LAL, of the Middle Temple.
HASSAN, MIRZA FUKHUNDEEN, of the Inner Temple.
HAYTON, ARTHUR E., of the Inner Temple.
HEWETT, HERBERT T., of the Inner Temple.
JACKSON, JOHN H., of the Inner Temple.
KAYS, REGINALD K., of the Middle Temple.
LAWRANCE, THOMAS D., of the Inner Temple.
M'ARTHUR, ALLEN G., of Lincoln's Inn.
MACDONA, EGERTON M. C., of the Middle Temple.
MACFARLANE, TENNANT, of the Middle Temple.
MACLEAN, ALEXANDER, of the Middle Temple.
MARTIN, MALCOLM E., of the Inner Temple.
MASON, WILLIAM J. P., of the Middle Temple.
MAXSE, LEOPOLD J., of the Middle Temple.
MEYER, ROBERT M., of the Inner Temple.
MITRA, HEMENDRA NATH, of the Middle Temple.
MONK, JAMES HENRY, of the Inner Temple.
MOORE, FREDERICK W., of Lincoln's Inn.
MORRIS, ROBERT, of the Middle Temple.
MURRAY, JAMES, of the Middle Temple.
NORMAN, OSWALD, of Lincoln's Inn.
O'BRYEN-TAYLOR, PHILIP S., of Lincoln's Inn.
PARRY, JOSEPH H., of the Inner Temple.
PARSONS, ALBERT, of the Middle Temple.
PEASE, WILSON, of the Inner Temple.
PETERS, JOHN W., of the Middle Temple.
PHILLIPS, LIONEL C. W., of the Inner Temple.
PRASHAD, DIWAN RAM, of the Inner Temple.
PRICHARD, MATTHEW, of the Inner Temple.
RADFORD, ALFRED, of the Middle Temple.
RAM GOPAL, of the Middle Temple.
RAYNER, OSCAR W., of the Inner Temple.
SARBADHICARY, SASI BHUSHAN, of Gray's Inn.
SCOTT-CRICKITT, PERCY S. H., of the Inner Temple.
SCRATTON, WILLIAM H., of the Inner Temple.
SHARP, ERNEST H., of the Inner Temple.
SHEPHERD, HERBERT H., of the Inner Temple.
SIBLEY, NORMAN W., of Lincoln's Inn.
SINCLAIR, JOHN A., of the Middle Temple.
SLATER, EDWARD T., of the Inner Temple.
STAVELEY-HILL, Henry, of the Inner Temple.
STEDMAN, MATTHEW R., of the Middle Temple.
THOMAS, JAMES R., of the Inner Temple.
THOMPSON, PERCY G., of the Middle Temple.
THURSBY, JOHN O. S., of Lincoln's Inn.
TRUEFITT, EDGAR F. G., of the Inner Temple.
UYEMURA, SHUNPEI, of the Middle Temple.
VALLANCE, HENRY W., of Lincoln's Inn.
WHYATT, HERBERT, of the Inner Temple.
WILLS, SAMUEL E., of the Middle Temple.
YATES, ARTHUR R., of the Middle Temple.

Of 104 examined, 86 passed.

The following students passed a satisfactory examination in Roman Law:—

Charles H. Bardswell, of the Inner Temple; William A. N. Battenburgh, of the Middle Temple; Henry Beaumont, of the Middle Temple; Julian E. Bellamy, of the Inner Temple; Purnanand Mahanand Bhatt, of the Middle Temple; Syed Hashim Bilgrami, of the Inner Temple; Syed Zainul Abiden Bilgrami, of the Middle Temple; Selwyn J. C. Brinton, of the Inner Temple; Malcolm Campbell-Johnston, of the Inner Temple; Francis D. P. Chaplin, of Lincoln's Inn; Charles B. Clapcott, of Lincoln's Inn; Richard P. Clowes, of the Middle Temple; John H. Codrington-Hobkirk, of Gray's Inn; Jehanghir Dossabhoy Cola, of the Middle Temple; John E. Cooney, of the Middle Temple; Frank S. Cooper, of the Inner Temple; Eduardo Patricio Avelius Dalgado, of the Middle Temple; John Asirvadam David, of the Middle Temple; James E. G. De Montmorency, of the Middle Temple; John F. Devenish-Meares, of the Middle Temple; Thomas Dixon, of the Inner Temple; Hugh C. S. Dumas, of the Middle Temple; Balthazar S. S. Foster, of the Inner Temple; Arthur Gee, of the Inner Temple; Felix H. V. Gottlieb, of the Middle Temple; John W. Grant, of the Inner Temple; Alexander L. Hannay, of the Inner Temple; Francis H. Harding, of the Inner Temple; Julius Hirschfeld, of Lincoln's Inn; Dady Hormusji (Dadabhoy), of the Middle Temple; Syed Hasan Imam, of the Middle Temple; Henry B. Isherwood, of the Inner Temple; John C. Jordan, of the Middle Temple; Moti Lal Kaistha, of Gray's Inn; Edmund G. Kimber, of Lincoln's Inn; Richard C. Lambert, of the Inner Temple; Thomas S. Lea, of Lincoln's Inn; Edward J. B. Macarthur, of Lincoln's Inn; Kenneth L. Macdonald, of the Inner Temple; Abdul Majeed Khan, of the Inner Temple; Satis Chandra Moorkerjee, of Lincoln's Inn; Charles B. Morgan, of the Middle Temple; George F. L. J. Mortimer, of the Inner Temple; William H. Nagle, of the Inner Temple; Horace J. Norton, of the Middle Temple; Thomas W. Nussey, of the Inner Temple; Robert P. Page, of the Inner Temple; Ernest J. Phelps, of the Inner Temple; John M. Prichard, of the Middle Temple; Roda Mull Quanugoe, of the Inner Temple; Alexander Pandia Ralli, of the Inner Temple; Florance T. S. Rippingall, of the Middle Temple; Thomas P. G. Robinson, of Lincoln's Inn; James C. Roe, of the Inner Temple; Louis A. Salomon, of Gray's Inn; Gurdas Ram Sawhny, of the Middle Temple; Charles F. Scott, of the Inner Temple; Chandra Sekhar Sen Gupta, of the Middle Temple; William C. E. Serjeant, of the Middle Temple; Conrad J. Simmons, of the Middle Temple; Satchida Nanda Sinha, of the Middle Temple; Thomas R. Spyers, of the Inner Temple; Joseph F. B. Sutherland, of the Middle Temple; Edward L. R. Thornton, of the Inner Temple; Hirondo Tomidzu, of the Middle Temple; and George R. T. Upton, of Lincoln's Inn.

Examined, 74; passed, 66.

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Newspaper Libels.—Mr. Justice Wright recently gave expression to his feelings upon the subject of newspaper libels, and it cannot but be admitted that lawyers too frequently look upon newspapers as a source of income which they are ever ready to tap by commencing trivial actions for alleged libel on behalf of some impecunious client. The law of libel, so far as newspapers is concerned, is a grotesque travesty upon justice, and it is surprising that with men like Sir Algernon Borthwick in Parliament the great newspaper interest is not more considered. Besides being full of anomalies, the newspaper law of libel is positively ridiculous and illogical.—*City Press.*

## PUBLIC TRUSTEE BILLS, 1891.

The Birmingham Law Society have just issued the following report on the above bills:—

The committee of this society have recently had these bills under their consideration, and are of opinion that the appointment of a public trustee is both unnecessary and inexpedient. Petitions against the bills have already been presented to Parliament on behalf of the society, but the committee consider it desirable, by means of this report, to enter somewhat more fully into the matter.

They would, at the outset, point out that their objections are directed to the principle of the bills, and they, therefore, deem it unnecessary to criticise the details.

In the first place, the committee consider that the principle of individualism, as opposed to that of officialism, is that which is generally required in trust matters, and they view with no small amount of uneasiness the proposed creation of another public administrative office, for which there does not seem to be any adequate demand or necessity. Anyone who is constantly brought into contact with Government offices and officials, as a solicitor of necessity is, cannot fail to be struck with the delays and expense which are inseparable from a Government office; the introduction of officialism into private and family affairs, in the way which is proposed by the bills, would inevitably have the effect, not only of increasing the cost which is unavoidably incident to trusts of all kinds, but of rendering the administration of trust estates more cumbrous, more tardy, and less elastic, results greatly to be deprecated.

Moreover, the committee feel that in all but very exceptional cases—too few to call for special legislation—the position of a trustee will be better filled by a private individual than it can possibly be by an official, such as the public trustee would be. The office of trustee is, under any circumstances, one which requires the exercise of discretion, tact, and judgment, and in many instances the truest objects of the trust would be practically unattainable were it not for that element of personal and individual interest and care which can only be ensured by the appointment of a private trustee.

It is well known that in many cases, especially where the interests of minors are concerned, the difficulties and delicacy of the trustee's position are often greatly increased owing to his having to take into consideration circumstances of a personal, and perhaps moral, nature. In such cases a trustee will often assume some personal responsibility in order to advance the interests of his *cestuis que trustent*, especially where, as not unfrequently is the case, such a course is practically the only one open, if the objects of the founder of the trust are to be carried out in the best and most effective manner. But a public trustee would, from the very nature of his office, be unable, except to a very limited extent, to exercise any discretion. He could not feel any personal interest in beneficiaries who would be absolutely unknown to him, and who would have no identity beyond a mere name or number. He would be bound by the regulations laid down for his guidance in rules and orders, as also by the traditions of his office, and it can hardly be supposed that any element of elasticity would be found in these regulations. Practice before him would, it is apprehended, be, to a large extent, a reproduction of the old administration suit—dilatory and costly in its progress, and often harsh in the application of its rules to the circumstances of particular cases.

It is, however, said that a demand exists for a public trustee, partly by reason of the growing disinclination amongst business men to undertake onerous trusts, and partly on account of the loss that is sometimes incurred owing to the dishonesty of a trustee. The committee are, however, of opinion that neither of these arguments,

when carefully examined, has sufficient weight to furnish a valid reason for the proposed legislation. As a matter of fact the cases in which a man experiences serious difficulty in obtaining the services of a trustee are, comparatively speaking, few and far between; and as to the loss caused by the misconduct of trustees, the committee submit that, considering the almost infinite number of private trusts which exist at the present day, the instances where the trustee proves to be unworthy of the confidence placed in him are extremely few. This argument, grounded, as it may be said to be, on the weakness of human nature, may be used with more or less strength in respect of all human institutions; but where it applies with no greater force than in the present instance, it cannot, in the opinion of the committee, form a good ground for State interference.

The supporters of these bills say that they are permissive only, and therefore can do no harm. The committee, however, feel that this argument is specious and illusory. Apart from the fact that some of the provisions of the bills are somewhat of a compulsory character, to say the least, experience has proved that the creation of a State department is an evil of itself, unless it is an absolute necessity or undoubtedly expedient. In the present instance the committee, as practical men, feel that a strong disinclination would exist on the part of the public generally to employ the public trustee, because of the public nature of his position; and if, as the committee venture to predict would be the case, the office were to prove a failure, or only a limited success, then the fees and percentages would not pay its expenses, and the result, judging from past experience, it is not difficult to foresee; the new branch of the public service would have to be made self-supporting, the jurisdiction of the department would be extended, and pressure would be brought to bear in order to provide work of some kind for its unemployed officials.

The committee submit that the more rational and effective way of meeting some of the least of the difficulties complained of would be to give to private trustees the right to remuneration for their services, as is proposed in the case of the public trustee. Such remuneration should be restricted to a reasonable though varying amount, the mode of settling which it would not be difficult to devise.

The legislation of recent years has done much to put the position of a private trustee upon a more rational footing, and the committee cannot but think that a further step in the direction just indicated would prove of far greater advantage to beneficiaries in general than the creation of a special department to safeguard their interests; whilst testators and others would have a wider field from which to select trustees, and would be able to secure the services of men of standing and ability, who, under the present system, in many instances cannot be, or certainly are not applied to, owing to the thankless nature of the office, an argument which would especially hold good in cases of appointments of new trustees.

THOS. MARTINEAU, President.
ARTHUR GODLEE, Vice-President.
THOS. H. RUSSELL, Hon. Secretary.

Wellington Passage,
Bennett's Hill, Birmingham.

RENTS COLLECTED AND DISTRAINTS LEVIED TO RECOVER SAME, by Messrs. HENRY C. WOOD (Surveyor to the Parish of Tooting) and HENRY KIRBY (Wood & Kirby), Certificated Brokers, 1 Great James Street, Bedford Row, W.C. No charge made to Landlords if Rent over 20*l*. Troublesome tenants got rid of. Possession also taken under Bills of Sale, Mortgages, &c. Bailiffs to the Parish of St. Dunstan in the West and City of London (Farringdon Ward). Money paid over same day received. Bankers: City Bank, Holborn Viaduct. References, if desired, to clients of many years' standing. Prompt and personal attention given.—ADVT.

# CAUSE LISTS.

## HIGH COURT OF JUSTICE.

### QUEEN'S BENCH DIVISION.

*Easter Sittings*, 1891.

### APPEALS AND MOTIONS IN BANKRUPTCY.

*Appeals for hearing before a* DIVISIONAL COURT *sitting in Bankruptcy.*

In re Whiteley, ex parte D. Smith & Co.
In re Burgoyne, ex parte Burgoyne
In re Hand, ex parte Townend
In re Parrott, ex parte Stringer
In re Whitley, ex parte Mirfield, &c. Co.
In re Same, ex parte Same
In re Parrott, ex parte Cullen
In re Cohen, ex parte Cohen
In re Angel, ex parte Angel
In re Gillo, ex parte Dollar
In re Fiddian, Squire & Co. ex parte H. Fiddian and H. V. Squire
In re Poulton, ex parte Williams
In re Cubitt & Utting, ex parte Gould
In re Cook, ex parte Murray
In re Bullock & Sons, ex parte Ibeson

*Motions in Bankruptcy for hearing before*

MR. JUSTICE CAVE.

In re Duncan, ex parte Official Receiver *v.* Duncan
In re Bates, ex parte Official Receiver *v.* Bates
In re Collier & Sons, ex parte Collier *v.* Nicholls
In re Nathan, ex parte Official Receiver *v.* Nathan and another
In re Same, ex parte Same *v.* J. Nathan
In re Rouquette, ex parte Young *v.* Steinthal
In re Matthews, ex parte W. A. Matthews *v.* Henderson
In re R. B. Wood, ex parte Wood and others *v.* Trustee
In re Wood, ex parte Roberts *v.* Sonan
In re Williams, ex parte Pepper *v.* Macqueen
In re Spanton, ex parte Official Receiver *v.* Lenanton and others
In re Wickes, ex parte Halse *v.* Foreman
In re Ashby, ex parte Official Receiver *v.* Green and others
In re Snyder, ex parte Picley *v.* Crossfield
In re Artolo Bros. ex parte Pardinus *v.* Hurlbatt

MATTERS IN BANKRUPTCY.

Total Appeals and Motions . . . . . 30

## PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

### PROBATE CAUSES.

*Easter Sittings*, 1891.

*A List of Actions in the order in which they are entered for Trial will be posted at the Registry, Somerset House, and Supplemental Lists will be printed from time to time.*

*Parties must be prepared to try their Actions ten days after the same have been entered for Trial.*

BEFORE THE COURT ITSELF—WITHOUT JURY.

Ashwin and Addis *v.* Addis (Addis and others cited)
Burchell *v.* Webber (Cowie and others cited)
Petitt and Woods *v.* Case
Wilde and others *v.* Lloyd (Joyce and others cited)
Beles *v.* Potter and others
Askew and Johnston *v.* Askew
Gee *v.* Gee and others
Redhouse *v.* Blakeslee
Lees *v.* Lees and others
Phillips *v.* Barton and others
Groffman and Groffman *v.* Groffman (by Groffman, her grdian.)
Martyr (by Blackabey, his attorney) *v.* Perry
Paton *v.* Ormerod (Paton and Paton, by Corbould, their guardian, intervening)
Jones and Jones *v.* Edwardes
Radcliffe and Field *v.* Mellor (Mellor and others cited)
Barber *v.* Larrett and others
Main and Graham *v.* Robinson and others (Arnold and others cited)
Featherstone *v.* Catterns
Witton *v.* Humphries (otherwise Witton)
Clark *v.* Dixon and others
Harris *v.* Hawker and others
Solicitor of the Treasury *v.* Harker
Ennis *v.* Leahy and others
Monk *v.* Higson and others
Banks and Ivens *v.* Burcher
Meads and Bland *v.* Smith
Rooms *v.* Rooms and Jones
Jones and Eastham *v.* Eastham
Peacock (otherwise Peacod) *v.* Peacod
Cavendish *v.* Cavendish (by Cavendish, his guardian)
Perry and others *v.* Norman and Blundy

FOR JUDGMENT.

Budd-Budd (Catala and others cited) *v.* Budd and Dalzell
Reeves *v.* Pennington

SUMMARY.

Before the Court itself—without Jury . . . . 31

# DIVORCE CAUSES.

## *Easter Sittings*, 1891.

PART-HEARD CAUSES.

*Notice to be given at Court when Parties are ready to proceed with the further hearing of these Causes.*

Kalbitzer *v.* Kalbitzer (undefndd.)
Briscoe *v.* Briscoe and Dockerty (undefended)
Thorn *v.* Thorn and Matthews (undefended)
Sanders *v.* Sanders (J.S.) (undefended)
Matters (by her guardian, Thos. James Harvey) *v.* Matters

BEFORE THE COURT ITSELF—UNDEFENDED.

Robertson *v.* Robertson
Pohl *v.* Pohl
Sleemin *v.* Sleemin
Ley *v.* Ley and Smith
Wilson *v.* Wilson
Smith *v.* Smith
Furby *v.* Furby and Nixon
Jago *v.* Jago and Gooding (pauper cause)
Kellett *v.* Kellett and Pratt (pauper cause)
Cartwright *v.* Cartwright and Randle
Shaw *v.* Shaw and Prince
Lock *v.* Lock
Sculthorpe *v.* Sculthorpe
Salt *v.* Salt
Harding *v.* Harding
Rust *v.* Rust and Dodd (pauper cause)
Langrick *v.* Langrick and Clubley
Brinham *v.* Brinham and Clark
Loftus *v.* Loftus and Crane
Elliot *v.* Elliot
Nettleton *v.* Nettleton
Spencer *v.* Spencer and Lee
James *v.* James and Johnson
Woolley *v.* Woolley and Forrester
Hart *v.* Hart
Wight *v.* Wight and Holland
Longfield *v.* Longfield and Squire
Minchin *v.* Minchin
Stromgvist *v.* Stromgvist
Taylor *v.* Taylor and Parrott
Bibbey *v.* Bibbey and Sheridan
Newman *v.* Newman
Willatt *v.* Willatt
M'Kenzie *v.* M'Kenzie (J.S.)
Armstrong *v.* Armstrong and Whitley
Chadwick *v.* Chadwick
Roberts *v.* Roberts
MacLean *v.* MacLean and Duckworth
Crowe *v.* Crowe
Henshall *v.* Henshall
Davis *v.* Davis and Davis
Turner *v.* Turner and Abbott
Beanland *v.* Beanland and Lightowler
Wilson *v.* Wilson, Wilson, and Fawcett
Beacon *v.* Beacon and Nash
Drew *v.* Drew
Martin *v.* Martin and Clark (pauper cause)
Snook *v.* Snook, White (since deceased), and Woolacott
Rabone *v.* Rabone and Davis
Hornblow *v.* Hornblow
Cowlishaw *v.* Cowlishaw and King
Knifton *v.* Knifton and Bailey
Beazley *v.* Beazley
Preedy *v.* Preedy
Medina (otherwise Prentice) *v.* Medina (N.)
Moser *v.* Moser (J.S.)
Morgan *v.* Morgan and Briscoe
Abbot *v.* Abbot
Greenwood *v.* Greenwood
Aptommas *v.* Aptommas
Pochet *v.* Pochet
Baghino *v.* Baghino and Primavesi
Joseph *v.* Joseph
Mills *v.* Mills, Smith, and Halligan
Smith *v.* Smith
Jackson *v.* Jackson
Smith *v.* Smith and Moss
Goucher *v.* Goucher
Smith *v.* Smith and Thompson
Hutchings *v.* Hutchings
Hopkins *v.* Hopkins and Leader
Gee *v.* Gee and Barnitt
Southam *v.* Southam
Bright *v.* Bright and Neate
Jefford *v.* Jefford
Honeycombe *v.* Honeycombe and Sawyer
Turpin *v.* Turpin and Smith (otherwise 'Jersey Bill')
Firth *v.* Firth
Martin *v.* Martin
Frisby *v.* Frisby
Cooper *v.* Cooper
Broom *v.* Broom
Wheater *v.* Wheater
Skeldon *v.* Skeldon and Spence
Swift *v.* Swift
Potier *v.* Potier
Munroe *v.* Munroe
McAven *v.* McAven
Ensor *v.* Ensor
Hunt *v.* Hunt
Coni *v.* Coni
Whittaker *v.* Whittaker
Taylor *v.* Taylor and Gardner
Rogers *v* Rogers and Langdown
Mason *v.* Mason
Mayhew *v.* Mayhew
Taylor *v.* Taylor
Aspden *v.* Aspden and Riding
Moorhouse *v.* Moorhouse and Hepworth
Palmer *v.* Palmer (J.S.)
Plum *v.* Plum
Shaw *v.* Shaw and Bullock
Griffith *v.* Griffith, Rhag, Patterson, and Graham
Hounsell *v.* Hounsell (J.S.)
Love *v.* Love
Sugden *v.* Sugden
Dagg *v.* Dagg and Sanderson
Scott-Lawrence *v.* Scott-Lawrence
Francis *v.* Francis
Bevington *v.* Bevington and Hobden
Gilbourne *v.* Gilbourne, Wilson, and Wright
Richmond *v.* Richmond
Dawson *v.* Dawson and Aylestubbs
Douglas *v.* Douglas
Bingley *v.* Bingley and Taylor (pauper cause)
Claybrook *v.* Claybrook & Russell
Crowley *v.* Crowley (pauper cause)
Noller *v.* Noller and Hawes
Shaw *v.* Shaw and Bullock

BEFORE THE COURT ITSELF—DEFENDED.

Purchase *v.* Purchase and Allsopp (cited)
Cripps *v.* Cripps and Boutellier
Larro *v.* Larro (J.S.)
Taplen *v.* Taplen and Cowen (Queen's Proctor intervening) (pauper cause)
Higgs *v.* Higgs and Clarke
Bailey *v.* Bailey and Mills
Bendall *v.* Bendall, Parker and Todd
Sneddon *v.* Sneddon
Wooder *v.* Wooder
Flateau *v.* Flateau
Potter *v.* Potter
Broad *v.* Broad
Storr *v.* Storr
Bramhall *v.* Bramhall and Dinely
Dobie *v.* Dobie
Treleaven *v.* Treleaven and Watling (Queen's Proctor showing cause)
De Vear *v.* De Vear (R.C.R.)
Vivian *v.* Vivian
Guttmann *v.* Guttmann
Johnson *v.* Johnson (J.S.)
Roberts *v.* Roberts
Taylor *v.* Taylor
Aarons *v.* Aarons and Wadmore
Jackson *v.* Jackson and Smith
Donkin *v.* Donkin, Atkinson, Salmon, and Lusby
Jackson *v.* Jackson (R.C.R.)
Taylor *v.* Taylor
Murdoch *v.* Murdoch (J.S.)
Ellis *v.* Ellis (Queen's Proctor showing cause)
Forde *v.* Forde (J.S.)
Yorke *v.* Yorke, Isod, and Matthews
Webster *v.* Webster (J.S.)
Windsor *v.* Windsor and Olsen (otherwise Alston)
Sharpe *v.* Sharpe
Vale *v.* Vale (J.S.)
Jay *v.* Jay
Aires *v.* Aires (J.S.)
Brook *v.* Brook (otherwise Sheridan) (*in camerâ*) (N.)
Lawrence *v.* Lawrence (otherwise Ambery) (*in camerâ*) (N.)
Danby *v.* Danby
Hayward *v.* Hayward (Queen's Proctor showing cause)
Atterton *v.* Atterton and Irving (pauper cause)
Orr-Ewing *v.* Orr-Ewing (J.S.)
Russell *v.* Russell (J.S.)
Hall *v.* Hall and Bagley
Speakman *v.* Speakman and Willet (Queen's Proctor showing cause)
Rais *v.* Rais and Back
Myzoule *v.* Myzoule
White and Dames *v.* The Attorney-General (Eddingtons and Fox cited) (L.D.A.)
Milner *v.* Milner (pauper cause)
Stay *v.* Stay
Johnson *v.* Johnson and Smith
Bruce *v.* Bruce and Younger
Redman *v.* Redman (J.S.)
Newell-Atkins *v.* Newell-Atkins
Bowers *v.* Bowers
Gray *v.* Gray and Gutteridge
Levi *v.* Levi (J.S.)
Sands *v.* Sands, Barton (cited as Barlow), Morissey, and Oliver
Chubb *v.* Chubb and Cugny
Breaks *v.* Breaks (J.S.)
Clack *v.* Clack
Bill *v.* Bill
Harrison *v.* Harrison (J.S.)
Ashton *v.* Ashton (J.S.)
Jones *v.* Jones and Cubberley (cited as Cuberley)
Levin *v.* Levin
Fairhurst *v.* Fairhurst and Johnston
Yarrow *v.* Yarrow
Tuplin *v.* Tuplin
Steinberg *v.* Steinberg & Ingham
Hopper *v.* Hopper

SUMMARY.

| | | |
|---|---|---|
| Causes before the Court itself—Undefended | . . | 119 |
| " " Defended | . . . | 72 |
| Total | . . . | 191 |

CAUSES standing over by consent or otherwise, or stayed by order; to be replaced in the List of Causes for Hearing on the Petitioner giving Ten Days' Notice in writing to the other parties for whom an appearance has been entered, and filing a Copy of such Notice in the Registry.

Coustas *v.* Coustas (J.S.)
Wood *v.* Wood and Brook (defended) (stay security)
Williams *v.* Williams and Young (defended) (stayed)
Bates *v.* Bates and Baker (C.J.) (stay security)
Browse *v.* Browse (defended) (stay security)
Worsnop *v.* Worsnop and Roulstone (undefended) (stay security)
Dodson *v.* Dodson (undefended) (stayed)
Wilson *v.* Wilson, Rand, and Wardell (stay security) (C.J.)
Bagge *v.* Bagge (defended order)
Pereira *v.* Pereira (undefd. order)
Fearn, A. E. *v.* Fearn, G. (order) (R.C.R.)
Nicol, M. A. *v.* Nicol, A. (defended order) (J.S.)
Bevington *v.* Bevington and Jameson (undefended) (commission)
Clark *v.* Clark (defended order) (J.S.)
Tribe *v.* Tribe (C.J.) (order) (J.S.)
Titford *v.* Titford (defended) (stay security)
Payne *v.* Payne, Carter, and Fry (cited) (defended order)
Relph *v.* Relph (defended) (stay security)
Wood, H. *v.* Wood, John (defndd.) (stay security) (J.S.)
Holmes *v.* Holmes and Pearson (defended) (stay security)
McConachie *v.* McConachie and Beal (defended) (stay security)
Darvall *v.* Darvall, Scutter, and Curtis (defndd.) (stay security)
Arnott *v.* Arnott and Fox (defended) (stay security)
Bennett, D. *v.* Bennett, M. (defended) (stay security) (R.C.R.)
Richley *v.* Richley and Tate (defended) (stay security)
Piggott *v.* Piggott, Ball, and Kimber (defnd.) (stay security)
Amos *v.* Amos and Harding (defended) (stay security)
Nathan *v.* Nathan (defended) (stay security) (J.S.)
Prime *v.* Prime and Hewett (stay security) (C.J.)
Francis *v.* Francis and Alderman (defended) (stay security)
Williams *v.* Williams and Hinton (stay security) (O.J.)
Corti *v.* Corti and Bruce (defended) (stay security)
Cardle *v.* Cardle and Jaggs (stay security) (O.J.)

Hodson v. Hodson and Seager (defended) (stay security)
Burnside v. Burnside and Hardy (defended) (stay security)
Park v. Park and Ashworth (stay security) (C.J.)
Shemtob v. Shemtob and Vitali (stay security) (C.J.)
Gotliff v. Gotliff and Harrison (defended) (stay security)
Agar v. Agar (undefended) (stay commission)
Campbell v. Campbell (defended) (commission) (J.S.)
Kavanagh v. Kavanagh and Nesbitt (defended) (stay security)
Duncan v. Duncan (undefended) (stay security)
Bucknall v. Bucknall (defended) (order)
Wild v. Wild (defnd. order) (J.S.)
Clarke v. Clarke and Robinson (defended) (stay security)
Edwards v. Edwards and Edwards (stay security) (C.J.)
Hicks v. Hicks and Smith (defended) (stay security)
Uva v. Uva and Mooney (defended) (stay security)
Beer v. Beer, Bath, Thomas, and Cox
Beer v. Beer (stay secty.) (S.J.)
Scarratt v. Scarratt and Bullock (stayed) (S.J.)
Hurley v. Hurley and Menzies (stay security) (S.J.)

## LAW STUDENTS SOCIETIES.

DEBATING.—The quarterly meeting of this society was held at the Law Institution, Chancery Lane, on Tuesday, April 7; Mr. Curtis in the chair. After the usual formal business had been transacted, the subject for discussion: 'That it is inadvisable to interfere with the present relationship between owners and occupiers of house property as to the incidence of local taxation,' was opened by Mr. Kinipple, for Mr. Bilney.—Mr. Rhys opposed.—The debate having been declared open, the following gentlemen spoke in the affirmative: Messrs. Mawdesley, Reed, Pattinson, Bower, Parkes, Watkins, Bolton, and Thirlby; in the negative, none.—Mr. Watson replied for Mr. Kinipple.—On the motion being put to the meeting, it was carried by a majority of eleven.—The subject for discussion at the next meeting of the society on Tuesday, April 14, is: 'That the case of *Barrow* v. *Isaacs*, 60 Law J. Rep. Q. B. 179; L. R. (1891) 1 Q. B. Div. 417, was wrongly decided.'

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, BOWEN, L.J., and KAY, L.J.

TUESDAY, APRIL 7.

*In re An Arbitration between J. Knight and Tabernacle Permanent Building Society and Arbitration and Building Societies Acts* (appeal of J. Knight from order of Wills, J., and Williams, J., dated February 10, rescinding order for statement of special case; part heard March 2—present, Master of the Rolls and Bowen, L.J., and Fry, L.J.)—*Cur. adv. vult.*

Before the LORD CHIEF JUSTICE, the MASTER OF THE ROLLS, and FRY, L.J.

WEDNESDAY, APRIL 8.

*Smith, Hill & Co.* v. *Pyman, Bell & Co.* (appeal of defendants from judgment of Charles, J., dated November 15, at trial without a jury at Leeds).—Allowed.

## APPEAL COURT II.

Before LINDLEY, L.J., BOWEN, L.J., and KAY, L.J.

TUESDAY, APRIL 7.

*In re D. H. Porrett, one, &c. and Animal Products Company (Lim.)* (appeal of D. H. Porrett from order of Kekewich, J., dated February 3, affirming order of district registrar for delivery of solicitor's bill of fees and disbursement).—Allowed.

WEDNESDAY, APRIL 8.

*Bonnard* v. *Perryman* (appeal of defendant C. W. Perryman from order of North, J., dated March 3, restraining until trial publication and sale of *Financial Observer* for February 7).—Adjourned for argument before full Court.

*In re J. K. Mainwaring, dec. Crawford* v. *Royal Infirmary and other Charities. In re J. K. Mainwaring, dec. Crawford* v. *Forshaw* (appeal of plaintiffs from judgment of Kekewich, J., dated January 11, 1890).—*Cur. adv. vult.*

## NOTICES FOR THE WEEK.

ROTA OF REGISTRARS.

MONDAY, April 13.—Court of Appeal No. 2: Mr. Farmer. Mr. Justice Chitty: Mr. Ward. Mr. Justice North: Mr. Beal. Mr. Justice Stirling: Mr. Leach. Mr. Justice Kekewich: Mr. Jackson. Mr. Justice Romer: Mr. Carrington.

Tuesday, April 14.—Court of Appeal No. 2: Mr. Rolt. Mr. Justice Chitty: Mr. Pemberton. Mr. Justice North: Mr. Pugh. Mr. Justice Stirling: Mr. Godfrey. Mr. Justice Kekewich: Mr. Clowes. Mr. Justice Romer: Mr. Lavie.

Wednesday, April 15.—Court of Appeal No. 2: Mr. Farmer. Mr. Justice Chitty: Mr. Ward. Mr. Justice North: Mr. Beal. Mr. Justice Stirling: Mr. Leach. Mr. Justice Kekewich: Mr. Jackson. Mr. Justice Romer: Mr. Carrington.

Thursday, April 16.—Court of Appeal No. 2: Mr. Rolt. Mr. Justice Chitty: Mr. Pemberton. Mr. Justice North: Mr. Pugh. Mr. Justice Stirling: Mr. Godfrey. Mr. Justice Kekewich: Mr. Clowes. Mr. Justice Romer: Mr. Lavie.

Friday, April 17.—Court of Appeal No. 2: Mr. Farmer. Mr. Justice Chitty: Mr. Ward. Mr. Justice North: Mr. Beal. Mr. Justice Stirling: Mr. Leach. Mr. Justice Kekewich: Mr. Jackson. Mr. Justice Romer: Mr. Carrington.

Saturday, April 18.—Court of Appeal No. 2: Mr. Rolt. Mr. Justice Chitty: Mr. Pemberton. Mr. Justice North: Mr. Pugh. Mr. Justice Stirling: Mr. Godfrey. Mr. Justice Kekewich: Mr. Clowes. Mr. Justice Romer: Mr. Lavie.

THE BANKRUPTCY ACT.—The attention of the Board of Trade having been called by a provincial accountant to the prevailing practice amongst a certain class of bankruptcy petitioners of touting for appointments as trustee under the Bankruptcy Act, the Inspector-General in Bankruptcy has addressed the following letter to the accountant upon the subject: 'Sir,—With reference to the subject of solicitation for proxies referred to in your letter, I have consulted the Board of Trade, and am authorised by them to state that in the event of any case being brought to their knowledge in which the appointment of a trustee has been effected by means of proxies obtained by solicitation on the part of the person so elected, the Board of Trade, having regard to the provisions of rule 20 of schedule 1 of the Bankruptcy Act, will be prepared to object to such appointment under section 21 of the Bankruptcy Act.—I am, sir, your obedient servant, John Smith, Inspector-General in Bankruptcy.'

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## CALENDAR OF THE COUNTY COURTS.

### From April 13 to April 18.

| No. of Circuit | His Honour | April 13 | April 14 | April 15 | April 16 | April 17 | April 18 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Runcorn | — | — | Birkenhead | — |
| 8 | Judge Heywood | — | Salford | Salford | Salford | Salford | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | Middlesbrough | York | Thirsk | Helmsley | Knaresborough | Ripon |
| 19 | Judge Barber | — | Alfreton | Burton | Derby | — | — |
| 22 | Judge Harington | Stratford-on-Avon | Coventry | Warwick | Rugby | — | — |
| 26 | Judge Jordan | Longton | Burslem | Hanley | Hanley | Atherstone | — |
| 47 | Judge Powell | — | Lambeth | Greenwich | Lambeth | Lambeth | — |
| 54 | Judge Metcalfe | Bristol | Bristol | Bristol | Bristol | Bristol | — |
| 55 | Judge Machonochie | — | Dorchester | Bridport | Weymouth | Blandford | — |
| 58 | Judge Edge | East Stonehouse | East Stonehouse | East Stonehouse | East Stonehouse | East Stonehouse | Tavistock |

## HONOURS AND APPOINTMENTS.

The Queen has been graciously pleased to appoint Nicholas John Hannen, Esq., to be Her Majesty's Chief Justice of the Supreme Court for China and Japan and Her Majesty's Consul-General at Shanghai. Mr. Hannen was called in 1866.

George Jamieson, Esq., to be Her Majesty's Assistant Judge of the Supreme Court for China and Japan and Her Majesty's Consul at Shanghai. Mr. Jamieson was called in 1880.

The Queen has also been graciously pleased to appoint Robert Anderson Mowat, Esq., to be Her Majesty's Judge for Her Court in Japan. Mr. Mowat was called in 1871.

The Lord Chancellor has appointed Mr. Francis William Maclean, Q.C., M.P., a Master in Lunacy, in place of Sir Alexander Miller, resigned. Mr. Maclean was called in 1868.

The Lord Chancellor has appointed Mr. Hardinge F. Giffard to be his private secretary, in place of Mr. Herbert J. Hope. Mr. Giffard is the son of the late Mr. J. W. Giffard, judge of County Courts; he was educated at Merton College, Oxford, and was called in 1887.

Mr. Aubrey William Rake (of the firm of Howe & Rake), of 22 Chancery Lane, W.C., and 171 Norwood Road, Herne Hill, S.E., has been appointed Solicitor to the Society of Public Analysts. Mr. Rake, having obtained honorary distinction at his Final, was admitted in February, 1884, and is a Commissioner for Oaths.

Mr. E. J. Trustram, M.A., Oxon (of the firm of Messrs. Halses, Trustram & Co.), of 61 Cheapside, E.C., and 17 Old Burlington Street, W., has been appointed by Sir James Whitehead, Bart. (High Sheriff of the county of London), Returning Officer for the borough of Deptford. Mr. Richard Clarence Halse, the senior partner in the firm, is the Deputy of the Ward of Cheap; and Mr. Clarence Richard Halse, of the same firm, is the Returning Officer for the borough of St. Pancras.

Mr. William Carpenter (of the firm of W. Carpenter & Sons), of 5 Laurence Pountney Lane, E.C., has been appointed a Commissioner for Oaths. Mr. Carpenter was admitted in 1871.

Mr. Thomas Carpenter (of the firm of W. Carpenter & Sons), of 5 Laurence Pountney Lane, Cannon Street, E.C., has been appointed a Commissioner for Oaths. Mr. Carpenter was admitted in 1872.

Mr. James Hamilton Collins, of St. George's House, Eastcheap, E.C., has been appointed a Commissioner for Oaths. Mr. Collins was admitted in 1884.

Mr. Daniel Cann (of the firm of Cann & Son), of 30 Gracechurch Street, E.C., and East Molesey, has been appointed a Commissioner for Oaths. Mr. Cann was admitted in 1883.

Mr. A. Mozley Stark, of 62 Strand, has been appointed a Commissioner for Oaths. Mr. Stark was admitted in 1884.

Mr. Arthur Burges Crosby (of the firm of Crosby, Farmer & Crosby), of Stockton-on-Tees and Norton, has been appointed a Commissioner for Oaths. Mr. Crosby was admitted in 1884.

Mr. William Thurnall (of the firm of W. Garrard & Thurnall), of Kettering, has been appointed a Commissioner for Oaths. Mr. Thurnall was admitted in 1881.

Mr. George Wintringham Cutts, of Goole, has been appointed a Commissioner for Oaths. Mr. Cutts was admitted in 1884.

Mr. F. W. Bayley, of Newcastle, Staffordshire, has been appointed a Commissioner for Oaths. Mr. Bayley was admitted in 1885.

Mr. George Edward Mellor, of Oldham, has been appointed a Commissioner for Oaths. Mr. Mellor was admitted in 1884.

Mr. J. H. Kean, of Fleetwood, has been appointed a Commissioner for Oaths. Mr. Kean was admitted in 1885.

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Commercial Failures.—According to *Kemp's Mercantile Gazette*, the number of failures in England and Wales gazetted during the week ending April 4 was forty-one. The number in the corresponding week of last year was eighty-three, showing a decrease of forty-two, being a net decrease in 1891, to date, of seventy-three.

Licensing Magistrates.—Mr. Maclure, M.P., has introduced a bill to remove the disabilities of railway and other shareholders in public companies to act at licensing sessions. At present section 60 of the Licensing Act of 1872 directs that no justice is to act at a licensing sessions or under any Intoxicating Liquors Licensing Acts who is, or is in partnership with, or holds a share in any company which is, a common brewer, distiller, maker of malt for sale, or retailer of malt, or of any intoxicating liquor in the licensing district or in the district adjoining to that in which he usually acts. The cases excepted from this general rule are those where the offence charged is that of being found drunk in any highway or other place, or on any licensed premises, or of being guilty while drunk of riotous or disorderly conduct, or of being drunk while in charge, on any highway or other public place, of any carriage, horse, cattle, or steam-engine, or of being drunk when in possession of loaded firearms. The bill proposes to repeal this section 60, so far as it relates to a railway or other shareholder, except so far as that he is not to vote or act as regards any station or other licensed premises in which the company in which he is a shareholder is interested. One noticeable point about the bill is that it appears to make the distinction between partners in a brewery and shareholders in one—of leaving the disability on the former while removing it from the latter.

HIS HONOUR JUDGE MORGAN HOWARD, County Court Judge for Cornwall, is lying seriously ill at Torquay.

THE *Guardian* understands that no appearance has been entered on behalf of the Bishop of Lincoln on the petition of appeal to the Privy Council by the promoters of the suit against his lordship.

THE Fire Inquests Bill, introduced by Mr. Brookfield on Wednesday, extends to the whole country the power now possessed by the City of London coroner to hold inquests in the case of fatalities from fires.

MR. HUNTER has drafted a bill to assimilate the divorce law of England to that which has been in force in Scotland since the time of the Reformation. He proposes to make desertion a ground for divorce, and to give the wife a title to apply for a divorce on the ground of adultery alone. The measure will be introduced in the course of a few days.

ABSENT JUDGES.—Neither Lord Justice Lopes, Mr. Justice Denman, nor Sir James Butt have resumed their duties at the present sittings. Mr. Justice Denman, we understand, will return to Court on Monday, and Lord Justice Lopes is expected back shortly; but in the case of Sir James Butt, who is indisposed, it is uncertain at present when his lordship will resume his seat.

SOLICITORS' BENEVOLENT ASSOCIATION.—The usual monthly meeting of the board of directors of this association was held at the Law Institution, Chancery Lane, London, on Wednesday, the 8th inst., Mr. John Hunter in the chair. The other directors present were Messrs. H. Morten Cotton, R. R. Dees (Newcastle-on-Tyne), Geo. Burrow Gregory, Samuel Harris (Leicester), Edwin Hedger, J. H. Kays, Grinham Keen, R. Pennington, Henry Roscoe, Sidney Smith, R. W. Tweedie, Frederic T. Woolbert, and J. T. Scott (secretary). A sum of 325*l.* was distributed in grants of relief, and other general business was transacted.

STATUTORY RULES.—A good deal of the minor legislation on details and procedure is effected by the intrusting of the making of 'rules' to various public bodies. In many cases it is no easy matter to ascertain what these rules are, and opportunity is not always afforded to those most interested to offer suggestions about any proposed rules. Accordingly a bill has been introduced by Mr. H. H. Fowler and Sir Albert Rollit for improving the procedure for making these 'statutory rules.' It is here provided that, at least forty days before the making of any, copies shall be circulated amongst the 'public bodies' interested in their subject-matter, and shall also be published in the *London Gazette*. If during those forty days any representations or suggestions are made by a public body to the authority proposing to make the rules, they are to be taken into consideration before the rules are finally settled. Where, however, a rule-making authority certifies that the immediate operation of any rules is a matter of urgency, they may be made to come into operation at once as provisional rules, subject to being subsequently confirmed or withdrawn. It is further directed that all statutory rules are to be published, as soon as possible after their coming into operation, by the Queen's printers in the form of a supplement to the statutes of the year, or in some such other form as the Treasury may prescribe. The 'statutory rules' referred to in the bill are those made for the English Court of Judicature or any division, or for the County Courts, and also those made by the Lord Chancellor or any Secretary of State or other Government Department. Another definition is that 'public body' includes the benchers of each Inn of Court, the Incorporated Law Society, the Chambers of Commerce of London and of any county borough, the council of any county, and any other society or body of a representative public character.

HOUSE OF LORDS APPEALS.—The judicial business of the House of Lords will be resumed on Tuesday next, when the case of *Barnardo* v. *Ford* will, it is expected, be in the paper for hearing. The present list contains the names of thirty-six appeals, of which twenty-six are English and ten are Scotch appeals, there being none from Ireland this time.

POLICIES OF LIFE INSURANCE AND MARRIED WOMEN.—The Norwich Union Life Insurance Society have recently been instrumental in obtaining a judicial decision on a matter of some little interest to the insuring public. It has always been a question of much controversy amongst conveyancing counsel whether a woman married before the passing of the Married Women's Property Act, 1882, could mortgage, sell, or assign a policy of life insurance to which she was beneficially entitled either on her own life or on that of another person, it being a matter of great doubt whether a policy of life insurance was a reversionary interest in personal estate within the meaning of the Act 20 & 21 Vict. c. 57, commonly known as Vice-Chancellor Malin's Act. The result has hitherto been that women married before the year 1883 have been very much fettered in dealing with policies of life insurance, and the Norwich Union Life Office (having recently become the purchasers of a policy for 2,000*l.* on the life of a married woman, sold under order of the Court of Chancery in the action of *Witherby* v. *Rackham*) determined to get the point decided, and for that purpose took out a summons in the Chancery Division of the High Court of Justice. The case was fully argued this week before Mr. Justice Chitty, when he decided that a policy of life insurance could be dealt with by a married woman, with the concurrence of her husband, by deed acknowledged before a commissioner, under the provisions of Vice-Chancellor Malin's Act. The following counsel appeared in the case: Mr. Farwell, Q.C., Mr. Byrne, Q.C., Mr. Martelli, and Mr. Swinfen Eady.—*Eastern Daily Press.*

## BIRTHS.

On March 31, at Mirfield, Gleneldon Road, Streatham, the wife of W. J. Hill, Barrister-at-Law, of a daughter.

On March 31, at Katoomba, N.S.W., the wife of Arthur Whitehead, Barrister-at-Law, of a son.

## MARRIAGES.

On April 2, at Whitburn, near Sunderland, Charles Francis Egerton Allen, Barrister-at-Law, Heywood Cottage, Tenby, to Elisabeth Georgina, daughter of the late William Wilcox, Esq., of Whitburn.

On April 2, at St. Peter's Church, Paddington, W., William Rigby, second son of C. H. Hawkins, Esq., of Maitlands, Colchester, to Ella Hastings, youngest daughter of the late Langford Lovell Hodge, Esq., of Antigua, West Indies, Barrister-at-Law.

On April 2, at St. John's Episcopal Church, Johnstone, Renfrewshire, Henry Barr, Solicitor, Glasgow, to Lucy Emily Laura, second daughter of the late W. J. Wainwright, Esq., General Manager Glasgow and South-Western Railway.

On April 7, at St. Stephen's, Westbourne Park, William Roffe Tindal-Atkinson, youngest son of the late Serjeant Tindal-Atkinson, Judge of County Courts, to Emily Marion, only daughter of Midgley Cockcroft, Esq., M.D., of Masham, Yorkshire.

On April 7, at the Parish Church, St. Mary's, Wimbledon, Ernest Edward Surridge, Esq., of Coggeshall, Essex, solicitor, second son of the late J. S. Surridge, Esq., of Coggeshall, Essex, to Edith Mary, third daughter of Lewis Powell, Esq., of Edenthorpe, Wimbledon Park, Surrey.

## DEATHS.

On March 30, at 15 Old Cavendish Street, London, W., John Cemlyn Jones, Esq., Solicitor, of Bangor and Cardiff, aged 39 years.

On March 2, at Graaff-Reinet, South Africa, at the residence of her father, James Ayliff, Civil Commissioner, Annie Helena, wife of Macleod Bawtree Robinson, Additional Resident Magistrate, Kimberley.

On April 3, at Wenderholme, near Bolton, Sarah Emily, the dearly beloved wife of Robert Winder, of Bolton, Solicitor, in her 57th year.

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# The Law Journal.

*SATURDAY, APRIL* 18, 1891.


## 'OBITER DICTA.'

PROGRESS in Court of Appeal No. 1 has hitherto been very slow since the commencement of the present sittings. Up to Wednesday last only four appeals in the final list had been disposed of. The list, at the beginning of the sittings, contained as many as sixty-one appeals, and the New Trial Paper, which is at present untouched, contains fifteen cases. There are also seven Admiralty appeals for hearing with assessors, as well as a constant supply of Interlocutory and Bankruptcy appeals. It seems evident, therefore, that, unless a considerable part of this business can be disposed of in the other branch of the Court, there must be a long list of arrears at Whitsuntide.

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ALL the judges of the Queen's Bench Division were sitting on Wednesday last, and, for the first time of late, all the ten Courts assigned to that Division were occupied, there being three Divisional Courts and seven Courts for the trial of jury and non-jury actions. The Lord Chief Justice sat with Court of Appeal No. 1, and Mr. Justice Wright was at judges' chambers.

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IN connection with the warrants issued for the arrest of two members of the House of Commons, who have apparently fled from justice, it may be stated that where a member is convicted of *felony* and sentenced to penal servitude or any term of imprisonment with hard labour or exceeding twelve months, he forfeits his seat by virtue of 33 & 34 Vict. c. 23, but that no such consequence follows a conviction for *misdemeanour*. The offence of flying from justice was in the case of a felony a separate offence, followed by forfeiture of goods, even although the offender should have been acquitted of the felony, until 7 & 8 Geo. IV. c. 28, s. 5; 'for,' as Blackstone says, 'the very flight was held an offence carrying with it a strong presumption of guilt,' though 'in modern times it became unusual for the jury to find the fact of flight, forfeiture being looked upon since the vast increase of personal property of late years as too large a penalty for an offence to which a man is prompted by the natural love of liberty.' There is at least one precedent—that of James Sadleir—for expelling a member who has fled from justice, without any conviction or judgment of outlawry; but in that case (which occurred in 1857) a true bill had been found, the offence being fraud. See May's 'Parl. Pr.' 9th ed. p. 66, from which, also, it appears that in 1796 one Colonel Cawthorne was expelled for 'conduct unbecoming the character of an officer and a gentleman;' also that 'expulsion is generally reserved for offences which render members unfit for a seat in Parliament, and which, if not so punished, would bring discredit on Parliament itself.' Modern opinion, however, would perhaps call for an immediate expulsion of a member proved to have fled from justice, on the ground that constituencies are entitled to have vacancies so caused filled up with as little delay as possible.

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RAIDS on gaming-houses are, it seems, becoming very common just now, and, in connection with the police watching of certain Buckinghamshire public-houses, Mr. Matthews has stated in the House of Commons that in London the practice of the police authorities was to give warning before taking action, but that this was not the case in the country. The Licensing Act, 1872, s. 17, which imposes a penalty on a licensed person who 'suffers any gaming to be carried on in his premises,' and directs that a conviction for this offence 'shall, unless the convicting magistrate otherwise direct, be recorded on the license of the person convicted,' is, of course, silent as to any previous warning. The current of the decisions (see *Bosley* v. *Davies*, 45 Law J. Rep. M. C. 27; *Redgate* v. *Haynes*, 45 Law J. Rep. M. C. 65; and *Bond* v. *Evans*, 57 Law J. Rep

M. C. 105) is strong against the liability of licensed persons for their servants in this matter. Only in *Somerset* v. *Hart*, 53 Law J. Rep. M. C. 77, where the potman, not proved to be in charge, saw some gambling and did nothing to prevent it, and the master was in another part of the building and knew nothing about it, has a 'licensed person' succeeded in persuading the High Court that he ought not to be convicted.

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IN *Regina* v. *The Bank of England* the Court has refused to grant a *mandamus* to the Bank to permit a 'next-of-kin agent' to inspect the register of unclaimed stock for the purposes of his business, which is carried on by means of printing the names in a list and charging a guinea for information given to each applicant becoming possessed of such list, and so becoming enabled to found a claim to unclaimed stock, if he should have been forestalled by the rightful claimant thereto. Section 51 of the National Debt Act, 1870, directs that 'all stock, no dividend whereon is claimed for ten years,' shall be transferred in the books of the bank to the National Debt Commissioners; and section 52 that, 'immediately after such transfer the name in which the stock stood immediately before the transfer, the residence and description of the parties, the amount transferred, and the date of transfer, shall be entered in a list to be kept for the purpose by the bank, which list shall be *open for inspection* at the usual hours of transfer.' The Court said that *open for inspection* here does not mean open to public inspection, but open to inspection only to a *bonâ fide* claimant, or some person acting for a *bonâ fide* claimant, but intimated also that, even if this had not been the true construction of the statute, they would not be disposed to exercise the discretion, which they undoubtedly possess, in favour of the applicant. The correctness of this judgment is, perhaps, open to some doubt, but, as the Budget is now fast coming on, we will, instead of discussing a dry point of law, hasten to suggest to Mr. Goschen a means of enriching the public which no person could disapprove of. Section 55 of the Act goes on to provide for the retransfer of unclaimed stock to any person showing title, so far as we are able to discover, after any lapse of time, the claimant being able to recover dividends as well as capital, though not 'invested accumulations' (see *In re Ashmead*, 42 Law J. Rep. Chanc. 314). Why should not a period of limitation, say twenty years, be imposed, after which the whole of the unclaimed stock should vest in the Chancellor of the Exchequer for the time being, for the benefit of the public, and during the currency of which a handsome duty, rising by annual increments, as they say at the Treasury, should be payable by successful claimants on retransfer? *Per contrà*, we would have the list at the Bank of England thrown open to public inspection in the widest sense of the term. Mr. Stanley Leighton would take care to see to *that*.

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THE Attorney-General for Ireland, in answer to Mr. T. W. Russell, has stated in the House of Commons that *Sharp* v. *Wakefield* cannot be held to be an authority in Ireland without an express decision of the House of Lords to that effect, inasmuch as the Irish Acts differ so much from the English Acts that *Sharp* v. *Wakefield* would be *primâ facie* distinguishable from any Irish case which might happen to be in conflict with it. A short statement of the leading points in the controversy will be found in the LAW JOURNAL for June 28, 1890, where an attempt is made to point out the *ratio decidendi* of *Reg.* v. *The Recorder of Dublin*, I. R. 11 C. L. 412, which is directly in conflict with *Sharp* v. *Wakefield*.

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A POINT of considerable importance upon the construction of the Arbitration Act, 1889 (52 & 53 Vict. c. 49) arose in the case of *In re An Arbitration between J. R. Williams and Stepney* (noted this week). The question was whether the provision in schedule 1 to the Act, giving arbitrators a discretionary power over the costs of the reference and award, could be deemed to apply to a submission made before the Act came into operation, and which conferred no power upon the arbitrators to award costs. A dispute had arisen between the parties after the Act came into force, and was referred to three arbitrators, who made an award giving costs to the successful party. It was contended that they were entitled to award costs by reason of section 2, which provides that 'a submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in schedule 1,' and reliance was also placed upon section 25, which enacts that the Act 'shall apply to any arbitration commenced after the commencement of this Act under any agreement or order made before the commencement of this Act.' The Court, however, were of opinion that the latter provision did not apply to a submission, but only to an arbitration held under a submission, and that section 2 only applied to future submissions. They, therefore, held that the arbitrators had no power to award costs. The decision is the more important as the schedule contains a number of other provisions 'to be implied in submissions,' and it would seem that none of these can now be held to apply to a submission made before January 1, 1890, the date on which the Act came into operation.

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UNDER the International Convention for the protection of industrial property and section 103 of the Patents Acts, 1883–88, an applicant for a patent in any one of the contracting States may, at any time within seven months from the date of his first foreign application, apply for a patent in this country; the English patent when granted is ante-dated to the date of the first foreign application and is consequently not defeated, as it otherwise would have been, by prior publication or user in the protected interval. An important point in the construction of these provisions was decided by Romer, J., in *The British Tanning Company* v. *Groth* (1891, 8 P. O. R. 113). W. & B. took out a patent in France on December 14, 1886. Within seven months thereafter—viz. on July 5, 1887—they obtained a patent for the same subject-matter in England. But the English patent was not ante-dated as contemplated by the Convention and the statute. The question arose whether W. & B.'s English patent was liable to be defeated by publication prior to July 5, 1887. Romer, J., held—and, if we may say so with respect, rightly held—that it was. A foreign patentee, in his lordship's opinion, has a double right under the Acts, 1883–88. He may take out an ordinary patent for the full period of fourteen years, or he may apply

for a limited grant under the Convention and section 103. The *date* of the patent must be held conclusive as to the course that he intended to adopt.

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In *Hampshire* v. *Wickens*, 47 Law J. Rep. Chanc. 243, the late Master of the Rolls held that a covenant in a lease that the lessee would not assign without the consent of the lessor was not 'usual.' In *Bishop* v. *Taylor* (*Harris, third party*) a deputy County Court judge had decided that a purchaser of a lease could not refuse to complete the purchase on the ground of the lease containing a covenant 'that the lessee would not assign without the consent of the lessor, *such consent not to be unreasonably withheld*,' and held that the deposit was forfeited by reason of the purchaser so refusing to complete. But a Divisional Court (Mr. Justice Smith and Mr. Justice Grantham) has recently reversed this judgment, being of opinion that *Hampshire* v. *Wickens* was applicable and binding. The case is a very important one, as, whether 'usual' in the legal sense or not, the covenant in the qualified form is a very common one—so common, indeed, that Mr. Bolton, in his Conveyancing Act Amendment Bill, proposes to make it universal by reading it into all leases. Upon authority we have no doubt that this judgment is correct. In *Hampshire* v. *Wickens* the covenant was qualified, though the words were a little different, being that the consent was '*not to be withheld to a respectable and responsible tenant*,' so that *Hampshire* v. *Wickens* is virtually undistinguishable. In point of natural justice, however, the insertion of the qualification ought to disable a purchaser of, or person contracting for, a lease from throwing up his bargain upon discovering that the lease contains the covenant against assignment; for the qualification has the practical effect (see *Treloar* v. *Bigge*, 43 Law J. Rep. Exch. 95, and other cases cited in Woodfall, 14th edit. p. 678) of drawing out of the covenant all the sting which it would otherwise possess. But, of course, the term 'usual covenants' should never be used in contracts for leases, and as even the term 'proper' is no more efficacious (see *Eadie* v. *Addison*, 52 Law J. Rep. Chanc. 80), the only safe procedure for a vendor or intending lessor to adopt is to settle the form of the covenant against alienation by express words in the contract.

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It will be remembered that in the case of *Ex parte Lickorish*, 59 Law J. Rep. Q. B. 500; L. R. 25 Q. B. Div. 176, the Court of Appeal, approving *Solater* v. *Cottam*, 3 Jur. (N.S.) 630, held that a solicitor-mortgagee could not charge his mortgagor with profit costs for non-contentious business incurred in relation to the mortgage debt and security. We pointed out at the time in an article in these columns (Law Journal, 1890, p. 414) that the principle of this decision must logically be applicable to every kind of business, whether contentious or non-contentious, though there was some authority the other way in *Price* v. *M'Beth*, 33 Law J. Rep. Chanc. 460, where Vice-Chancellor Stuart allowed profit costs of a redemption action to a solicitor-mortgagee acting in person. In the case of *Stone* v. *Lickorish* (26 Notes of Cases, 1891, p. 18) the precise point came for decision before Mr. Justice Stirling, which he decided in accordance with our anticipation, allowing only costs out of pocket to a solicitor-mortgagee in a similar case. In *Price* v. *M'Beth* Vice-Chancellor Stuart appears to have decided the point on the mere ground that the redemption decree had gone in the usual form directing the taxing-master to tax the mortgagee's costs, and that the objection to the allowance of profit costs ought to have been taken at the hearing and could not be raised on taxation. A similar view, though it was not necessary for his decision, seems to have been entertained by Vice-Chancellor Bacon in the case of *In re Donaldson*, 54 Law J. Rep. Chanc. 151; L. R. 27 Chanc. Div. 544, as to a like objection being taken after a common order under the Solicitors Act, 1843, to tax the bill of a solicitor-trustee. The case of *Stone* v. *Lickorish*, before Mr. Justice Stirling, was on all-fours with *Price* v. *M'Beth* in this respect, but the learned judge, who specially inquired as to the practice, not only found that Vice-Chancellor Stuart's view was opposed to the regular practice in the taxing-master's office, which was to entertain such an objection though not taken at the hearing, but also held that it was inconsistent with Lord Cottenham's actual decision in *Cradock* v. *Piper*, 19 Law J. Rep. Chanc. 107; 1 M. & G. 107. Mr. Justice Stirling's decision upon the point of practice seems clearly right. His decision on the point of law seems equally clearly in accordance with the rule laid down by the Court of Appeal, and as matters stand—that is, unless and until some case is carried to the House of Lords—there appears to be no possible further doubt as to the position of a solicitor-mortgagee in the matter.

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The Lord Chancellor has just introduced a Law of Evidence Consolidation Bill (see *ante*, p. 220) in the House of Lords, which will probably have been read a second time before these lines meet the eye of the reader. It may be hoped that the bill will not leave that House without having incorporated therein a provision for allowing all persons accused of crime to give evidence. A bill of Lord Bramwell's to this effect, first introduced in 1884, has four times passed the House of Lords, and a similar bill was introduced from 1884 to 1888 by successive law officers of the Crown. In 1884 this bill passed through the Standing Committee on Law, and in 1888, when it was fully debated on a second reading, it met with the warmly expressed approval of Sir Charles Russell, Mr. Finlay, and other distinguished lawyers too numerous to mention, but failed to pass on account of the opposition of the Irish members, Sir Henry James and Sir Charles Russell joining with those members in urging that, in view of that opposition, Ireland ought to be excluded from the operation of the bill. Upon consideration of the statute-book as it now stands, we think that the exclusion of Ireland from the bill has very much to be said for it. There are no less than forty-four Evidence Acts which apply to Scotland only, and no less than thirty Evidence Acts which apply to Ireland only. Neither Lord Denman's Act of 1843, by which the evidence of interested witnesses, not being actual parties, was admitted, nor Lord Brougham's Act of 1851, by which the evidence of actual parties was admitted, applies to Scotland, the Scotch law of the subject being governed by two separate and later Acts. Similarly, when the advantage of the rules, which Lord Bramwell's

bill and the Government bills sought to introduce, has been proved, as no doubt it will be, by English experience, it will be applied to Ireland at the solicitation of Irish members themselves, to whom the question must have been familiar longer even than to English or Scotch members; for, curiously enough, it was two Irish members, Mr. Scully and Mr. McMahon, who very many years ago introduced a bill for admitting the evidence of all accused persons.

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FEW persons can have much frequented the Courts of late years without noticing the great increase of 'parties in person,' to the no small interruption of ordinary business. Cannot some remedy be found? We think it can, in the revision of the rules (see Rules of Supreme Court, Order XVI., rules 22-31), which relate to proceedings by and against paupers. Under these rules a person swearing that he is not worth 25*l.* (raised from 5*l.* by the rules of 1883) is entitled to the gratuitous services of solicitor and counsel. Might not the right of parties to appear in person be very greatly curtailed, and the right of paupers to gratuitous services of solicitors be considerably extended, by an amendment of procedure to the effect that the maximum amount of a 'pauper's' property should be considerably raised, and that, although the pauper should continue to enjoy the services of solicitor and counsel gratuitously, such services should be paid for by the Chancellor of the Exchequer, say, out of the Suitors' Fee Fund? It may be mentioned that the 'Acte to admytt such persons as are poore to sue *in formâ pauperis*' (2 Hen. VII. c. 12) is repealed by the Statute Law Revision and Civil Procedure Act, 1883, so that the Rules of Committee have, subject to section 5 (*b*) of that Act, which would prevent them only from curtailing the rights of paupers, complete power in the matter.

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WE have read with much regret, but little surprise a statement in the *Globe* that it is not intended to appeal to the House of Lords in *Ex parte Jackson*, the Clitheroe (so-called) 'abduction' case. The fact is that *Bell-Cox's Case*, 60 Law J. Rep. Q. B. 89, though distinguishable from *Ex parte Jackson* on more points than one (see *ante*, p. 189), wears, when it comes to be very carefully considered, an appearance very discouraging to Mr. Jackson on the main point—that when once a discharge has been obtained on *habeas corpus*, the order for discharge is final and subject to no review. Considering that from this very *Bell-Cox's Case* it *may* (we do not say *must*) be deduced that the Court of Appeal had no jurisdiction in the matter; considering that the Lord Chancellor's original jurisdiction ir the matter *may* (we do not say *must*) be technically bad on account of the presence of the judges of the Court of Appeal on the bench; considering that at any rate on the point of law involved there is only the opinion of three judges to two against Mr. Jackson; considering that these three judges have set Lord Mansfield at naught, and overruled a judgment of Mr. Justice Coleridge only just fifty years old; considering, finally, that of the few lawyers who think the judgment of the Court of Appeal right there is not a single man of them who does not regret the mode and manner of its deliverance, —truly *Jackson's Case* is one to which the history of judicial decisions furnishes no parallel, or furnishes a parallel in *Cooke* v. *Crawford* alone.

## THE ECONOMY OF JUDICIAL POWER.

IN an article published in last week's number of this journal upon the question of the necessity for the appointment of an additional judge a temporary remedy was suggested for the occasional congestion in the business of the Law Courts.

To effect a more substantial and, at the same time, a more fruitful reform in this direction it would be necessary to go deeper than this, and to revert to one of the leading principles which influenced the great law reformers of 1850–1873 in framing their scheme for the creation of 'the Supreme Court of Judicature.'

It will be remembered that, by the Judicature Act of 1873 'the Supreme Court of Judicature' was to consist of two great divisions—the 'Court of Appeal' and the 'High Court of Justice.' To the former was to be transferred the appellate jurisdiction of the House of Lords, and nearly the whole of that exercised by the Judicial Committee. So that the 'Supreme Court of Judicature' would itself have included all the tribunals in the country. There would have been no Courts outside it. The Court of Appeal was to consist of a large number of the most eminent judges. The Chancellor, the Master of the Rolls, and the chiefs of the Divisional Courts were to be *ex-officio* members; it was to have the power of sitting in division, and its judgments were to be final. Provision was also made for enabling this great Court, in cases of especial difficulty and importance, to combine any or all of its divisions, and to sit, so to speak, as a Court of Appeal '*in banc*.' Lord Selborne, in introducing the bill into the House of Lords, said: 'If you have a good Court, with sufficient judicial power to command the confidence of the country, it is better there should not be a double appeal. . . . You never can escape by going through any number of Courts of Appeal from the risk of difference of opinion in each and every one of them, and from doubts arising as to whether the last Court decided better than those before it. What you want is to make as good a Court as possible, and to give it all the power and authority you can' ('Hansard's Parliamentary Debates,' 214). It must be remembered, as the same noble lord pointed out with great force in 1875 ('Hansard's Parliamentary Debates,' 223), that this scheme actually became the law of the land; that it passed with the approval and hearty sympathy of Lord Cairns and without opposition by Lord Redesdale; that it was based upon the recommendation of one of the strongest legal committees of the House of Lords which ever sat; that it had been two years before the legal public for the express purpose of inviting criticism, and that bench and bar were unanimous in its favour.

It is unnecessary to follow in great detail the history of the final repeal of this portion of the Act of 1873. In 1874 Lord Beaconsfield came into power, with Lord Cairns as Chancellor. A movement had been set on foot in which Sir William Charley took a conspicuous part, and a committee was formed to protest against the abolition of the appellate jurisdiction of the House of Lords. When, therefore, the Judicature Bill of 1875 was presented in that House by the Lord Chancellor (Cairns), Lord Redesdale led the attack on those sections of the Act of 1873 (the operation of which, it will be remembered, had been postponed until November, 1875) which provided for the transfer of the appellate jurisdiction of the House of Lords to one final Court of Appeal; and although Lord Selborne, sup-

ported by Lord Hatherley, pointed out with great force that these provisions had been deliberately sanctioned by the House of Lords itself, after long debate and ample consideration, and that they had become law, the result was that the operation of the obnoxious sections was suspended, and the sections themselves finally repealed by the Appellate Jurisdiction Act of 1876.

The arguments in favour of retaining the appellate jurisdiction of the Lords did not turn upon the question of the advisability of allowing a double appeal. They were directed chiefly to consideration of the authority, the high standing, and the constitutional importance of that Court.

The scheme of 1873 differed considerably from that which Lord Westbury had in his mind in 1856, when he stated, in giving his evidence before the Select Committee, that he wished the House of Lords to be the great appellate tribunal for the whole empire. The scheme of 1873 only touched English appeals. Irish, Scotch, and colonial were still to have the right, which they jealously guarded, of laying their petition of appeal at the foot of the throne.

The Act of 1873 took away the privilege from the English portion of the community, and referred its appellants to a Court whose members for the most part were of inferior rank. It was a scheme for 'levelling down' rather than 'levelling up.' And it could not well be otherwise, for the idea of creating life peers, under the title of 'Lords of Appeal,' had not at that time received serious consideration. That innovation, so strenuously resisted, is now an established constitutional principle, and the result is that the law reformers of to-day have an opportunity before them which those of 1873 had not. Lord Westbury could not have realised his design of making the House of Lords into one great appellate tribunal for the empire without creating a considerable number of *hereditary* Lords of Appeal; and Lord Selborne was obliged to resort to 'levelling down' his Court of Appeal for the same reason. Practically it was impossible at that time to turn fourteen judges into peers who must have been hereditary, and no other course than that followed was then open.

Upon the question of double or single appeals there does not appear to have been any difference of opinion between Liberal or Conservative lawyers. It was the destruction of that ancient and dignified Constitutional Court—the House of Lords—that led to the formation of Sir W. Charley's committee, to Lord Redesdale's opposition, and to the suspensory sections of the Judicature Act, 1875. If the appellate jurisdiction of the House of Lords could have been preserved consistently with the principle of single appeals, it seems that everyone would have been well satisfied. At that time this course was impossible, but the success of the experiment of the creation of 'Lords of Appeal' has enabled this generation of lawyers to solve the difficulty.

If, then, the five Lords Justices of Appeal were created 'Lords of Appeal in Ordinary,' we should have one great Court of final appeal in which all the judges would be peers of Parliament, and in which provision would be made for the interchangeability of duties, so that every judge of this great Court would be also a judge of the High Court, and would be at liberty, when appeal business was disposed of, to assist his brethren in the Chancery and Queen's Bench Divisions of the High Court of Justice.

This great Court of final appeal would sit in divisions: one division would sit exactly as the House of Lords now sits at Westminster, would take English, Scotch, and Irish appeals; another would sit as and where the Judicial Committee sits, and take its work; other divisions would sit in the Royal Courts of Justice, and do exactly the same work as the Court of Appeal now does.

If any case was of peculiar difficulty or importance, any number of the members of this Court might be convoked to hear it, and a litigant who should be dissatisfied with the finality of the judgment of such a Court would be singularly hard to please. There is nothing novel in the suggestion. It is merely a reversion to the great and simple scheme approved by all the greatest lawyers of the day, and which, as we have seen, became law—of one 'Supreme Court of Judicature' complete in itself, consisting of two branches only, the High Court and the Court of Appeal. The economy in time and in money would be very considerable.

Consider how much of both would have been saved in the *Vagliano Case* if the fourteen appellate judges who tried that case had sat together as one final appellate Court in March, 1889, instead of sitting in two divisions, of six and eight judges respectively, with an interval of two years between their judgments (March, 1889, to March, 1891).

Thomas Snow.

## THE PUBLIC TRUSTEE (No. 2) BILL.

We have before us the Public Trustee (No. 2) Bill ('prepared and brought in by the Chancellor of the Exchequer, Mr. Jackson, and the Attorney-General'), which beyond doubt is intended by the Government to pass this session. We have also before us an article in the *Solicitors' Journal*, entitled 'Lord Halsbury's State Socialism,' in which the bill is described as 'a Socialistic measure having for its object the substitution of a public office and a Government monopoly for services which have hitherto been rendered by individuals,' and is in the course of being attacked as being wholly uncalled for and radically vicious. We have read the arguments brought forward in support of these propositions as far as they have gone, 'neither,' as Lord Bacon says, 'to believe or contradict, but to weigh and consider' them, with a full appreciation of the growing evils of bureaucracy, and also with the full consciousness that, if the bill passes and is fully worked, a large number of our readers will have to put up with a considerable loss of the income which they now derive from the management of trust estates. We think that the great increase of trouble and correspondence which the complications of modern life have involved will render it daily more difficult for testators and settlors to obtain private trustees for nothing, and that a public trustee is infinitely to be preferred to a trustee company. One remedy, and one only, might be a sufficient alternative to a Public Trustee Bill, and might even render it unnecessary, and that is a measure enabling persons acting in a fiduciary position to be remunerated. But such a measure is not before the country, whereas the Public Trustee Bill is one of the leading measures of a powerful Government, and is backed by the same Chancellor of the Exchequer whose name is associated with the greatest financial measure of the century, and who 'sees money in it' for the benefit of the public. This being so, we consider it as reasonably probable

that the bill will pass, and will proceed at once to give as accurate an account of its provisions as we can, accompanied by such criticisms in point of detail as the bill itself (which is unhappily destitute of a memorandum pointing out its scope and object) has suggested to us. It is a short bill, and our observations upon it will not be long.

The first and second clauses, omitting immaterial facts, run thus:—

> The public trustee may act either alone or jointly, with any person or body of persons, and shall have the same powers, duties, and liabilities, and be entitled to the same rights and immunities, and be subject in like manner to the control and orders of the High Court, as a private trustee acting in the same capacity.
>
> The public trustee may by that name be appointed to be trustee of any will or marriage, or other family settlement, and may be so appointed whether the will or settlement was made or came into operation before or after the passing of this Act, and either as an original or as a new trustee, in the same cases and in the same manner, and by the same persons or Court, as if he were a private trustee, with this addition, that though the trustees originally appointed were two or more, the public trustee may be appointed sole trustee.

Those interested in the subject will do well to read the above extract from the bill some four times over, so as to impress upon their own minds these four points: (1) The bill is up to this point wholly permissive; (2) the bill is retrospective; (3) the public trustee may have a private trustee to act with him; and (4) the public trustee may be appointed sole trustee. In point of form we think the wording of the clauses defective, on the ground that these four all-important points ought to have been put by the draftsman into four separate paragraphs.

Clause 3 goes so far as to authorise the public trustee to act not only as trustee under a will (which has already been done by clause 2), but as simple executor and administrator; the clause, however, will require a 'general order' to be made before it can be put into operation. We do not think that the public trustee ought in any case to be allowed to act as administrator.

Then comes clause 4, which is, we think, objectionable on the ground of being purely compulsory. This clause provides that where an administration action is in progress, 'and by reason of the small value of the estate it appears to the Court that the estate could be more economically administered by the public trustee than by the Court, the Court may order that the estate shall be administered by the public trustee.' This clause should be struck out altogether. Of course any estate can be administered more economically in one sense by a bureaucracy. But at whose expense? At the expense of the public in a great measure.

Clause 5 is the most interesting which we have found in any bill for a long time. It first provides that 'where the trust property held by the public trustee is of such a nature as to involve, irrespectively of the terms of the trust, the payment of any rent, *call*, or debt, or *the discharge of any other liability*, the public trustee shall not be liable therefor *except so far as the trust property is available to meet the same*.' Here is an opportunity for the trustees and the executors of this country, for the solicitors who represent those trustees, and for the law societies who represent those solicitors. The Glasgow bank has shown in the case of calls, and every lease may any day show in the case of covenants other than the covenant for rent, that the liability of fiduciaries is *personal* to an extent utterly unjust. Mr. Goschen has been well advised enough to guard against it on behalf of the forthcoming *public trustee*. Let the law societies compel Mr. Goschen to guard *private trustees* also against it by a very slight verbal amendment of clause 5, and the Public Trustee Bill may be the means of saving many an honest man from undeserved ruin.

Another part of clause 5 very properly provides that the Consolidated Fund shall be liable to make good any liability arising out of any fraud or negligence on the part of the public trustee *or his officers*, &c.; and clause 6 provides that 'the Treasury, with the concurrence of the Lord Chancellor, shall appoint a fit person to the office of public trustee during pleasure.' This will not quite do. There should be (1) a fixed qualification for the office, (2) a fixed salary, and (3) compulsory retirement after the age of seventy with a pension.

Clause 9 provides for an appeal from the public trustee to the High Court, and the 10th allows him both to decline and with the leave of the Court retire from a trust, while the 11th allows trustors to restrict his powers by special provisions in a trust. The 12th is of very great practical importance. It runs thus:—

> Where a testator, &c. [why not say *trustor*?] directs the employment of any solicitor or bank, or where either the co-trustee of the public trustee or the persons appearing to the public trustee to be for the time being entitled to the income of the trust . . . require the employment of any particular solicitor or bank, that solicitor or bank shall be employed as the solicitor or bank to the trust, unless removed for good cause by the High Court upon the application of the public trustee or of any person appearing to the Court to be interested in the trust.
>
> Where it appears to the public trustee that any solicitor or bank has been ordinarily employed in matters connected with any trust or with the family matters of persons concerned in the trust, he may, on the application or with assent of any of such persons as appear to him to be principally interested in the income of the trust for the time being, employ such solicitor or bank as the solicitor or bank to the trust.

The remaining clauses are either comparatively immaterial or will require rules for their working, so we will now take leave of the bill.

## LEGISLATIVE PROGRESS.

HOUSE of Commons.

Third readings:—

The Middlesex Registry Bill.

The Charities Recovery Bill.

The Taxes (Regulation of Remuneration) Bill was considered as amended, the Law Agents (Scotland) Bill passed through committee, and the Purchase of Land and Congested Districts (Ireland) Bill and the Hares Bill are in committee.

Second readings:—

The Statutory Rules Procedure Bill.

The Registration of Certain Writs (Scotland) Bill.

The Herring Branding (Northumberland) Bill.

The Local Registration of Title (Ireland) Bill.

The Boy Messengers Bill.

Intoxicating Liquors (Ireland) Bill.

New bills:—

To Encourage the Industry of Gathering and Manufacturing Sea-ware in the Crofting Counties of Scotland.

For the Preservation of Public Footpaths.

To Amend the Law relating to Sheriffs' Courts in Glasgow.

To amend the Law of Divorce in England.

To Enable Women to Act as Poor-law Guardians in Ireland.

To Amend the Salmon Fisheries (Ireland) Acts.

Bill withdrawn:—

The Inflammable Liquids Bill.

# Reviews.

## A HANDBOOK FOR JURYMEN.

*The Juryman's Handbook.* By Spencer L. Holland, Barrister-at-Law. London: Effingham Wilson & Co. 1891.

This little work is intended for the guidance of persons liable to be summoned as jurymen in any Courts in the United Kingdom. Incidentally, however, it was necessary to deal with a number of particular branches of law connected more or less intimately with the positions of jurymen. The work may be recommended as a useful handbook of the law on the points with which it professes to deal. In the introductory chapter we have a picture (perhaps a little overdrawn) of the condition to which country jurymen are reduced under the pressure of ignorance and awe. The rest of the work is divided into twenty-seven articles, going through all the appropriate subdivisions of the work, from the 'description of jurymen' to 'a jury of matrons.'

## CLERKE ON THE SETTLED LAND ACTS.

*The Law and Practice under the Settled Land Acts,* 1882 *to* 1890. With the Statutes and the Rules and Forms issued under the Settled Land Act, 1882. By Aubrey St. John Clerke, B.A., of the Middle Temple, Barrister-at-Law. Second Edition. London: Sweet & Maxwell (Lim.). 1891.

It is now more than eight years since the Settled Land Act of 1882 came into operation, and during that time a very considerable number of important cases have been decided on its provisions. The principal Act has also been amended by four subsequent statutes passed in the years 1884, 1887, 1889, and 1890, which have introduced a good many minor changes, but comparatively few of them can be described as of first-rate importance or in any way affecting the principles of the Act of 1882. The general effect of the Act of 1890 is summed up in the work before us as follows: 'The Act of 1890, among other enactments, authorises the creation of easements on an exchange or partition of the settled land, enables the tenant-for-life to grant short leases without communicating with the trustees of the settlement, replaces section 15 of the Act of 1882 by a more intelligible restriction on the alienation of the principal mansion-house, and confers power on the tenant-for-life of raising money by mortgage for the discharge of incumbrances. The most important amendments, however, introduced by the last-mentioned Act are contained in the two sections relating to trustees, one of which materially extends the definition of "the trustees of the settlement," while the other applies to the appointment, discharge, and retirement of such trustees all the provisions of the Conveyancing and Law of Property Act, 1881.' There can be no doubt that the Settled Land Acts have exercised a very great effect. The change, indeed, was judicially described by Mr. Justice Pearson as revolutionary. The Act has, as Mr. Clerke expresses it, been welcomed and utilised by large numbers of distressed or encumbered landowners, and it has also produced considerable changes in conveyancing. Under these circumstances a good edition of all the Settled Land Acts, with decided cases well brought down to date, was a manifest *desideratum.* The present work may be safely recommended as supplying what is needed. It is executed throughout with great care, and, so far as we have been able to discover, no case has been omitted. A valuable feature is the introductory chapter, giving a summary of the changes introduced by the Acts and Rules.

## WOOLF ON WINDING-UP.

*The Winding up of Companies by the Court, containing the Companies (Winding-up) Act,* 1890, *and the Cases thereon; the sections of Part IV. and other Parts of the Companies Act,* 1862, *relating to Winding-up by the Court; the Companies (Winding-up) Rules and Forms,* 1890 *and* 1891; *Section* 10 *of the Judicature Act,* 1875; *the Preferential Payments in Bankruptcy Act,* 1888; *the Directors' Liability Act,* 1890, *and the Orders of the Lord Chancellor and Board of Trade.* With Explanatory Notes and References to the Cases and Practice in Bankruptcy. By Sidney Woolf, Esq., of the Middle Temple, one of Her Majesty's Counsel, assisted by Richard Ringwood, of the Middle Temple, Barrister-at-Law.

The work, the author tells us, is not intended to compete with the recognised standard works which deal generally with the law of companies. Its aim is to be a useful supplement to them, and in this respect it will, we think, be found serviceable. The few cases that have been decided since the Act came into operation have been noted up, but the book would have been most convenient and useful if the effect of the decisions had been shortly given. There is a useful note to section 10 of the Companies (Winding-up) Act, 1890, which, while substantially reproducing the provisions of section 165 of the Companies Act (now repealed), extends its effect in three ways: (1) by giving the Court power over 'any person who has taken part in the formation or promotion of the company,' though he may never have been an officer of it; (2) by including the official receiver among the persons who may apply; and (3) by enabling the Court to compel restoration. The various decisions on section 165 of the Companies Act are here well summarised.

Rents Collected and Distraints Levied to Recover Same, by Messrs. Henry C. Wood (Surveyor to the Parish of Tooting) and Henry Kirby (Wood & Kirby), Certificated Brokers, 1 Great James Street, Bedford Row, W.C. No charge made to Landlords if Rent over 20*l.* Troublesome tenants got rid of. Possession also taken under Bills of Sale, Mortgages, &c. Bailiffs to the Parish of St. Dunstan in the West and City of London (Farringdon Ward). Money paid over same day received. Bankers: City Bank, Holborn Viaduct. References, if desired, to clients of many years' standing. Prompt and personal attention given.—Advt.

# Correspondence.

## *SHARP* v. *WAKEFIELD* AND ITS RESULTS.

SIR,—Your correspondent 'Amicus Cauponum' is, I think, a little too much in love with his friends. 'Justices sit to grant licenses, not to suppress public-houses,' I admit, but the Licensing Act, 1872, was, as its preamble shows, and as Mr. Justice Mellor pointed out in *Regina* v. *Mann*, 45 Law J. Rep. M. C. 35, passed 'for the better prevention of drunkenness,' and I contend that, where a public-house is so situated as to be more conducive to drunkenness than not (as where it might lie on the exact line of labourers returning from their work), it would be a proper exercise of magisterial discretion to suppress it.

*Regina* v. *Silvester*, 31 Law J. Rep. M. C. 93, is a case which ought to be set aside by Act of Parliament. It was there held that justices might not act on a general resolution to refuse renewals to licensees not promising to relinquish the sale of spirits. These and other conditions of renewal might, with the greatest advantage, be imposed by justices. HOSTIS EBRIORUM.

Temple: April 13.

# Unreported Cases.

## COUNTY COURTS.

### EMPLOYERS' LIABILITY ACT—DAMAGES.

AT the Marylebone County Court, on March 26, his Honour Judge Stonor delivered the following judgment in the case of *May* v. *Bartle*: In the present case I find the following facts: The plaintiff is a hammerman and works in factories, and is not accustomed to work upon ladders or to their use. In consequence of the absence of another workman he was ordered by Mr. James Bartle, one of the defendants, to work upon a roof, the erection or reparation of which the latter was personally superintending. The plaintiff found a ladder erected at the spot, which he ascended and descended twice. On the last occasion he followed a fellow-workman down the ladder, but far apart, when the ladder broke into three pieces, and the plaintiff fell to the ground and broke his arm in two places and was otherwise injured. The ladder had previously been broken and spliced, and was unsafe to the knowledge of the defendant James Bartle, who had on two previous occasions prohibited its use. The plaintiff, on the other hand, knew that it was spliced, but did not know or think that it was unsafe. There is a conflict of evidence as to the precise position of the ladder—viz. whether it rested on the top or second purlin, or cross-beam, or bar of the roof, and whether, consequently, it was standing at a smaller or larger angle; and on the whole I find, with some doubt, that the ladder was resting on the top purlin at an angle of more than 45 degrees, but still at a less angle than what is usual for the erection of ladders. It was contended on behalf of the defendants that the position of the ladder was dangerous, and, further, that two men descending the ladder at the same time, although far apart, in the position in which it stood, was also dangerous. According to the evidence, however, of two witnesses, one of whom was called for the defendants, it appeared that if the ladder (which was produced in Court) had been sound, it could have borne two and even more men at the same time with safety in the position in which it was placed, and one of the witnesses for the defendants added, and even if it were in an horizontal position. Upon the whole, I find that the ladder was not in a dangerous, although somewhat unusual, position, and that, if sound, it could in that position have safely borne the two men at the same time. Independently of these findings, as I have found that the plaintiff was not accustomed to ladders, and although he noticed the splice, did not think that there was any danger, and did this work by the order and under the superintendence of Mr. James Bartle, who knew of the defect in the ladder and had prohibited its use on two previous occasions, and ought to have prevented its use on the present occasion, I think that the plaintiff is entitled to recover. With regard to the damages, I have given them much consideration. The plaintiff is fifty-six years old, and might fairly expect to continue the kind of work on which he was employed for a period of seven or eight years longer. His wages have been 24*s.*, which it has been agreed should be taken as the measure of damages under the Act, and the limit of damages will be, of course, three years' wages—say, 187*l.* He is entitled, in the first place, to compensation for the loss of wages for upwards of eight months to the day of the hearing—say, 38*l.*; but some deduction should be made therefrom. I think that he might have undertaken and obtained some employment during a portion of the time, and he does not appear to have tried for it, and I therefore reduce the amount to 30*l.* In the second place, he is entitled to compensation for the diminution of his wage-earning capability for the next seven or eight years, taking into account the possibility of his not getting regular work, and this I estimate at one-fourth of his past earnings of 24*s.* a week, being therefore 6*s.* a week—say, 15*l.* a year—amounting for seven years only to 105*l.* And, lastly, he is entitled to compensation for his suffering, which I shall assess at 15*l.*, making a total of 150*l.*—Counsel: Salter; Robbins.

### ACTION FOR COSTS.

At the Birmingham County Court, on April 14, the case of *Phillips* v. *Neville* was heard by his Honour Judge Chalmers. The action was brought by J. W. Phillips, solicitor, against Edward Neville, of Ilkeston, Derbyshire, to recover 16*l.* 16*s.* 1*d.* on a bill of costs for conveyancing. The only dispute was as to the amount charged not being in accordance with the scale allowed by the Solicitors' Remuneration Act. Plaintiff had sent in a detailed bill to the defendant, and the defendant objected to it because notice had not been given of the intention to charge in detail.—Mr. Pritchett, for the plaintiff, said that the scale charges would have been much more than Mr. Phillips sued for.—His Honour: The defendant objects that you have not charged him enough.—Mr. Pritchett said the requirements as to notice only applied where the solicitor wished to preserve his right to charge more than the scale charges. The amount of the bill was considerably less than was allowed by the scale.—Mr. Registrar Parry said the amount by the scale would be about 40*l.*—His Honour: Well, it is the first time I have known a man complain of being charged too little. You can amend the bill.—Mr. Rollason said there was no power to amend the bill under this action.—His Honour: All I can do is to strike it out then, and suggest that a bill according to the scale charge should be sent in. I should think the best way would be to proceed under Order XIV.—Mr. Rollason: It so happens that when they have delivered one bill they cannot increase it. However, I think Mr. Phillips and I will arrange the matter.—Mr. Phillips (indignantly): I shan't arrange anything with you.—Mr. Rollason: Very well. The case was struck out without costs.—Mr. Pritchett: We will send in another bill and claim in the alternative on two bills, and I think we shall be right.—Mr. Pritchett (instructed by Mr. Phillips) appeared for the plaintiff, and Mr. Rollason for the defendant.

## THE NEW JUDGE.

The Queen has approved of the appointment of Mr. Richard Henn Collins, Q.C., of the Northern Circuit, as a judge of the Queen's Bench Division, in succession to Mr. Justice Stephen, who recently retired. Mr. Collins, who is the third son of Mr. Stephen Collins, Q.C., of Dublin, was born in 1842, and was for some years at Trinity College, Dublin, where he took the highest honours in classics and moral science. He left Dublin before taking his degree, for Downing College, Cambridge, where he was bracketed fourth in classical tripos. He was elected a fellow of Downing in 1865, and was made an honorary fellow of that college on the expiration of his fellowship. He was called to the bar of the Middle Temple in November, 1867, was created a Q.C. in 1883, and was elected a bencher of his Inn in the following year. Both as a junior and a Queen's Counsel, Mr. Collins has been in the enjoyment of a large and lucrative practice for a long time past. A few years ago Mr. Collins ceased to attend circuit except with the inducement of a special fee. The last two noteworthy cases in which Mr. Collins appeared lately were the important licensing appeal of *Sharp* v. *Wakefield*, in the House of Lords, and the Clitheroe abduction case, in which he was leading counsel for Mr. Jackson in the Court of Appeal. Mr. Collins is well known as a sound and painstaking lawyer, and his elevation to the bench will be a popular one with both branches of the legal profession. He has been a member of the Bar Committee for some years past, and is joint-author of 'Smith's Leading Cases.' The learned gentleman was sworn on Saturday, April 11, before the Lord Chancellor in his lordship's private room at the House of Lords, and took his seat in Court on Tuesday, April 15.

## EXTRACTS FROM THE PUBLIC TRUSTEE (No. 2) BILL.

1. *Office of Public Trustee.*—(1) There shall be established the office of public trustee. (2) The public trustee shall be a corporation sole under that name, with perpetual succession and an official seal, and may sue and be sued under the above name like any other corporation sole. (3) Subject to the provisions of this Act, and to the rules made thereunder, the public trustee may act either alone or jointly with any person or body of persons in any capacity to which he may be appointed in pursuance of this Act, and shall have the same powers, duties, and liabilities, and be entitled to the same rights and immunities, and be subject in like manner to the control and orders of the High Court, as a private trustee acting in the same capacity.

2. *Appointment of Public Trustee to be Trustee, Executor, &c.*—(1) The public trustee may be appointed to be trustee of any will, or marriage or other family settlement, or to perform any trust or duty belonging to a class which he is authorised by a general order under this Act to accept, and may be so appointed, whether the will or settlement, or the instrument creating the trust or duty, was made or came into operation before or after the passing of this Act, and either as an original or as a new trustee, in the same cases, and in the same manner, and by the same persons or Court, as if he were a private trustee, with this addition, that though the trustees originally appointed were two or more, the public trustee may be appointed sole trustee. (2) A general order for the purpose of this section may be made by the Lord Chancellor with the concurrence of the Treasury, but the draft of any order proposed so to be made shall be laid on the table of each House of Parliament not less than thirty days on which that House has sat before the order is made, and if the draft is disapproved of by a resolution of either House, the order shall not be made.

[3. Power as to granting probate.]

[4. Administration of small assets.]

5. *Liability of Public Trustee and of Consolidated Fund.*—(1) Where the trust property held by the public trustee is of such a nature as to involve, irrespectively of the terms of the trust, the payment of any rent, call, or debt, or the discharge of any other liability, the public trustee shall not be liable therefor, except so far as the trust property is available to meet the same. (2) The Consolidated Fund of the United Kingdom shall be liable to make good any liability arising out of any fraud or negligence on the part of the public trustee, or his officers, and also to make good any liability arising out of any such other act or default of the public trustee, or his officers, as may be specified in rules under this Act, and all sums payable in pursuance of this section out of the Consolidated Fund shall be charged on and issued out of that fund or the growing produce thereof. (3) The draft of any rule made for the purposes of this section shall be laid before the House of Commons for not less than thirty days on which that House has sat, and if the draft be disapproved of by a resolution of that House, the rule shall not be made.

[6. Appointment of 'fit person' as public trustee with officers, &c.]

[7. Fees charged by public trustees to be such as fixed by Treasury and Lord Chancellor.]

[8. Holding and transfer of property.]

9. *Appeal to the High Court.*—(1) A person aggrieved by any act or omission of the public trustee in relation to any trust, may apply to the High Court, and the Court may make such order in the matter as the Court thinks just. (2) Subject to Rules of Court, an application under this section shall be made to a judge of the Chancery Division of the High Court in chambers.

10. *Refusal of Trust by Public Trustee.*—(1) The public trustee may decline, either absolutely or except on prescribed conditions, to accept any trust. (2) The public trustee may, with the sanction of the Court, retire from a trust.

11. *Restriction of Powers of Public Trustee.*—If a testator or a settlor or other creator of any trust directs that any specified power or discretion shall be vested solely in the co-trustee, or shall not be vested in the public trustee, the public trustee shall not exercise such power or discretion, but shall, if need be, concur in all acts necessary to carry out the exercise of such power or discretion by the co-trustee, unless it appears to him that the matter in which he is requested to concur is a breach of trust, and the public trustee, whether he does or does not so concur, shall not be responsible, nor shall the Consolidated Fund be liable, for any such concurrence or non-concurrence on his part.

12. *Employment of Solicitors and Banks.*—(1) Where a testator, settlor, or other creator of any trustee directs or authorises the employment of any particular solicitor or bank, or where either the co-trustees of the public trustee or the persons appearing to the public trustee to be for the time being entitled to the income of the trust, or if they are infants, their guardians, require the employment of any particular solicitor or bank, that solicitor or bank shall be employed as the solicitor or bank to the trust, unless removed for good cause by the High Court upon the application of the public trustee or of any person appearing to the Court to be interested in the trust. (2) Where it appears to the public trustee that any solicitor or bank has been ordinarily employed in matters connected with any trust or with the family matters of persons concerned in the trust, he may, on the application or with assent of any of such persons as appear to him to be principally interested in the income of the trust for the time being, employ such solicitor or bank as the solicitor or bank to the trust. (3) Where a solicitor or

bank is employed in pursuance of this section the Consolidated Fund shall not be liable to meet any liability arising from any default of such solicitor or bank, and the public trustee shall not be deemed to have notice of any matter merely by reason of such solicitor or bank having had notice thereof.

[13. Rules as to transfers, accounts, and branch offices, to be made by Lord Chancellor and Treasury.]

[14. Application of Act to Palatine Courts.]

[15. Mode of action of public trustee and Treasury.]

16. *Definitions.*—In this Act, unless the context otherwise requires, the expression 'trust' includes an executorship or administratorship, and any other capacity in which the public trustee acts in pursuance of this Act; and the expression 'trustee' shall be construed accordingly; and the expression 'trust property' shall include all property in the possession or under the control, wholly or partly, of the public trustee by virtue of any trust.

17. *Short Title.*—This Act may be cited as the Public Trustee Act, 1891.

## THE HEREFORDSHIRE INCORPORATED LAW SOCIETY.

THE annual general meeting of the above society was held at the Law Institution, Hereford, on Friday, March 20, when there were present: Mr. F. Bodenham (president), Mr. A. Temple (vice-president), Messrs. W. M. Ackerman, H. C. Beddoe, W. Boycott, G. Davies, P. W. L. Earle, W. J. Humfrys, F. R. James, J. G. James, T. Llanwarne, M. J. G. Scobie, J. F. Symonds, E. L. Wallis, C. D. Andrews, H. V. Smith, F. S. Collins, G. H. Page, and J. R. Symonds (hon. sec.).

The minutes of the last general meeting were read, confirmed, and signed.

*Justices' Clerks.*

A letter, dated March 10, was received from the secretary of the Incorporated Law Society, stating that the council fully concurred in the views expressed by this society as to these appointments being confined to solicitors, and it was resolved that a copy of the resolution of this society, passed November 10, in favour of legislation limiting such appointments to solicitors, should be sent to the Justices Clerks' Society.

*Public Trustee Bill.*

It was resolved, on the motion of Mr. J. Gwynne James, seconded by Mr. H. C. Beddoe, that, having regard to the position assumed by the Government as indicated by the Chancellor of the Exchequer to the deputation, it is not desirable to oppose the bill as a whole, but that it is essential that it shall be carefully considered and such clauses introduced as may be necessary to make it useful and workable, and particularly that provision should be made to prevent the compulsory principle being introduced.

The following is extracted from the report of the committee for the past year, which was received and adopted:—

*'The Library.*

'A valuable collection of Queen's Bench Reports (about 100 volumes) has been presented by the standing joint committee, from the Shire Hall Library, upon condition that the society's library shall be available for the use of the magistrates and county council, and for the judges and barristers at assizes, quarter sessions, and County Courts. The committee, in accepting the books, gladly acceded to these conditions.

'In addition to the standard Law Reports the committee have resolved to take in the "Times Law Reports" (with the addition of the six volumes already issued) and the LAW JOURNAL REPORTS. To complete the series of the latter the volumes between the years 1855 and 1885 are wanted. Any member having any of these volumes will confer a great benefit on the institution by presenting same.

*'Conditions of Sale.*

'The attention of the committee having been directed to the case of *Re Willett & Argenti*, 60 L. T. Rep. 735, which decided that the cost of the production of deeds in the possession of a mortgagee must be borne by a purchaser, by virtue of subsection 6 of section 3 of the Conveyancing and Law of Property Act, 1881, they have resolved to add a condition to the common forms providing that such costs shall not fall on the purchaser. They have also communicated with the Incorporated Law Society, United Kingdom, and have received a reply to the effect that the council agree with the committee as to the hardship of the present state of the law and would gladly avail themselves of any opportunity of getting the subject reconsidered in Parliament.

*'Justices' Clerks.*

'A special general meeting, called by requisition, was held on November 10, to consider the appointment by the Ross bench of magistrates of a clerk not a member of the profession.

'It appearing, however, that the gentleman appointed was duly qualified under the Justices' Clerks Act, 1877, the meeting passed a resolution directing the attention of the principal Law Society to the advisability of an alteration in the law to the effect that such appointment should be confined to solicitors alone. The committee feel that no personal objection could be raised to the gentleman appointed; in fact they are conscious of his fitness in many ways for the post he now fills.

*'County Courts Act*, 1888, *s.* 72.

'The committee have expressed approval of the resolution passed at the annual general meeting of the principal Law Society on July 11 in favour of the repeal of so much of this section as prohibits the solicitor of a suitor from retaining another solicitor to appear as advocate.

*'Unauthorised Persons.*

'The committee have had before them two cases of deeds being prepared and charged for by persons not solicitors, but in neither case could action be taken, as in both instances the six months—within which proceedings must be taken under section 60 of the Stamp Act, 1870—had expired. It is hoped that members will immediately report any such case coming under their notice.

*'The Incorporated Law Society, U.K.*

'The committee have been in communication with the principal society on various important subjects during the year, and can testify to the thorough and able manner in which the interests of the profession are watched by the council.

'The annual provincial meeting at Nottingham was attended by some members of this society, who greatly appreciated the hospitality and entertainment provided by the Nottingham Law Society.

*'Land Transfer.*

'The committee congratulate the society and profession at large upon the fact that no Land Transfer Bill has been introduced this session, a result which they feel to be mainly due to the successful opposition to the previous measures got up by the law societies throughout the country.

*'Costs of Leases.*

'In their report on April 23, 1888, the following resolution of the committee was given, and it is reprinted as

inquiries have been made on the subject: "That this committee considers that, in the absence of any stipulation to the contrary, it is the universally recognised practice in this part of the country for the costs of the lessor's solicitor to be divided equally between lessor and lessee, and that the lessee pays his own solicitor in addition, if he employs one."'

## LAW AND PROFESSIONAL NOTES.

By T. F. UTTLEY, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### DEPOSITIONS *v.* DYING DECLARATIONS.

AN interesting point was lately argued at Oldham when a man was charged before the magistrates with murdering his sweetheart. According to the text-books, depositions taken before a magistrate may be (*a*) given in evidence if the party making them is dead, ill, insane, or kept away by the prisoner; (*b*) given in contradiction of evidence if deponent is examined as a witness at the trial itself. Further, on a charge of homicide the dying declaration of the party slain with respect to the cause of his death, and if made under a sense of approaching dissolution, is admissible as evidence (although given without oath, without cross-examination, and in the absence of the party accused). A declaration made by the declarant as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, is deemed to be relevant only in trials for murder or manslaughter of the declarant, and only when the declarant is shown to the satisfaction of the judge to have been in actual danger of death, and to have given up all hope of recovery at the time when the declaration was made. Three things must combine: (1) There must be no hope whatever of recovery in the mind of the declarant; he must entertain a settled hopeless expectation of death. (2) It must be shown that the deceased at the time he made the statement was under the impression that death was impending, and not merely that he had received an injury from which death must ensue, but that, as the popular phrase goes, he then believed he was 'at the point of death.' (3) There must be an expectation of impending and almost immediate death from causes then operating. In the Oldham case, the deputy-magistrate's clerk proved taking the depositions of the deceased in the presence of a doctor. He added that the deceased took hold of his (witness's) throat and drew her other hand across it to demonstrate the prisoner's action to her. Prisoner asked her whether the quarrel was about marriage and not about a youth. She was exhausted, and witness told him that the question was not material. Prisoner said, 'It's all right except that.' On cross-examination by the prisoner's advocate he stated: 'She said nothing about her recovery, and nothing was said to her about her recovery. She did not say whether she expected to recover. When the prisoner asked his question she was too exhausted to answer. Prisoner's advocate thereupon objected to the depositions, and said they were inadmissible, inasmuch as no evidence had been given that at the time the depositions were taken the deceased knew she was in a dangerous condition and not likely to recover. On the contrary, the doctor told her to keep her spirits up, leading her to believe that she had a good chance of recovery. He submitted that that could not be admitted as a dying declaration; it was a deposition. The chief constable was prepared to take a dying declaration; but the deceased was not in a fit state to be told of her condition. Prisoner's advocate, however, contended she did not know she was in this extreme condition, and that being so, argued, on the point of law, there were many cases showing that these depositions were not admissible. As the prisoner was committed to the assizes, it will be interesting to know how this point, if it crops up, will be settled.

### RIOT OR UNLAWFUL ASSEMBLY?

During the trial of a trades-union official at Cardiff, for riot and intimidation, the prisoner's counsel took objection to the prosecuting counsel detaling what was said by those in the crowd. If he was proceeding upon a case of riot he was entitled to call evidence as to what was said by the crowd, but if he was proceeding upon an indictment for unlawful assembly what was said by other persons was not evidence. This was undoubtedly an indictment for riot. He was very much surprised, when he saw the indictment, to find that it was one not for unlawful assembly, but for riot, and as the defendant was not committed for riot, he (the learned counsel) might as well take his objection here as at any other time. After some further argument on this point, as to whether the indictment was one of riot or of unlawful assembling, and hearing further evidence, the recorder decided that the charge must be one of unlawful assembly, and a verdict of 'Guilty' being returned, the recorder, in passing sentence, said that it was fortunate for the defendant that he had not been found guilty of riot, and that he had only been convicted of unlawful assembly. The jury had found that he went to a large number of places and there terrorised the people for the purpose of inducing them by threats not to work. Such a state of things could not be permitted. He would teach the defendant, and others in a similar position, that during strikes and labour disputes they could not be allowed to carry out their objects, whether legitimate or otherwise, by force and against the law. The sentence was imprisonment for six weeks, without hard labour. The prisoner, for some reason, wanted hard labour, but, of course, did not get it, as an unlawful assembly is punishable only with fine and imprisonment without hard labour; but, had the charge been a riot, then fine and imprisonment would have followed, with perhaps hard labour in addition. In Noy's 'Maxims' there is a quaintly put rule that 'In one thing, all things following shall be included, in granting, demanding, or prohibiting,' and, therefore, *par exemple*, in case of riots, assemblies, &c., if several persons meet to do an unlawful act, and separate without doing it, they are to be punished. The moral of the rioting incident is, according to a labour paper, that neither workmen nor their representatives should act towards others in a manner which would be resented if done to themselves.

### SCOTCH DIVORCE LAW.

A correspondent in a Manchester newspaper, over the initials 'S. S. C.,' has very kindly given the general public some practical hints as to the Scotch method of getting a divorce. The *Pall Mall Gazette* had previously drawn attention to the subject, but 'S. S. C.'s' letter supplements the information, and his clear and concise description of the *modus operandi* is decidedly good. It is well known that a husband cannot get a divorce *à mensâ et thoro* on the ground of desertion alone in England. In Scotland it is different. The case referred to by the *Pall Mall Gazette's* correspohdent is the leading case (*Carswell* v. *Carswell*) upon the point, and was decided in the House of Lords. The great point decided there was that the domicile of the husband was the domicile of the wife. Now the *modus operandi* for a man to get a divorce from his wife on the ground of desertion is as follows: He must go to Scotland—Glasgow is the best place if a trader; if retired, Edinburgh. He must take a house, paying rent and taxes for at least nine months. If a trader, he must take an office also; get his name put up, get it in the directory and on the register. It is not absolutely necessary he should remain in Scotland the whole nine months. He can visit other places.

He must not say he came for his health, but to live there. The amount of rent and taxes to be paid does not matter. The extract from your register and your landlord or rent-notes and taxes are proof of the domicile. Having got these, you write to the wife asking her to come and live with you, as you are residing in Scotland and intend to do so, and offering to send her money to come. She refuses; then, after nine months, you petition the Court for a divorce on the ground of desertion. This is, of course, on the supposition that she has deserted for four years or upwards. She must have deserted you four years before you take up your residence in Scotland. Now as to the case of *Carswell* v. *Carswell* and the remarks of the judge who tried it, which were as follows: 'If I could think the pursuer was making a mere pretence in having adopted Scotland as his home, that he had come here merely as a visitor in order to invoke the Scotch law against his wife, and that, having achieved that end, he intended to return to the country which, *ex hypothesi*, had never ceased to be his home, I should not entertain his action for a moment.' Yet immediately decree is pronounced the pursuers leave Scotland in nine cases out of ten. They always do in the cases I have had under notice. The advantage of the Scotch divorce is: (1) Immediately the decree is pronounced it is absolute. You can be married again immediately the decree is drawn up, which is the next day. (2) Desertion is a ground for divorce *à mensâ et thoro*. (3) It is much cheaper than an English decree. (4) It is easy of proof. The disadvantages are: (1) If the wife in reply to the husband's letter wrote saying she would come and live with him then his case is gone—that is, if she does come. (2) The wife can appear on the trial and defend the case without ever giving any notice of her intention to defend. You have thus to prepare for every point. The above summary of divorce in Scotland is law, and a divorce thus obtained holds good throughout the world.

### MR. SALA AND THE CLITHEROE CASE.

The dreary discussion as to the mutual relations of husband and wife arising from the curious decision of the Court of Appeal in the *Jackson Case* still drags its slow length along, and seems in one of its aspects to have drifted into an anecdotical history of wife-beating in England, with incidental reference to the thrashing of daughters and servants. 'An Irish Barrister,' writing to a daily contemporary, quotes an old case of 'a clergyman who corrected his housemaid in the manner of a schoolboy, and although he wrote a pamphlet in defence of his action the decision was adverse.' So far as I can recollect no decision was ever arrived at in this very curious case. The clergyman in question was a shining light of the Presbyterian ministry named Zachary Croften, and the housemaid was one Mary Cadman. His chief defence to the charge was that his mother in chastising a servant 'with a wand' had accidentally poked the poor girl's eye out, and that he had resolved not to incur any such risk. The case occurred during the Commonwealth or the early days of the Restoration, and gave rise to a furious controversy between Anglicans and Presbyterians. Some Cavalier scribe absolutely wrote a comedy on the scandal, called 'The Presbyterian Lash; or, Nocktroff's Maid Whipt.' Nocktroff being meant for the Rev. Croften, against whom an action for battery was brought by the girl's parents. By some extraordinary means the case got into Chancery, and I have been unable to discover that it ever came out again.' Thus writes Mr. George Augustus Sala in the *Manchester Evening News*, and then proceeds to find some hints to ladies on the matter. Ye married ladies of England, bless you all! Here is an echo of the past which is worth copying into your commonplace books if you take the naturally feminine view of the 'Clitheroe abduction case.' I find it in Sir George Trevelyan's 'Early History of Charles James Fox,' and it relates to that typically bad husband, Jack Wilkes. 'In despair he turned once more upon the wife whom he had robbed and sued out a writ of *habeas corpus* to terrify her, by the threat of exerting his conjugal rights, into a surrender of the pittance which was all that his rapacity had left her. But the Court of King's Bench, having heard the story, extended its protection to the outraged woman, and forbade Wilkes to molest her at his peril in a decree whose legal phraseology only slightly veils the indignation which had been roused in Lord Mansfield by the heartlessness and ingratitude of the husband.'

### WHAT A LICENSE IS.

The chairman of the Salford Hundred Quarter Sessions (Mr. W. H. Higgins, Q.C.), after congratulating the grand jury on the lightness of their labours, referred to the case of *Sharp* v. *Wakefield*. He pointed out that the argument in it rested on the principle of whether the magistrates in granting a license had the right to exercise their discretion as to the requirements of the neighbourhood in which the house was placed, as beyond the character of the house itself, the chairman said that it had now been laid down as the law of this country that magistrates sitting in petty session had the right to use such a discretion. It was a mistake to suppose that there was such a thing as a 'renewal' of a license; indeed the word 'renewal' seemed to have crept only into one Act of Parliament in connection with licensing. The fact was that a license was a bit of a paper which licensed its holder to sell between a certain day named on it and another certain day also named. When the latter day was reached, the license ceased to be a license, and became merely a useless piece of paper, so that there would be no question of renewal. If the person to whom it had been granted wanted a new license, he must ask the magistrates for an entirely new license and not for a renewal. It was under those circumstances that the House of Lords had laid it down that in granting a new license the magistrates could use their discretion. So far as he was aware, the using of that discretion had always been the rule with regard to that Court, and one that had invariably been followed. But in coming to a decision on the grant of a license it was also clear that the magistrates' discretion must be fully and properly exercised, and it was undoubted that it was the duty of the quarter sessions, in reviewing any decision of the magistrates with regard to licenses, to see whether the discretion had been properly exercised. That was also a principle which had been acted on there, and, therefore, so far as the Court was concerned, it had hitherto acted, as it would also continue to act, on the conditions of the law as now laid down by the highest Court in the land.

### THE COSTS OF A PROSECUTION.

When well-to-do prisoners come up for sentence for petty offences they are too often let off by payment of a fine or imprisonment, and no mention is made of payment of costs. The recorder of the C. Easter Quarter Sessions has, however, set a good example in this respect, and informed a prisoner, much to his surprise, that he will be expected to pay the costs of his prosecution. It appeared that an agent had pleaded guilty to stealing articles from hotels and shops, and also set up a plea of kleptomania. Considering the expense the man had already entailed on the ratepayers, the recorder adopted an unusual course, for he sentenced the man for the first theft to three months' imprisonment, and on the second charge he was to be kept in prison until the costs of the present prosecution were paid.

## THE *INDIAN JURIST.*

THE *Indian Jurist*, published at Madras, is as well edited a law journal as can be found anywhere. It is a shining illustration of the capacity of our British cousins to adapt themselves to circumstances, and, like the Romans of old, to erect a civilisation in strange lands and out of the most uncouth material. There, away out in British India, they have built up a body of law superior in many respects, because untrammelled by ancient precedents, to that enjoyed by the Englishman on his native shore. They have their own legal literature and their own law reports, which latter, by the way, would be quite a curiosity to many of our readers. Think of having to report a case under the title of *Sadashir Rayaji* v. *Maruti Vithal*, or *Easwara Doss* v. *Pungavanachari*, or *Faki Abdulla and another* v. *Babaji Gungaji*, and having to state as a part of the syllabus that the case of *Rao Karan Singh* v. *Raja Bakar Ali Khan* and *Mohima Chunder Mozoomdar* v. *Mohesh Chunder Neogi* are explained. The case we have before us as we write is one involving a question under the Hindu Statute of Limitations, and we are informed that it is an appeal from an order of remand made by Rao Bahadur G. A. Mankur, 'First-class subordinate Judge of Thana, A. P.' That the appellant's counsel was Shantaram Narayan, who cited the case of *Mohima Chunder Mozoomdar* v. *Mohesh Chunder Neogi*, and that Manekshah Jehangershah argued for the respondent, and cited to the Court the case of *Rao Karan Singh* v. *Raja Bakar Ali Khan*, whereupon Telang, J., delivered the decision of the Court, in which he expresses the opinion that the case of *Rao Karan Singh* v. *Raja Bakar Ali Khan*, relied upon by the learned counsel, Shantaram Narayan, should be read in connection with *Gopaul Chunder* v. *Nilmoney Mitter* and *Moro Desai* v. *Ramachandra Desai*, as well as that of *Nawab Mahomed Amanulla Khan* v. *Badan Singh*. Thank heaven, we live in a land where plain *Doe* v. *Roe* and *Smith* v. *Jones* is enough to satisfy the Court. We are not yearning to practise law in Madras, even though so excellent a law journal as the *Indian Jurist* be published there.—*Washington Law Reporter.*

## UNITED LAW SOCIETY.

APRIL 6.—Mr. Moyle in the chair. Mr. Voules moved: 'That the decision of Mr. Justice Day in *De Souza* v. *Cobden* was wrong.' Mr. Strickland opposed. The motion was, after discussion, put and lost.

April 13.—Mr. De Montmorency moved: 'That in the opinion of this house a reform of the poor laws and a system of State pensions will go far to solve the social problem.' Mr. Sinclair Cox opposed. Mr. Alfred Thomas, M.P., gave an interesting address dealing with the Poor Law System, and referring to the bill which had been introduced into the House to amend the poor laws. The other speakers were Messrs. Maitland, F. B. Moyle, H. W. Marcus, C. Herbert Smith, B. Hawkins, and J. L. V. S. Williams. The motion was put and lost.

A TRAGEDY AVERTED.—An amusing incident occurred in the Lord Mayor's Court on April 15, where the recorder was sitting trying cases. A jury had heard a case, and, being unable to agree, retired to deliberate. After a while a note from the jury was handed to the recorder, who, after perusing it, said: 'I must prevent a tragedy; send for the jury.' Upon returning into Court the jury were discharged without giving a verdict, as they were still unable to agree. It was afterwards stated that the note to the judge ran: 'Ten of us are agreed; but the other two decline to agree while they have breath in their bodies.'

## QUESTIONS AND ANSWERS.

COSTS.

AN appeal goes from the County Court to the Court of Appeal, whose decision is for the original defendants, with costs. The costs are taxed, and the solicitor to the successful defendants, in his bill of costs against his clients as between 'solicitor and client,' seeks to obtain what has been taxed off from his 'party and party' costs, saying that the amounts taxed off from the 'party and party' costs constitute 'solicitor and client' costs. Is this statement correct? and, if not, what would be the best course to pursue, as the solicitor received the money to carry on his case and now gives his client credit for same?

JUSTITIA.

## OBITUARY.

MR. J. MORGAN HOWARD, Q.C., judge of the Cornish County Court Circuit and Recorder of Guildford, died at Torquay, aged fifty-five. Deceased was called to the bar at the Middle Temple in 1858, became a Q.C. in 1874, and travelled on the South-Eastern Circuit. He was Chief Commissioner of the Norwich Royal Commission in 1875, and among other societies to which he belonged he was one of the council of the British Archæological Association. In 1875 he was appointed Recorder of Guildford. He three times unsuccessfully contested Lambeth in the Conservative interest, but was returned for the Dulwich Division in 1886 unopposed. Mr. Howard resigned his seat on his appointment as County Court judge for Cornwall in succession to the late Judge Beer. Since his appointment he had been in very bad health, and was frequently obliged to entrust his duties to a deputy.

MR. ALFRED CARRINGTON, solicitor, who died on the 17th ult. at Chester, was born at Lincoln in 1845. He was educated at a college near Sheffield, and was articled to Messrs. Newall & Priestley, of Barton-on-Humber. He was admitted in Michaelmas, 1866, and on coming to Chester he acted for eight or nine years as assistant at the Friars with the preceding and present firm of Messrs. Birch, Cullimore & Douglas, and afterwards joined the firm of Messrs. Barker & Hignett on the death of the old members in 1878. The business was then carried on by Mr. Horace Hignett and Mr. Carrington until the death of the former, and consequently by Mr. Carrington himself, under the name of Barker, Hignett & Carrington, up to 1885. Mr. H. Y. Barker, a grandson of the late Mr. Richard Barker, the senior member of the old firm, was then taken into partnership, and the style of the firm was changed to Carrington & Barker, and has been carried on as such down to the present time. He was elected president of the Chester and North Wales Incorporated Law Society in 1885-86, and when the Incorporated Law Society of England met at Liverpool, and visited Chester in that year, he entertained the visitors at the Town Hall. He took a great interest in the parent society, and induced many country members of the profession to join it. He was clerk to the Wirral turnpike trust down to its dissolution; also clerk to the Hawarden embankment trustees. Mr. Carrington was unmarried.

LINCOLN'S INN.—Mr. Henry Burton Buckley, Q.C., has been elected a bencher of the Honourable Society of Lincoln's Inn.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## CALENDAR OF THE COUNTY COURTS.

FROM APRIL 20 TO APRIL 25.

| No. of Circuit | His Honour | April 20 | April 21 | April 22 | April 23 | April 24 | April 25 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Altrincham | Northwich | Warrington | Birkenhead | — |
| 8 | Judge Heywood | — | Manchester | Manchester | Salford | Salford | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | Barnard Castle | Stockton-on-Tees | Darlington | Richmond | Guisborough | Northallerton |
| 19 | Judge Barber | — | Ashbourne | Wirksworth | Bakewell | New Mills | — |
| 22 | Judge Harington | — | — | — | — | Bromyard | — |
| 47 | Judge Powell | — | Lambeth | Woolwich | Lambeth | Greenwich | — |
| 54 | Judge Metcalfe | Weston-supr-Mare | Wells | Axbridge | — | — | — |
| 55 | Judge Macbonochie | Poole | Christchurch | Bournemouth | Wimborne | — | — |
| 58 | Judge Edge | Churston | Okehampton | — | — | — | — |

# Court of Appeal Register.

## APPEAL COURT I.

Before the LORD CHIEF JUSTICE, the MASTER OF THE ROLLS, LINDLEY, L.J., BOWEN, L.J., FRY, L.J., and KAY, L.J.

THURSDAY, APRIL 9.

*Bonnard* v. *Perryman* (appeal of defendant C. W. Perryman from order of North, J., dated March 3, restraining until trial publication and sale of *Financial Observer* for February 7).—Part heard.

FRIDAY, APRIL 10.

*Bonnard* v. *Perryman.—Cur. adv. vult.*

Before the LORD CHIEF JUSTICE, the MASTER OF THE ROLLS, and FRY, L.J.

*In re H. E. Wallis, ex parte Board of Trade* (appeal of Board of Trade and the trustee from order of Mr. Registrar Brougham, dated February 2, refusing discharge).—Dismissed.

SATURDAY, APRIL 11.

*Condy* v. *Blaiberg* (appeal of plaintiff from judgment of nonsuit of Charles, J., dated November 26, at trial with common jury in Middlesex).—Dismissed.

MONDAY, APRIL 13.

*A. Levasseur and another (Liquidators of La Société Industrielle et Commerciale des Métaux)* v. *Mason & Barry (Lim.)* (appeal of plaintiff from judgment of Day, J., dated November 27, at trial of issue without a jury in Middlesex).—Part heard.

Before the MASTER OF THE ROLLS and FRY, L.J.

TUESDAY, APRIL 14.

*Regina* v. *Justices of Lancaster* (Q. B. *Crown Side*) (appeal of J. O'Brien from order of Pollock, B., and Charles, J., dated January 29, affirming refusal of licensing justices to renew license).—*Regina* v. *Justices of Lancaster* (Q. B. *Crown Side*) (appeal of J. O'Brien from order of Pollock, B., and Charles, J., dated January 29, discharging *nisi* for *mandamus* to licensing justices to rehear appeal).—Allowed.

Before the LORD CHIEF JUSTICE, the MASTER OF THE ROLLS, and FRY, L.J.

WEDNESDAY, APRIL 15.

*A. Levasseur and another (Liquidators of La Société Industrielle et Commerciale des Métaux)* v. *Mason and Barry (Lim.)*.—Dismissed.

*De Souza* v. *Cobden* (appeal of defendant from judgment of Day, J., dated November 24, at trial without jury in Middlesex).—Part heard.

## APPEAL COURT II.

Before LINDLEY, L.J., BOWEN, L.J., and KAY, L.J.

THURSDAY, APRIL 9.

No sitting.

FRIDAY, APRIL 10.

*Tucker* v. *Kaye and others* (appeal of plaintiff from judgment of Romer, J., dated January 29).—Part heard.

SATURDAY, APRIL 11.

*Tucker* v. *Kaye and others.*—Dismissed.

*Redman* v. *Rymer* (appeal of defendants W. Rymer and T. Rymer from judgment of Kekewich, J., dated February 15, 1889 — perfected February 25, 1889).—Allowed.

MONDAY, APRIL 13.

*Angus* v. *Clifford* (appeal of defendants from judgment of Romer, J., dated December 2, 1890).—Part heard.

TUESDAY, APRIL 14.

*Angus* v. *Clifford.—Cur. adv. vult.*

WEDNESDAY, APRIL 15.

*Catherine O'Shea, Wife of W. O'Shea* v. *C. P. Wood and another* (appeal of defendants from orders of Jeune, J., dated respectively March 3 and 17, refusing production of documents scheduled to affidavit).—Allowed in part.

*Mary D. Wood (petitioner)* v. *Percy A. N. St. L. Wood (respondent)* (appeal of petitioner from order of Jeune, J., dated March 24, varying registrar's report as to permanent maintenance).—*Cur. adv. vult.*

*Cuthill and others* v. *Shropshire Railway Company and others* (appeal of plaintiffs from order of Stirling, J., dated March 17, refusing to restrain prosecution of bills in Parliament).—Abandoned.

*In re H. Woolcombe, deceased; Woolcombe* v. *Woolcombe (construction)* (appeal of plaintiff from order of Chitty, J., dated December 11, 1890).—Part heard.

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REGISTRATION OF TEACHERS.—Giving evidence, on April 14, before the committee of the House of Commons, of which Sir W. Hart Dyke is chairman, the Rev. G. C. Bell, head-master of Marlborough College, supported Sir Richard Temple's bill for the registration and organisation of teachers, though he desired to see it amended in some details. He would like to see registration made compulsory, though not penal; that was to say, he did not desire that teachers who neglected to register should be precluded from recovering fees, believing, as he did, that the desirability of being registered would soon make itself apparent to the teachers in other ways. In his opinion Scotland and Ireland should, at first, at any rate, be excluded from the operation of the Act.

## LAW STUDENTS SOCIETIES.

DEBATING. — The ordinary weekly meeting of this society was held at the Law Institution, Chancery Lane, on Tuesday, April 14; Mr. Crawford in the chair. The subject for discussion ('That the case of *Barrow* v. *Isaacs*, L. R. (1891) 1 Q. B. Div. 417, was wrongly decided') was opened by Mr. Douglas, followed by Mr. Herbert Walton.—Mr. Lathbury opposed.—The debate having been declared open, the following gentlemen spoke: In the affirmative, Messrs. Watson, Pattinson, and Watkins; in the negative, Messrs. Arnold, Greene, Thirlby and Stevens.—Mr. Douglas replied.—The chairman, having summed up, put the motion to the meeting, when it was lost by a majority of three.—The subject for discussion at the next meeting of the society on Tuesday, April 21, is: 'That our fiscal policy ought to be changed, so as to give greater advantages to our colonies than to other countries.'

# CAUSE LIST.

## HIGH COURT OF JUSTICE.

### QUEEN'S BENCH DIVISION.

*Easter Sittings*, 1891.

### LONDON.

COMMON JURY ACTIONS.

Actions beyond No. 2468 in this List will not be taken before Monday, April 27.

The following numbers will be in the List for Trial on Tuesday, April 21: Nos. 1309 to 1868, both inclusive.

1309 Mullens and another *v.* Hearn
1333 Richardson *v.* Advertising and Addressing Co. (Lim.)
1615 Darvall *v.* Heywood
1741 Lovell *v.* Tomlin
1817 King *v.* Croft
1818 Russell *v.* Sulis
1828 International Agency, &c. Trust Co. (Lim.) *v.* Ross
1832 Hemings *v.* Fortescue
1863 Simpson *v.* Taunton
1868 Waites and Wife *v.* North London Steam Tram Co.
1889 Strousberg *v.* Lee
1899 Hood *v.* Brown & Co.
1911 City of London Brewery Co. *v.* Willshear
1913 Von Limburg *v.* Ketchaw Pahang Corporation (Lim.)
1924 Schott *v.* Barr, Moering & Co.
1973 Hartmont *v.* Eisler
1975 Courtenay *v.* McLorns
1977 Ramsey *v.* Benbow
2040 Dawson *v.* Kempf
2092 Transvaal Oil Engine. Co. (Lim.) *v.* Scott & Co.
2103 Hambleton *v.* Rogers and another
2105 Simmons *v.* Musket Iron Works
2126 Smith *v.* Goddard & Sons
2161 Davis and another *v.* Haimsohn
2229 Langford *v.* Groom
2231 Wadeson *v.* Ghirelli
2252 Oheston *v.* Witt
2273 Pickford & Co. *v.* Leitrim and others
2310 Gardner *v.* Abohbot
2311 Same *v.* Same
2365 Mayor, &c. of London *v.* Bell
2369 Leader *v.* Tod Heatly
2375 Prosser *v.* Evans
2398 Simpson *v.* Dentriez
2406 Bartlett *v.* Oram
2414 Lewis *v.* Lewis
2422 Newell *v.* Donald Currie & Co.
2437 Smith and another *v.* Birch
2439 Griffiths *v.* Wilson
2461 Darley *v.* Palmer
2468 Beale *v.* Repton
2469 Bridcut *v.* Duncan & Sons
2478 Camuset *v.* Pol & Co. and another
2490 Pound *v.* Davis and another
2503 Hough *v.* White
2514 Francis *v.* Downing & Sons
2532 Pamphilion *v.* Bussey
2537 Bassett *v.* Lee Smith
2542 Hill *v.* Morris
2551 Subit & Son *v.* Sanitary and Domestic Engineering Co.
2556 Smith *v.* Fire Insurance Association (Lim.)
2586 Knudsen, Bros. & Co. *v.* Brown
2605 Sapsworth *v.* Hilbuth

LEGAL VACANCIES. — By the death of Mr. Morgan Howard, Q.C., the County Court judgeship of Cornwall and the recordership of Guildford both become vacant. The first is in the gift of the Lord Chancellor, and the other is in the hands of the Home Secretary.

## NOTICES FOR THE WEEK.

ROTA OF REGISTRARS.

MONDAY, April 20.—Court of Appeal No. 2: Mr. Ward. Mr. Justice Chitty: Mr. Clowes. Mr. Justice North: Mr. Godfrey. Mr. Justice Stirling: Mr. Rolt. Mr. Justice Kekewich: Mr. Lavie. Mr. Justice Romer: Mr. Pugh.

Tuesday, April 21.—Court of Appeal No. 2: Mr. Pemberton. Mr. Justice Chitty: Mr. Jackson. Mr. Justice North: Mr. Leach. Mr. Justice Stirling: Mr. Farmer. Mr. Justice Kekewich: Mr. Carrington. Mr. Justice Romer: Mr. Beal.

Wednesday, April 22.—Court of Appeal No. 2: Mr. Ward. Mr. Justice Chitty: Mr. Clowes. Mr. Justice North: Mr. Godfrey. Mr. Justice Stirling: Mr. Rolt. Mr. Justice Kekewich: Mr. Lavie. Mr. Justice Romer: Mr. Pugh.

Thursday, April 23.—Court of Appeal No. 2: Mr. Pemberton. Mr. Justice Chitty: Mr. Jackson. Mr. Justice North: Mr. Leach. Mr. Justice Stirling: Mr. Farmer. Mr. Justice Kekewich: Mr. Carrington. Mr. Justice Romer: Mr. Beal.

Friday, April 24.—Court of Appeal No. 2: Mr. Ward. Mr. Justice Chitty: Mr. Clowes. Mr. Justice North: Mr. Godfrey. Mr. Justice Stirling: Mr. Rolt. Mr. Justice Kekewich: Mr. Lavie. Mr. Justice Romer: Mr. Pugh.

Saturday, April 25.—Court of Appeal No. 2: Mr. Pemberton. Mr. Justice Chitty: Mr. Jackson. Mr. Justice North: Mr. Leach. Mr. Justice Stirling: Mr. Farmer. Mr. Justice Kekewich: Mr. Carrington. Mr. Justice Romer: Mr. Beal.

THE SPRING ASSIZES.—The ensuing spring assizes will necessitate the absence of three judges only from town during the present sittings, as assizes will be held at Manchester and Liverpool on the Northern and at Leeds on the North-Eastern Circuits alone. At Manchester and Liverpool both civil and criminal business will be taken, but at Leeds prisoners only will be tried. Mr. Justice Grantham and Mr. Justice Wright will go to Manchester and Liverpool, and Mr. Justice Day will attend at Leeds. The commission-days have been fixed as follows: Manchester, Saturday, April 25; Liverpool, Saturday, May 2; Leeds, Saturday, May 2.

INNER TEMPLE.—His Honour Judge Bristowe (the treasurer of the Inner Temple) and the masters of the bench entertained at dinner on April 15, being the Grand Day of Easter Term, the following guests: Lord Coleridge (treasurer of the Middle Temple), Lord Hannen, Colonel the Hon. Charles Eliot (equerry to Prince Christian), Sir John Mowbray, Lord Justice Fry, Sir U. Kay-Shuttleworth, Mr. Justice Day, General Sir P. Radcliffe, Colonel Sir N. Kingscote, Sir Joseph Hooker, Sir A. Woods, Dr. Butler (master of Trinity College, Cambridge), Mr. Lidderdale (governor of the Bank of England), Professor Max Müller, Mr. Christie (the Astronomer-Royal), Mr. Napier Higgins (treasurer of Lincoln's Inn), Mr. Beetham (treasurer of Gray's Inn), the Rev. Canon Ainger (reader at the Temple Church), and Mr. H. W. Lawrence (the sub-treasurer). The benchers present were his Royal Highness Prince Christian, K.G., Mr. Forsyth, Q.C., Mr. Bulwer, Q.C., Mr. Mackeson, Q.C., Sir James Stephen, Sir Patrick Colquhoun, Q.C., Mr. Robinson, Q.C., Judge Holl, Mr. Justice Charles, Mr. Buszard, Q.C., Mr. Bompas, Q.C., Mr. Lumley Smith, Q.C., Mr. Potter, Q.C., Mr. Shaw-Lefevre, Mr. Addison, Q.C., Mr. Jelf, Q.C., Mr. Crossley, Q.C., Mr. Graham, Mr. Chandos Leigh, Q.C., Mr. Myburgh, Q.C., Mr. Horace Smith, Mr. Cooper Willis, Q.C., Mr. Colt, Q.C., Mr. Bosanquet, Q.C., and Mr. Channell, Q.C.

## HONOURS AND APPOINTMENTS.

MR. PHILIP JOHN RUTLAND, of 69 Chancery Lane, W.C., and High Wycombe, has been appointed Deputy in London for J. R. Phillips, Esq., the high sheriff for the town and county of Haverfordwest. Mr. Rutland was admitted in 1885.

Mr. Frank Winterton (of the firm of Freer, Blunt, Rowlatt & Winterton), of Leicester, has been appointed a Commissioner for Oaths. Mr. Winterton was admitted in 1883.

Mr. John Charles Hudson (of the firm of Charles Heywood, Son & Hudson), of Manchester, has been appointed a Commissioner for Oaths. Mr. Hudson was admitted in 1885.

Mr. Robert Jowett Whitwell, of Kendal, has been appointed a Commissioner for Oaths. Mr. Whitwell was admitted in 1882.

LINCOLN'S INN.—The Treasurer of Lincoln's Inn (Mr. Napier Higgins, Q.C.) entertained at dinner, on April 14, being the Grand Day in Easter Term, the United States Minister, Earl Fortescue, Lord Cottesloe, Lord Alcester, Lord Justice Lindley, the Right Hon. John Blair Balfour, Q.C., M.P., Mr. Justice North, Sir Charles Pearson, M.P. (Solicitor-General for Scotland), Mr. Edward Maunde Thompson (principal librarian British Museum), Mr. Walter Vaughan Morgan (treasurer of Christ's Hospital), Mr. J. C. Robertson, and Mr. John Hollams. The benchers present on the occasion were Mr. Osborne Morgan, Q.C., M.P., Lord Justice Fry, Mr. Justice Mathew, Mr. Justice Chitty, Sir Robert Stuart, Q.C., Mr. Pember, Q.C., Mr. Crackanthorpe, Q.C., Sir Horace Davey, Q.C., M.P., Mr. Justice Kekewich, Mr. Horton Smith, Q.C., Sir Richard Webster, Q.C., M.P. (Attorney-General), Mr. Gibbs, Q.C., C.B., Lord Macnaghten, Mr. Forbes, Q.C., Mr. W. W. Karslake, Q.C., Mr. Rigby, Q.C., Mr. Everitt, Q.C., Mr. Cecil Henry Russell, Mr. Cozens-Hardy, Q.C., M.P., Mr. Giffard, Q.C., Mr. Justice Stirling, Mr. Ingle Joyce, Mr. Lockwood, Q.C., M.P., Mr. Douglas Walker, Q.C., Mr. Bush, Q.C., Mr. Cutler, Q.C., Mr. Leonard Courtney, M.P., Lord Morris, and Mr. H. Burton Buckley, Q.C., with the Rev. Dr. Wace (preacher).

THE RULE OF THE ROAD AT SEA.—A Parliamentary paper is just published containing the report of the committee appointed by the President of the Board of Trade in July last year to consider the alterations in the regulations for preventing collisions at sea recommended at the Washington International Maritime Conference. The members of the committee were Sir H. G. Calcraft, Sir Charles Hall, Q.C., M.P., Rear-Admiral N. Bowden-Smith, Rear-Admiral Sir R. H. M. Molyneux, Sir Digby Murray, Rear-Admiral Sir G. S. Nares, Mr. T. Sutherland, M.P., Mr. W. Watson, Captain C. G. Weller, and Captain W. J. L. Wharton, R.N. Mr. Garnham Roper acted as secretary. The report suggests alterations in four articles. In Article 7 a paragraph has been added dealing with the case of rowing-boats. In Article 15 a vessel not under command is added to those which shall give sound signals. Article 21 provided that where one of two vessels was to keep out of the way the other should keep her course and speed; to this the report adds, 'unless, in consequence of thick weather or other causes, she finds herself so close that collision cannot be avoided by the action of the giving-way vessel alone, when she also shall take such action as will best aid to avert collision.' Article 31 deals with distress signals, and the report suggests that, besides a gun, some other explosive signal may be used. Some other trifling alterations are suggested. The report was submitted by the Board of Trade to the Admiralty, who concurred in the alterations, which will be submitted to the various foreign Governments.

AN INTERESTING DISCOVERY.—The *City Press* announces that the rector of Allhallows, London Wall, has just made a most interesting discovery. At the bottom of an old chest in the vestry he has found a register of churchwardens' accounts, dating back to the reign of Henry VI. He intends forwarding the register to the British Museum for it to be reported upon by the experts there. If the register turns out to be genuine—and at present there is no suspicion that it is not—the discovery will undoubtedly prove a valuable as well as a most interesting one.

LAW SITTINGS IN THE CITY.—A short time ago the Lord Chancellor wrote to the City Corporation offering to send down two Queen's Bench judges to hold sittings in the City for two or three weeks in each term, when the actions in which City merchants were concerned could be tried. The Corporation gladly accepted the offer, and since then preparations have been made for providing suitable accommodation. The sittings had been appointed and the jury about to be summoned, when it was pointed out that without an Act of Parliament the object in view could not be carried out. Consequently some time will have to elapse before the judges will be able to sit in the City, but in order that no unnecessary delay should ensue the Corporation are about to promote a bill in Parliament giving the necessary jurisdiction.

## BIRTHS.

On April 11, at Noël Glen, Bournemouth, the wife of Guy Heaton, of Bournemouth, Solicitor, of a daughter.

## MARRIAGES.

On April 7, at St. John's Church, Mansfield, Notts, Edmund Sharp, late Crown Solicitor, Hong Kong, and of Upper Sydenham, to Lizzie Moffat, daughter of Thomas Godfrey, of Mansfield, Surgeon.

On April 8, at Lyndhurst, Kelvinside, Glasgow, George Monro Miller, of Oliva, Putney Heath, London, Solicitor, to Jessie Miller, second daughter of George Miller, esq.

On April 8, at the Evangelical Free Church, Felixstowe, Matthew Whiting, of 190 Lavender Hill, Wandsworth, to Annie Sinclair Birkett, daughter of the late Benjamin Birkett, Solicitor, of Ipswich and Felixstowe.

On April 8, at Christ Church, Yokohama, Japan, Edward Charles Hannen, second son of Benjamin Hannen, of 4 Pembridge Place, London, and Ouseleys, Wargrave-on-Thames, to Mary Fanny, youngest daughter of Nicholas John Hannen, Chief Justice of Her Majesty's Supreme Court for China and Japan and Her Majesty's Consul-General at Shanghai.

On April 9, at the Parish Church, Hawkhurst, Kent, John Callaway, of Cranbrook, Kent, Solicitor, to Mabel Lucy, daughter of William Cotterill, Esq., of Tongswood, Hawkhurst.

On April 14, at the Church of St. John the Baptist, Woodlands, Isleworth, Frederic Brooke, fourth surviving son of Zachary Brooke, late of Lincoln's Inn Fields, Solicitor, to Emma, youngest daughter of the late Rev. John Medows Theobald, formerly of Henley Hall, Suffolk.

## DEATHS.

On Jan. 11, at Avoca, Victoria, N.S.W., Leonard Worsley, Barrister-at-Law, third son of the late Charles Cornwall Seymour Worsley, of Newport, I.W., and nephew of the late General Sir Henry Worsley, K.C.B.

In the massacre at Manipur, Frank St. Clair Grimwood, I.C.S., of Lincoln's Inn, Barrister-at-Law, Deputy Commissioner Assam, and the Resident at Manipur, second son of Jeffrey Grimwood Grimwood, of 29 Ennismore Gardens, S.W., aged 37.

On April 6, at St. Peter's Lodge, Bedford, Caroline Marion, widow of Thomas Wesley Turnley, late of Bedford, Solicitor, and daughter of the Rev. Thomas Hornsby, formerly Vicar of Ravensthorpe, in her 85th year.

On April 8, at Westholme, Streatham Common, S.W., George Ernest Jeffery, LL.B., Barrister-at-Law, eldest son of George A. Jeffery, M.D., of Eastbourne and Carter's Corner, Hailsham, Sussex, aged 38.

On April 10, at Chelston Dene, Torquay, J. Morgan Howard, Judge of the County Courts of Cornwall, Recorder of Guildford, and sometime M.P. for Dulwich.

On April 10, of fever, at Zanzibar, shortly after his arrival, E. D. Vesey, Barrister-at-Law, aged 29, the beloved son of Edward Vesey, of the Paymaster-General's Office, Whitehall.

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# The Law Journal.

*SATURDAY, APRIL 25, 1891.*


## 'OBITER DICTA.'

In *Bonnard* v. *Perryman* the Court of Appeal, in a Court of six judges strong, has held that the High Court has jurisdiction, under subsection 8 of section 25 of the Judicature Act, 1873, to grant an injunction to restrain the publication of a libel at or before the trial of an action. The particular appeal, which was from an interlocutory injunction granted by Mr. Justice North, was allowed, *dissentiente* Lord Justice Kay, but the whole Court was unanimous in the opinion that the jurisdiction to grant the injunction existed. This jurisdiction, it was explained by the Court, has existed since the Common Law Procedure Act of 1854, and although not in fact exercised till 1878—*i.e.* after the Judicature Act—was not, as has been thought by many, first called into existence by that Act. The unanswerable reasons for the judgment of the Court in *Bonnard* v. *Perryman* will be found given, with exhaustive fulness, in the judgment of Lord Justice Cotton in *The Liverpool Household Stores Association* v. *Smith*, 57 Law J. Rep. Chanc. 85; L. R. 37 Chanc. Div. 170, from which *Bonnard* v. *Perryman* was practically, though, of course, not technically, an appeal. Whether it is wise for the Court of Appeal to expend its full strength in reviewing the decisions of either of its divisions may perhaps be doubted. Be the numerical strength of the Court what it may, there is, of course, an appeal to the House of Lords in all cases—except *habeas corpus*.

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Mr. Vaughan's order for the destruction of the Rabelais pictures, which was made under 20 & 21 Vict. c. 83 (Lord Campbell's Act), has now been reversed on appeal to quarter sessions under section 4 of the Act, but on condition that the pictures, which are the property of French owners, be forthwith transmitted to France, and no longer exhibited in this country. There is, of course, no express power under the Act to impose any such condition, nor are we aware of any means of enforcing it if it should not be complied with. But complied with, no doubt, it will be, and both the reversal of Mr. Vaughan's order and the requirement of the condition with which that reversal has been accompanied appear to us to be eminently sensible and just. A statement of the law of the subject, with suggestions of the practical difficulties which might have arisen in enforcing it in the case of the Rabelais pictures, will be found in the Law Journal for November 22, 1890.

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Both the members of Parliament for the arrest of whom warrants had been issued are stated to be in bad health. One of them, with commendable courage, has returned to England, at the risk, so it has been said, of his life, for the purpose of meeting the charge against him. In reference to the other, the precedent set in *Sadleir's Case* will, no doubt, be followed, and not only will some length of time be allowed to elapse, but strict proof will be required that he is flying from justice before his expulsion can be determined upon.

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All interested in law reform should peruse the exhaustive and careful article on 'The Judicial System,' which appears in the current number of the *Edinburgh Review*. The writer advocates the trial of commercial cases in the city of London—for the resumption of which the Government have recently introduced a bill—the establishment of provincial centres, such as Liverpool, Manchester, and Birmingham, 'where there should be two or three sittings every year, always beginning on the same day, and having a maximum length allotted to them; the discontinuance of certain towns near London, 'such as Aylesbury, Hertford, and Reading,' as assize towns; the abolition of the system under which a judge sits in chambers to hear appeals on points of practice; and an increase of the judicial and official strength of the Chancery Division. 'The work of this division,' says the writer of the article, 'is in a large sense administrative, and the working-out of executorships and trusts, and the winding-up of companies are business that must necessarily grow with an enlarging population and an ever-increasing commerce.' We agree generally in the substance and spirit of the article,

which, however, does not so much contain new proposals as succinctly group together old ones. One quite novel proposal, however, there is. 'Costs between party and party,' it is said, 'are somewhat strictly taxed, and solicitors are apt to spend too large sums in carrying on litigation. It may, therefore, be fairly a question whether a solicitor should be allowed to recover from his client any sums over and above the taxed costs; that is to say, when the bill of the solicitor of the victorious party has been taxed, the client should be liable *for no sums whatever* unless he has specially authorised their expenditure.' We hope the arguments of the reviewer in favour of the change, which however have *not* convinced us, will be carefully read.

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'NOTWITHSTANDING anything in the Courts of Justice Building Act, 1865, or any Order in Council thereunder contained (*sic*), sittings may be held in the City of London by judges of the High Court under commissions issued for the trial of issues or inquiries in cases at *nisi prius*.' So it is proposed to enact, by the Government City of London Causes Bill, which will, no doubt, become law before the close of the session, having now passed its second reading. The history of the matter is curious. It was enacted by section 20 of the Act of 1865 that 'Her Majesty, by Order in Council from time to time,' at the request of the City Council, 'may direct that all or any issues or inquiries in cases at *nisi prius* which would otherwise be tried and executed within the county of the city of London *shall for ever hereafter*, or for a time to be specified in such Order, be tried and executed at the Courts authorised to be erected by this Act.' By section 30 of the Judicature Act, 1873, it was enacted that 'sittings for trial by jury of causes and questions or issues of fact should be held in Middlesex and London, and such sittings should, so far as is reasonably practicable, and subject to vacations, *be held continuously throughout the year*. In 1882 the Royal Courts of Justice, which were the Courts authorised by the Courts of Justice Building Act, 1865, were duly finished, and on May 22, 1883, an Order in Council was made (see LAW JOURNAL for June 2, 1883) which, after reciting that a petition had been presented to Her Majesty in Council 'that the power of the removal of the place of trial and executions of issues and inquiries under the said Act' of 1865 should be carried into effect, concluded, 'with a happy confidence,' as we then observed, 'in the durability of legal institutions,' as follows: 'Now, therefore, Her Majesty, by and with the advice aforesaid, is pleased to order, and it is hereby ordered, that from and after the date of these presents all issues or inquiries in cases at Nisi Prius which would otherwise be tried and executed within the county and city of London shall *for ever hereafter* be tried and executed at the said Royal Courts of Justice.'

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THE Consolidating Evidence Bill, to which we referred last week, is now being considered by the Standing Committee of the House of Lords. It is to be hoped that that committee will greatly improve it. There are no less than seventy-five enactments in the schedule of enactments to be repealed. Of these, the first, 5 Eliz. c. 9, 'An Act for the Punyshment of suche persones as shall procure or comit wyllfull Perjurye,' is to be only partially repealed, although the sections which it is not proposed to repeal, and which visit perjury with a 20*l.* fine only and six months' imprisonment—to be followed by the pillory, to which the offender is to have '*bothe* his eares nayled'—have long been rendered obsolete by 2 Geo. II. c. 25, which, as amended by the Penal Servitude Act, imposes the punishment of penal servitude, and by 1 Vict. c. 23, which abolished the pillory in general terms. No doubt the reason for this is that to deal with these enactments would be to amend the criminal law, which would be, to some extent, outside the purpose of the bill. But, considering the present references in modern statutes to the penalties of perjury (see, *e.g.*, the Oaths Act, 1888), and considering also the small compass within which those penalties are contained, it would surely be worth while, in consolidating so much of the law of evidence, to repeal and re-enact so much of 5 Eliz. c. 9, and 2 Geo. II. c. 25, as it is considered desirable to preserve.

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THE bill 'to provide for the enfranchisement of leasehold places of public worship,' which passed a second reading in the House of Commons on Wednesday last by a majority of more than 100, is backed by Mr. Evans, Mr. Halley Stewart, Mr. James Rowlands, Mr. Lloyd George, Mr. Bryn Roberts, Mr. Waddy, and Mr. Randell. Its short effect, if it should ultimately become law, would be to enable 'the trustees of a *religious body*' to acquire the fee simple of or freehold or other reversion expectant (*sic*) upon the determination of any lease or term under or for which a place of religious worship is held by or for such religious body;' by compulsory purchase at a price to be fixed by the County Courts, through which the purchase-money, to be paid into Court by the trustees, is to be distributed amongst the various parties entitled thereto. As Mr. Secretary Matthews pointed out, the bill is full of imperfections in point of form, first and foremost amongst these being the omission of any definition of the term 'religious body,' but if the House of Lords should see its way to adopting the principle of the bill, these imperfections could, without much difficulty, be removed. A religious body, for instance, might conveniently be defined as a body possessed of a place of religious worship, duly certified as such to the Registrar-General, under 18 & 19 Vict. c. 81, the Act 'to amend the law concerning the certifying and registering of places of religious worship,' and the machinery of the Lands Clauses Acts might advantageously be substituted for that of the County Courts in reference to compulsory purchase. Perhaps the bill might with advantage be referred to a select committee, empowered at the same time to consider the bill of Mr. Powell, Mr. Talbot, Mr. Tomlinson, and Mr. Addison 'to repeal the provisions of the Church Building Acts (see 58 Geo. III. c. 45, ss. 40–43; 59 Geo. III. c. 134, s. 37; 3 Geo. IV. c. 72, ss. 8 and 32; and 1 & 2 Wm. IV. c. 38), relating to the compulsory purchase of sites for churches and burial-grounds,' with the ultimate view of giving all religious bodies of sufficient numbers, in proportion to the population of any parish, equal powers of acquiring a limited acreage of land within the parish for the purpose of religious worship.

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*Regina* v. *Lancaster Justices*, decided last week, is a case of very great importance upon the construction of sections 8 and 19 of the Wine and Beerhouse Act,

1869, the effect of which sections is that the renewal of a beer license which was in force in 1869 cannot be refused except on one of four specified grounds, of which the first and most frequently applicable, is the ground 'that the applicant has failed to produce satisfactory evidence of good character.' In the *Lancaster Case* the licensing justices refused a renewal to one of the applicants, who had been convicted of Sunday trading, on the ground of failure to produce such satisfactory evidence. The applicant appealed to Quarter Sessions, and called several independent witnesses, who gave him a good character. 'The Court found that he was of good character and was so regarded by his neighbours, but Mr. Higgin, the chairman, in delivering judgment dismissing the appeal, said that the justices of Manchester had the care of a dense population, and the question was whether they were right in refusing the renewal, and not whether the Quarter Sessions would themselves have granted it.' A rule for a *mandamus* to the justices, on the ground that they had not heard and determined the matter, was discharged by a Divisional Court, but the Court of Appeal has reversed this judgment, and granted a *mandamus* to Quarter Sessions 'to hear and determine,' on the ground that that Court acted, not on the character of the applicant, which they had admitted to be good, but on the question whether he was a proper sort of person to keep a bearhouse in Manchester. Seldom was the wisdom of Lord Mansfield's advice to an inferior Court not to give a reason for its judgment, 'for the judgment would probably be right, but the reasons would be wrong,' better exemplified. If there is one thing certain in licensing law, it is that the number of existing beerhouses has nothing to do with the consideration of the question whether the renewal of the license of a pre-1869 beerhouse ought to be refused or not.

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THE maxim that timber estates are excepted from the general law relating to timber may sound rather like a paradox to the uninitiated, as they might naturally suppose that an estate which is called 'a timber estate' would, *par excellence*, be an estate to which the timber rules apply. Timber estates were defined by the late Master of the Rolls in *Honywood* v. *Honywood* (43 Law J. Rep. Chanc. 652; L. R. 18 Eq. 306), as 'estates which are cultivated merely for the produce of saleable timber, and where the timber is cut periodically.' As soon as the meaning of the phrase is thus understood, the distinction between a timber estate and an ordinary estate with timber on it becomes inevitable. In the former case the produce of the estate is simply to be found in the timber periodically cut; in the latter the timber is an accidental part of the estate, and therefore, as between a tenant-for-life and the remainderman, belongs in bulk to the latter. Mr. Justice Chitty, in *Dashwood* v. *Magniac* (60 Law J. Rep. Chanc. 210), has followed Sir G. Jessel's decision, and permitted a tenant-for-life to enjoy the produce of her thinning of beech woods, which since 1798 had been periodically cut and sold for profit mainly for the purpose of making chairs, which is the great industry in the part of the country where this estate is situate.

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SECTION 56 of the Settled Land Act, 1882, was soon discovered to have thrown no small impediment in the way of the conveyance of settled land in cases where the settlement itself gave a power to trustees exercisable without the consent of any other person, the effect of subsection 2 of section 56 being to make the consent of the tenant-for-life, or if there were several persons so entitled, then of all of them, necessary to the exercise of the power. The Settled Land Act, 1884, s. 6, subs. 2, partially removed this impediment by providing that where two or more persons together constitute the tenant-for-life, the consent of one only of those persons shall be enough. That the necessity for the consent of a single tenant-for-life or person having the powers of a tenant-for-life may create difficulty enough appears from the case of *In re Atherton*, reported in our Notes of Cases this week, at p. 64. The trustees there had a power of leasing without any other person's consent under the testator's will, and the testator's heir-at-law, who was a person of unsound mind not so found, had become entitled to the rents—a trust for accumulation having expired—during the remainder of his life as undisposed of. The trustees came to the Court to ascertain whether they could exercise the power without the consent of the heir-at-law, and Mr. Justice Kekewich, considering that the heir-at-law was beneficially entitled to the real estate as tenant-for-life under the settlement, held that his consent was necessary. There seems no doubt that the heir-at-law was tenant-for-life under the settlement by virtue of section 2, subsections 2 and 5, and, this being so, the view of the learned judge was unquestionably correct and in accordance with the construction of section 56, subsection 2, which has been universally adopted (see *In re The Duke of Newcastle's Estates*, 52 Law J. Rep. Chanc. 645; L. R. 24 Chanc. Div. 129, 139). The only way out of the difficulty in such a case seems to be that indicated by section 62; that is, to make the tenant-for-life a lunatic by inquisition; and then, by section 62, the committee of his estate can consent on his behalf.

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A QUESTION of some difficulty as to costs arose in the case of *Wilson and others* v. *Statham* (noted this week). The action was brought in the High Court to recover a sum of 51*l.* upon a contract. Upon a summons under Order XIV., rule 1, the plaintiff obtained judgment for 12*l.*, leave being given to the defendant to defend as to the balance. The action was afterwards remitted for trial to the Manchester County Court, where the plaintiff recovered a further sum of 24*l.* The registrar taxed the plaintiff's costs upon scale B in the County Court scale, but allowed him costs upon the High Court scale down to the time of the action being remitted, relying upon the terms of section 65 of the County Courts Act, 1888. The County Court judge refused to review the taxation, but upon appeal the Divisional Court held that the taxation was wrong and that the plaintiff was only entitled to costs upon the County Court scale, and ought not to have been allowed any costs upon the High Court scale. The Court were of opinion that the case came within section 116 of the County Courts Act, 1888, which provides that, 'with respect to any action brought in the High Court which could have been commenced in the County Court,' if in an action of contract, the plaintiff shall recover a sum of 20*l.* or upwards, but less than 50*l.*, he shall only be entitled to County Court costs. For the plaintiff it was contended that the section had no application, inasmuch as an action for 51*l.* cannot be 'commenced in the County Court,' but Mr. Justice Day disposed of the argument

by observing that the Legislature could not have intended to enable a plaintiff, by claiming too much, to establish a right to higher costs.

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In the course of the same case the Court sent for Master Wilberforce, and, after conferring with him, Mr. Justice Day stated that, under section 116, where the action remained in the High Court, and the plaintiff recovered less than 20*l.* within twenty-one days, under Order XIV., the practice among the masters, having regard to the proviso to that section, was to allow County Court costs only, but that as Order XIV. has no application to the County Courts, the masters allow the plaintiff the costs of the somewhat analogous County Court proceeding by default summons. Mr. Justice Day added that such being the practice where the action remained in the High Court, it followed that where, as in the case under consideration, it was remitted to a County Court, the plaintiff was still less entitled upon taxation to the costs of proceedings under Order XIV.

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There seems, after all, a chance of the *Jackson Case* going to the House of Lords. Mr. Jackson's solicitors have written to the *Standard* that an appeal would be proceeded with if the necessary expenses are provided, Mr. Jackson's own means not being such as to justify the step. The importance of the matter to the public is so great that we sincerely trust the appeal will not be allowed to lapse for want of pecuniary assistance. Additional interest in this remarkable case has now been caused by the statements of the Lord Chancellor and Lord Esher in Parliament, and Mrs. Jackson's published justification of the course she has pursued.

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The perennial 'block' in the High Court of Justice was the subject of some questions in the House of Commons last week. The Attorney-General did not attempt to deny the existence of heavy arrears both in the Chancery and the Queen's Bench Divisions, but beyond stating that the suggested appointment of a new judge was receiving the attention of the Government he had no comfort to offer to the patient (or impatient) victims of 'the law's delay.' Mr. Atherley Jones, it is stated, intends to press for a royal commission to inquire into the practicability of cheapening the administration of the law. Cheaper law will, however, be no boon unless the judicial engines are at the same time made to work more quickly and in a less spasmodic fashion.

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Mr. Milvain's Slander of Women Bill has passed a second reading, and is practically sure to become law before the close of the session, as it passed a second reading last year without any opposition. It is very short, simply providing that words spoken and published which impute unchastity or adultery to any woman or girl shall not require special damage to render them actionable, thus reversing the law as laid down by Holt, C.J., in *Ogden* v. *Turner*, 2 Salk. 696 (on the ground that this is a spiritual defamation, punishable in a spiritual Court), and denounced as unsatisfactory and barbarous by Lord Campbell and Lord Brougham respectively in *Lynch* v. *Knight*, 9 H. L. C. at pp. 593, 594 (see also *per* Cockburn, C.J., and Crompton, J., and Blackburn, J., in *Roberts* v. *Roberts*, 33 Law J. Rep. Q. B. 249). In Scotland, it appears, and also throughout the United States (see 'Odgers on Libel and Slander,' 2nd ed. p. 88), the law is already what the bill would make it here, while 'even to charge a woman with being drunk is actionable in Massachusetts' (Odgers, *ibid.* citing *Brown* v. *Nickerson*, 1 Gray, 1). That our present English law has been so long the subject of unfavourable comment from the bench without amendment is very remarkable.

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## INJUNCTIONS IN RESTRAINT OF LIBEL.—*BONNARD* v. *PERRYMAN.*

One recent decision of the Court of Appeal—*Mrs. Jackson's Case*—aroused a storm of adverse criticism in leading articles and letters addressed to the newspapers. But the question argued a few days ago before the full Court of Appeal, on which judgment was given on Tuesday, is of at least equal importance and interest. In *Bonnard* v. *Perryman* it was not so much the law which was involved as the principles of its application. All the judges admit that the Chancery Division has jurisdiction to grant an interlocutory injunction in restraint of a libel, and in that respect the judgment of Mr. Justice North was affirmed. It is a pity, however, that the language of the judgment read by the Lord Chief Justice is not more precise in its terms with respect to the jurisdiction to restrain by injunction the publication of a libel. 'Prior to the Common Law Procedure Act, 1854, neither Courts of law nor Courts of equity could issue injunctions in such a case as this: not Courts of equity, because cases of libel could not come before them; not Courts of law, because prior to 1854 they could not issue injunctions at all.' One would gather from this that the power of the Court of Chancery to grant injunctions was limited to cases which came before it, whereas, in fact, a large portion of the instances of its exercise were cases in which a plaintiff was enjoined from proceeding in a common law Court. Lord Langdale's reason for refusing, in *Clark* v. *Freeman*, 17 Law J. Rep. Chanc. 142; 11 Beav. 118, to restrain by injunction the publication of a libel was: 'If I were to interfere as is now asked, I should be reviving the criminal jurisdiction of the Star Chamber.' And Lord Eldon, in *Gee* v. *Pritchard*, 2 Sw. 413–426, citing Lord Hardwicke, based the equitable jurisdiction by way of injunction on the ground of property.

The real question involved is rather of general public interest than of legal and professional import. It is really which of two conflicting political or ethical principles shall prevail in cases of this kind. Lord Justice Kay, who had the courage of his opinions and dissented from his five legal brethren, did well to give prominence to the facts of the case and the character of the libels. The defendant, it appears, has been in the habit of making accusations 'in some of the strongest language of his well-furnished vocabulary.' The plaintiff was termed, in an article which the defendant intends to repeat, 'a city thief,' 'a vulture;' was charged with 'swindles and nefarious practices.' 'There is no phase of the criminal law,' it is said, 'that has not been scoffed at by him.' Fraud, conspiracy, burglary, felony

are stated to have been used to aid the plaintiff's schemes to despoil and hoodwink the public. There is no proof, or even evidence, beyond affidavits of belief by the defendant, of the truth of any of these charges. The English doctrine that a man is presumed to be innocent until he is shown to be guilty has surely a wider application than the actual precincts of a criminal Court. If these accusations are true, proceedings ought to be taken of a different character from journalistic attacks. If untrue—and they must be taken to be untrue until proved—an atrocious wrong is done to the plaintiff, who, by the institution of a libel action, has taken the only means open to him of vindicating his character. According to the judgment of the Appeal Court, an innocent man may be assailed in the foulest terms and tortured by the repetition of atrocious calumnies, it may be for months, until his action for libel is actually heard. If it was for the public advantage that the man should be denounced, the thing was already done. The man has, once for all, been indicted at the bar of public opinion. What end is served by a repetition of the charges? Who is damnified by the grant of an interlocutory injunction? In ordinary cases of injunction, as, for example, in stopping building operations, the object of an interlocutory application is to keep things in *statu quo*, and the plaintiff gives an undertaking in damages which are usually measurable with some degree of precision. It is difficult to see what the damages could be in this case. There are, in the judgment of the majority of the Court, many remarks which John Austin would have called 'fustian.' 'The right of free speech is one which it is for the public interest that individuals should possess.' This reminds one of a remark made by a Liberal voter with respect to the candidature of a noble lord who was standing for one of the Eastern counties. He believed, he said, in free trade; but not in free trade in other people's wives. Free speech is an excellent thing; but when the subject is the character of one's neighbour, the law is rightly a protectionist. Then, say the judges, individuals 'should exercise' this right 'without impediment, so long as no wrongful act is done.' Is it good morals to allow acts to be done which may prove to have been atrocious, and to have inflicted cruel and undeserved suffering? We cannot imagine that any moralist would approve such a course. Then to justify this extraordinary judgment some very loose language is cited of the Master of the Rolls in *Coulson* v. *Coulson*, to the effect that the jurisdiction is of 'a delicate nature,' and 'ought only to be exercised in the clearest cases,' when, if the jury did not find the language to be libellous, the Court would set aside the verdict as unreasonable. This is to misunderstand the very nature of an interlocutory application. No such conclusion could be arrived at unless the Court had before it all the materials necessary to enable it to arrive at a final decision of the case; and in interlocutory applications the Court rarely, if ever, has such materials presented to it. Freedom of speech with regard to matters of public interest is one thing; it is quite another when personal character is at stake. We have too much of it, as the judges themselves have frequently said, in our society journals. Some think we have too many rhetorical platitudes in the utterances of our judges.

## RELIEF FOR MISTAKE.

IF hard cases make bad law, the judges must have been tempted to enunciate bad law in the case of *Barrow* v. *Isaacs*, 60 Law J. Rep. Q. B. 179; L. R. (1891), 1 Q. B. 417, for it would be difficult to conceive a much harder case of the kind. The lessees and their solicitors forgot to obtain the consent of the lessor to an underlease, though there was in the superior lease a covenant that the lessees should not underlet without the lessor's consent, and the power of re-entry was reserved to the lessor in the event of the lessees not well and truly observing and performing their covenants. There was the not uncommon proviso attached to the covenant that the consent of the lessor should not be arbitrarily withheld in the case of a respectable and responsible person. It was admitted that the underlessees were respectable and responsible persons, and therefore the lessor could not have arbitrarily withheld his consent. Lord Justice Kay pointed out that it did not follow that, because the intending underlessees were unobjectionable in themselves, the lessor was bound to permit an underlease to be granted to them. His lordship suggested that the refusal could not be considered arbitrary if the trade which the underlessees wished to carry on would be injurious to the lessor, or if they wished to use the premises in a manner which would altogether change their character.

The Master of the Rolls assumed, for the purposes of his judgment, that no reasonable man would have refused his consent in this case, and that, if he had refused, his refusal would be considered arbitrary, and, therefore, invalid. In spite of this, a unanimous judgment of the Court of Appeal has upheld the lessor's right of re-entry. There cannot be any serious question that the decision is right, though it might have been more chivalrous on the lessor's part if he had not been quite so exact in enforcing his legal rights. The Conveyancing Act, 1881, s. 14 (6), especially provides that the restrictions on and relief against forfeiture of leases therein mentioned shall 'not extend to a covenant or condition against the assigning, under-letting, parting with the possession, or disposing of the land leased.' We are, therefore, driven back upon the general rules under which the Courts will give relief. Before the Judicature Acts, it was the Courts of equity mainly which gave relief where the strict legal rules pressed too hardly on persons, but there was a limit to their power, and they interfered only in cases of accident, mistake, or fraud. It was in one sense by an accident that the lessees and their solicitor did not apply for the necessary consent, as it was certainly not of malice prepense or set purpose, but accident, as a ground of relief, was used in a narrower sense. In Snell's 'Principles of Equity' (7th edit. p. 432) it is thus defined: 'By the term "accident" is intended, in equity, not any inevitable casualty or act of Providence, or *vis major*—*i.e.* irresistible force—but any unforeseen event, misfortune, loss, act, or omission which is not the result of negligence or misconduct in the party.' The last part of this definition quite puts the lessees in question out of Court, as it was clearly negligent on their part or on the part of their solicitor not to have inspected the original lease. There was clearly no fraud in the matter, and the lessees were therefore driven to contend that they could obtain relief on the ground of mistake. In turning again to Snell, we find (p. 443) that 'mistake, as recognised and relievable against in

a Court of equity, may be defined, in contradistinction from accident, as some unintentional act or omission arising from ignorance or surprise, and sometimes from imposition or misplaced confidence; but in the latter case it is not distinguishable from fraud.' In Judge Story's 'Commentaries on Equity Jurisdiction' (12th edit. vol. i. p. 102), it is said that mistake 'is sometimes the result of accident in its large sense, but as contradistinguished from it, it is some unintentional act, or omission, or error, arising from ignorance, surprise, imposition, or misplaced confidence.' The lessees were in effect attempting, in *Barrow* v. *Isaacs*, to add to this conception, so as to include forgetfulness. They were in no error as to the need for the lessor's consent, but they forgot that they had applied for it in another transaction, and that there were words in the superior lease rendering it necessary. The Master of the Rolls said: 'Taking the word in its ordinary sense, is mere forgetfulness "mistake"? Can you say "I forgot" is the same as "I was mistaken"? If a man merely forgets, it is plain he is not in the condition of a man who assumes that one state of things exists, whereas some other state of things in fact exists.' It is worthy of notice that Lord Justice Kay neither affirmed nor denied that the Court had jurisdiction to relieve in such a case, but was of opinion that it was not a proper case to give relief, if they had the power to do so, considering what a lax practice among lessees such an exercise of judicial discretion might introduce. It may seem very hard that a person should lose the whole of a valuable lease owing to his neglect to obtain a consent of which he was sure; but then he was perfectly at liberty not to enter into a covenant with the lessor which entailed such terrible consequences; and if the time of the Courts is to be taken up in relieving persons from the consequences of covenants into which they have entered with their eyes open the judicial staff will certainly have to be increased.

## LEGISLATIVE PROGRESS.

In the House of Lords the following is the record of work during the past week:—

Bills read a third time and passed:—
Oyster and Mussel Fishery (Loch Severn) Order Confirmation Bill.
Electoral Disabilities Removal Bill.
The Middlesex Registry Bill.

Bills passed through Committee:—
Evidence Bill.
Trustee Bill.
Army Schools Bill.
Public Bodies (Provisional Orders) Bill.
Sale of Goods Bill.

Second readings:—
Marriage Acts Amendment Bill.
Merchandise Marks Bill.
Charities Recovery Bill.

In the House of Commons.

Third readings:—
London Sky Signs Bill.
Herring Branding (Northumberland) Bill.
Taxes (Regulation of Remuneration) Bill.
Registration of Writs (Scotland) Bill.
Law Agents (Scotland) Bill.
Drainage and Improvement of Land (Ireland) Bill.

Second readings:—
Commissioners for Oaths Amendment Bill.
Trusts Amendment (Scotland) Bill.
Ancient Monuments Protection Act (1882) Amendment Bill.
London City (Trial of Causes) Bill.
Places of Worship Enfranchisement Bill.

New bills:—
To Exempt Members of Fire Brigades from Service on Juries.
To Regulate Crofters' Common Grazings.
To Amend the Law Relating to Leaseholds in Ireland.
To Amend the Law Relating to the Tenure of Houses in Ireland.

The False Marking Prevention (No. 2) Bill was thrown out.

# Reviews.

## THE ELEMENTS OF MERCANTILE LAW.

*The Elements of Mercantile Law.* By Thomas Edward Scrutton, Barrister-at-Law. London: Wm. Clowes & Son (Lim.). 1891.

This little volume is composed of a course of lectures which the author delivered as lecturer in common law to the Incorporated Law Society. It consists of seven chapters, in which the author, after giving a sketch of the history and growth of the law merchant, considers the mercantile law affecting negotiable instruments, charterparties, and bills of lading, the Factors Act, with notes on the contract of sale, and, finally, the policy of marine insurance. The appendix contains forms of charterparty, bill of lading, and marine policy. A good specimen of the work will be found in the third chapter, where the statutory definition of a bill of exchange is considered and analysed, the reason assigned by the author being that the ingenuity of people who draw bills appears never to be exhausted in finding out how unlike the ordinary form they can get a document, and yet have it called a bill of exchange. The book throughout is carefully and pleasantly written, and will be found useful as a sketch of the law merchant. The cases referred to are not numerous, but a table of cases prefixed to the work would have been an improvement.

## PALMER'S COMPANY PRECEDENTS.

*Company Precedents for Use in Relation to Companies subject to the Companies Acts, 1862 to 1890.* With Copious Notes and an Appendix containing the Acts and Rules. Fifth Edition. By Francis Beaufort Palmer, assisted by Charles Macnaghten, Barristers-at-Law. London: Stevens & Sons (Lim.).

The reputation of this book is universal. No company lawyer can afford to be without it, and the appearance of the fifth edition, bringing the work down to date, was eagerly looked for and as warmly welcomed. The extent and importance of the recent company legislation has rendered the task of editing this new edition peculiarly onerous; but it is almost needless to say that the task has been faithfully performed. There can be no question that Mr. Palmer's work has had a

very decided influence upon the constitution of no inconsiderable portion of the thousands of companies which have been incorporated since the first edition appeared in 1877. The original plan has been adhered to in this edition, the subject being divided into heads which are arranged in logical sequence, from 'Promoters' to 'Winding-up,' while under each head the forms are prefaced by introductory notes. In the appendix are given the whole of the Acts and rules. One of the most important features of a book of this size and character is the index. We have tested Mr. Palmer's, and have found it completely reliable. The book has grown to nearly 1,200 pages, and we are unable to say how it could have been reduced without detracting from its value. The price is 36*s*.

# Correspondence.

## THE PUBLIC TRUSTEE BILL.

Sir,—To what extent will the public trustee act on his own responsibility? Will he run to the Court for directions at every turn? Assuming that in a case of doubt he exercises discretion, acting as he thinks for the best, but wrongly; will the Court upset his act? Lastly, will the offices of the public trustee be closed for ten weeks' Long Vacation?

These are points on which practising solicitors would like to know the intentions of the Government.

R. B. Lowndes.

2 Church Street, Cheltenham: April 20.

## COURT ROLLS.

Sir,—I should feel much obliged if any of your readers can tell me of any book which contains examples of the entries usually made in the court rolls of a manor on the holding of a Court, either in English or Latin. I am engaged in reading the rolls of a manor in the times of Edward III. and Henry VI., and any book such as I have described would help me very much by giving me a lead, as it were. Also do you know of any book containing examples of old deeds—feoffments, releases, &c.—of the time of Edward I. to Henry VIII.?

T. K.

# Unreported Cases.

## BANKRUPTCY CASE.

At the Liverpool Bankruptcy Court on March 13 the case of *In re Davies* came before his Honour Judge Collier. Mr. Charles Collins, solicitor, applied for the judge's directions in regard to the costs in the bankruptcy of Davies. It appeared that the assets were originally estimated at under 300*l*., and the costs were consequently taxed on the lower scale. It was subsequently found that the assets exceeded 300*l*., and an application was made to the registrar to give costs on the higher scale. The question was referred by the registrar to his Honour Judge Shand, who decided that there was no power to increase, although there was express power to reduce. The trustee had communicated with the Board of Trade on the subject, and had received a reply to the effect that the taxing-master in the High Court, under similar circumstances, would increase the costs, and, if the Bankruptcy Court in Liverpool decided to follow that practice, the additional payment would, of course, be allowed. Mr. Collins suggested that his Honour should give it as his opinion that the practice in the High Court should be adopted.—The Judge: Yes, I will do that.

## SUPREME COURT OF NEWFOUNDLAND.

INTERNATIONAL LAW—PREROGATIVE OF CROWN—ACT OF STATE—PERSONAL RESPONSIBILITY OF AGENT OF CROWN.

In the case of *James Baird and another* v. *Sir Baldwin Walker, Bart.*, the following judgment was on March 18, 1891, delivered by Mr. Justice Sir Robert Pinsent: The statement of claim in this action charges the defendant with having, in June last, wrongfully entered the plaintiffs' messuage and premises, situate at Fishel's River, in Bay St. George, and with taking and retaining possession of the plaintiffs' lobster factory and of a large quantity of gear, materials, and implements appertaining to the same, and with having prevented the plaintiffs from carrying on the business of catching and preserving lobsters; and the plaintiffs claim 5,000 dols. damages, and they pray for an injunction. The defendant, amongst other matters, pleads in effect that he was captain of one of Her Majesty's ships employed during the last season on the Newfoundland fisheries, and was senior officer on the station; that the Lords Commissioners of the Admiralty, by command of Her Majesty, committed to him 'the care and charge of putting in force and giving effect to an agreement embodied in a *modus vivendi* for the lobster fishery in Newfoundland during the said season, which as an act and matter of State and public policy had been by Her Majesty entered into with the Government of the Republic of France.' That the said agreement provided, amongst other things, 'that on the coast of Newfoundland, where the French enjoy rights of fishing, conferred by the treaties, no lobster factories which were not in operation on July 1, 1889, should be permitted unless by the joint consent of the commanders of the British and French naval stations.' The plea then proceeds to allege that the said lobster factory of the plaintiffs was in operation in contravention of the terms of that agreement, and that after notice to the plaintiffs, which they disregarded, he (the defendant) 'in his public political capacity, and in the exercise of the powers and authorities, and in the performance of the duties of the care and charge so as aforesaid committed to him,' entered and took possession, &c., but that the alleged trespasses 'were acts and matters of State, done and performed under the provisions of the said *modus vivendi*.' And the defendant sets out that all he had done was with a full knowledge of the circumstances, approved and confirmed by Her Majesty, and he concludes his plea in these words: 'And the defendant therefore submits that the matters set forth in his answer to the said statement of claim, and on which he rests his right to enter into and take possession of the said messuage and premises, and to take possession of the said gear, material, and implements, were acts and matters of State arising out of the political relations between Her Majesty the Queen and the Government of the Republic of France; that they involve the construction of treaties and of the said *modus vivendi* and other acts of State, and are matters which cannot be inquired into by this honourable Court.' It is admitted that if this plea can be sustained as a matter of fact, and if it be good in law, there will be an end to this action. It is assumed that the plaintiffs are British subjects, and it is hardly necessary to add that for the purposes of the present discussion the right of property in the plaintiffs in the lands and chattels the subject of the alleged trespasses, and the acts of

trespass themselves, must be taken as admitted. The reply of the plaintiffs to this plea or statement of defence, besides raising issues upon questions of fact, with which we have at present no concern, avers that 'the alleged contravention of said agreement or *modus vivendi* afforded no justification in law for the action of the defendant;' 'that the said action of the defendant was not an act of State and public policy;' 'that the alleged authority from Her Majesty, and subsequent confirmation by her, afford no justification for the action of the defendant,' and do not relieve the defendant from liability for his said acts. No question has, on either side, been raised in the course of the argument with regard to the terms and construction of any treaty or treaties, or of any statutes in relation to them; in fact, no reference has been made to them beyond the general allegation in the pleadings. The pleadings, if any adjudication upon such points were called for, are wanting in such necessary and specific references, averments of circumstances and of connection, as would enable the Court, in the absence of proof, to pass judgment upon them (*Pulido* v. *Musgrave*, 5 App. Cas. 103). However, no such adjudication is now sought. What we are at this time asked to determine is a question *in limine*, by the finding of which in favour of the defendant the case of the plaintiffs would be out of Court. The argument has been conducted with much care and ability. A vast deal of learned industry has been expended by counsel on both sides in dealing with the proposition involved in it. They cited a large number of authorities, foreign as well as domestic, and quoted from Parliamentary debates and other sources of information, to sustain their respective positions. To many of these authorities it will be unnecessary to refer, and I shall confine myself to those which appear to me to be more particularly relevant to this inquiry. For the plaintiffs it is contended that no such thing is known to the law or to the constitution as an act of State by which in time of peace the Crown can convey authority to a public officer or any other person, to commit any act in violation or disturbance of the person or property of the subject, so as to exclude the subject from resort to the Queen's Courts of law for redress and compensation for injuries committed under colour of the authority of such act of State. This position is contested by the other side, and it is contended that the mere fact of such an agreement having been made as that here alleged to have been entered into between the Government of Great Britain and that of the Republic of France is in itself sufficient evidence of such public necessity as will justify the sacrifice of the right of private property to the public weal, and particularly where it is alleged that such sacrifice is required in relation to pre-existing treaties; in other words, that the agreement in this case termed the *modus vivendi* is equivalent to a treaty, to the terms of which rights of private property may be subordinated. It is not averred in the pleadings that the object of the agreement was to avert hostilities between the contracting States, and we have no historic ground for the assumption that war was imminent. There is no question that the *modus vivendi* was entered into and that the acts of the defendant were committed at a time of actual peace, which still continues. The term '*modus vivendi*' in itself supposes an actual state of tranquillity, and a desire on the part of the high contracting parties to secure its continuance. The question, then, for us is this: Is there sufficient before us to enable the Court to uphold this agreement with the right claimed by the defendant of putting it in execution with legal impunity? A good deal has been said upon the meaning of the expression 'act of State.' In the broad sense of the term many lawful acts of the executive Government, and many instances of the exercise of the prerogative of the Crown might be designated 'acts of State;' but there is a narrower sense, and that in which the term is more technically, if not exclusively employed, which relates to acts done or adopted by the ruling powers of independent States in their political and sovereign capacity, particularly 'an act injurious to the person or to the property of some person who is not at the time of that act a subject of Her Majesty, which act is done by any representative of Her Majesty's authority, civil or military, and is either previously sanctioned or subsequently ratified by Her Majesty' (Stephen's 'History of the Criminal Law'). With regard to such acts, the general principle of law is that 'the transactions of independent States between each other are governed by other laws than those which Municipal Courts administer; such Courts have neither the means of deciding what is right nor the power of enforcing any decision which they may make' (*Secretary of State for India* v. *Kamachee*, 13 Moo. P. C. 75). That was the case of a seizure made by the British Government, acting as a sovereign power through its delegate, the East India Company, of the property of a native independent sovereign. 'Of the propriety or justice of that act,' said the Privy Council, 'neither the Court below nor the Judicial Committee have the means of forming, or the right of expressing, if they had formed any opinion. It may have been just or unjust, politic or impolitic, beneficial or injurious, taken as a whole, to those whose interests are affected. These are considerations into which their lordships cannot enter. It is sufficient to say that, even if a wrong had been done, it is a wrong for which no municipal Court of justice can afford a remedy.' The contention of the plaintiffs, citing this amongst other cases, is that, where the municipal law can be put in force, there can be no ouster of the jurisdiction of the Courts; and it is argued by their counsel that the doctrine, as we find it laid down in Stephen's 'History of the Criminal Law,' is sound and irrefutable. That learned author, after referring to the case above cited, proceeds: 'In order to avoid misconception it is necessary to observe that the doctrine as to acts of State can apply only to acts which affect foreigners, and which are done by the orders or with the ratification of the sovereign. As between the sovereign and his subjects there can be no such thing as an act of State. Courts of law are established for the express purpose of limiting public authority in its conduct towards individuals. If one British subject puts another to death or destroys his property by the express command of the king, that command is no protection to the person who executes it, unless it is in itself lawful, and it is the duty of the proper Courts of justice to determine whether it is lawful or not. On this ground the Courts were prepared to examine into the legality of the acts done under Governor Eyre's authority in the suppression of the insurrection in Jamaica. The acts affected British subjects only. But, as between British subjects and foreigners, the orders of the Crown justify what they command so far as British Courts of justice are concerned. In regard to civil rights this, as I have shown, has been established by express and solemn decisions. Again, it is said, "That no man's property can legally be taken from him or invaded by the direct act or command of the sovereign, without the consent of the subject, given expressly or implicitly through Parliament, is *jus indigenæ*, an old home-born right, declared to be law by divers statutes of the realm."' Much other of the text-learning relating to the prerogative of the Crown has been discussed in the course of this argument, and the necessity of 'preserving the property of the subject from the inundation of the prerogative;' but, while for obvious and all-sufficient reasons of convenience and security, the personal inviolability of the sovereign is insured by the constitution, it is plain and not open to question that the prerogative itself is the creature of the constitution and is defined and limited by

law, beyond the boundaries of which it cannot pass without subjecting the advisers and servants of the Crown to answer in Courts of justice to other subjects aggrieved by the unlawful exercise of the sovereign will. The point for decision here is: Was the act within the lawful power of the Crown? Was the authority under which the defendant justifies within the province of the prerogative? The powers of the Crown to cede British territory to a foreign state by treaty of peace, following upon the termination of war, seems to be unimpeachable, and has not been questioned at the bar; but it is said that this *modus vivendi* is not of that nature, that it does not partake of the character of a treaty, and that, if it does, no power resides in the British sovereign of entering into a compact with a foreign state in time of peace for a cession of territory, or *à fortiori* for alienating the property of a subject or of imposing upon him conditions of tenure in derogation of his ordinary rights, while he remains a subject of the Queen inhabiting British territory. Upon the question of the prerogative right of territorial cession in time of peace, it was held by the High Court of Bombay in the year 1876, in the case of *Damodhar Gordhan* v. *Deoram Kanji*, that it was beyond the power of the British Crown, without the concurrence of the Imperial Parliament, to make any cession of territory within the jurisdiction of any of the British Courts in India in time of peace to a foreign Power. Lord Selborne, in delivering the judgment of the Privy Council on appeal, observed that their lordships of the Judicial Committee, 'having arrived at the conclusion that the present appeal ought to fail without reference to that question, they think it sufficient to state that they entertain such grave doubts (to say no more) of the soundness of the general and abstract doctrine laid down by the High Court of Bombay, as to be unable to advise Her Majesty to rest her decision on that ground.' There are manifestly some cases, as where the grant of money is involved, in which the assent of Parliament to any treaty is practically essential. There are others involving the cession of territory in the time of peace which require the moral support of the nation as being acts of prudence and necessity, and free from the suspicion of fraud, collusion, or criminal weakness; but nevertheless, as in the acquisition of territory, so *ex converso*, in its cession the treaty-making power is in the Crown of Great Britain. Upon the argument of the case last cited, it was suggested that, if cessions in time of peace were legal, the Crown might cede any portion of territory, say Dover or the Isle of Wight, to a foreign Power; to which it was most aptly answered by Stephen, Q.C.: 'The possible extreme abuse of a power is no argument against its existence; you get beyond the tacit terms of a principle when you assume its capricious application.' So much for the principles of international as distinguished from constitutional and municipal law. With regard to the form of the instrument, it appears to me to be a matter of indifference so long as the terms are clear and sufficiently expressed; and that its construction would be determined simply by the principles which govern other contracts. It has been suggested that the exercise of the prerogative in possessions enjoying responsible (or constitutional) government is of a more limited character than it would be in the mother-country, but where the objects of its application correspond, there can be no doubt, in my opinion, that the sovereign authority in the colonies is the same as it is in Great Britain, where in truth 'responsible government' is more amply and absolutely enjoyed than it is in the colonies themselves. 'There can be no doubt the Queen's prerogative is as extensive, valid and effectual in New South Wales as in this county of Middlesex,' observed Vice-Chancellor Bacon (*In re Bateman's Trusts*, 42 Law J. Rep. 554). For the defendant it is, as I have said, contended that the fact of a *modus vivendi* having been concluded is sufficient without reference to the specific treaties or any provisions of the treaties upon which it is said to be founded, that the *modus* was in itself a treaty, and that the sovereign possesses absolute power to enter into an international agreement of this kind so as to bind the entire community and every individual subject's right; that Parliamentary impeachment is the only mode in which its propriety can be called in question, and that, if the defendant had failed to fulfil the duty cast upon him by the State, the nation would have been held responsible by the other contracting Power for this want of action; that as the terms upon which peace is made are in the absolute discretion of the sovereign, so the right to enter into an agreement to maintain peace and prevent war is equally so. Counsel for the defendant, after citing several text authorities upon international law, and referring to many decided cases, say that they rely particularly for the position they assume upon *Buron* v. *Denman*, 2 Exch. 157; *Conway* v. *Gray*, 10 East, T. R. 536; and *Rustomjee* v. *Reginam*, 2 Q. B. Div. 74. The first named of these cases was one in which the plaintiff (a Spaniard) sought to recover from the defendant, a British naval commander, damages for taking possession of a barracoon belonging to the plaintiff, and carrying away and liberating his slaves. The defendant had instructions to suppress the slave trade, but the authority of which, without further instructions, he would have been possessed under the terms of the treaty with Spain would have extended only to the stopping of ships on the high seas. The action of the defendant was, however, confirmed and ratified by the English Government, and it was held that this subsequent ratification was equal to a prior command, and that the defendant was not amenable in a British Court of justice at the suit of the plaintiff, because the act of the defendant, whether originally authorised or afterwards ratified, was 'an act of State.' In the second of the cases cited (*Conway* v. *Gray*), in which the plaintiff, although a British subject, sued under a policy of insurance for the benefit of a foreigner, it was held that a foreigner insuring in England a ship or goods is not entitled to abandon upon an embargo laid on the property in the ports of his own country, as his assent is virtually implied to every act of his own Government; in other words, that a foreigner could not recover from a British subject in an English Court damages arising out of an act of the plaintiff's own Government. In this case Lord Ellenborough, C.J., in the course of his judgment, referring with approval to *Tonteng* v. *Hubbard*, 3 B. & P. 291, says: 'The Court was of opinion that, if that had not been the case of a Swede against a British subject, the plaintiff would have been entitled to recover, but as the embargo was produced by the acts of the Swedish Government, it was in effect the plaintiff's own act that the vessel was detained.' I cannot see how either of these cases makes for the defendant against the principle that there can be no 'act of State,' so as to supersede or exclude the operation of the municipal law in the case of subjects of the same State. But for the defendant still another case was cited, which, it was maintained, distinctly (if for the first time) introduced a different rule. This was the case of *Rustomjee* v. *Reginam*, which was a proceeding by petition of right in which it was sought to make the Crown responsible as an agent or trustee for the suppliant as one of a class in respect of money paid, under a treaty of peace between the Queen of England and the Emperor of China towards the discharge of debts due to British subjects from certain Chinese merchants, and it was held that the act of the Crown in rejecting the claim of the plaintiff was not a subject of inquiry in a British Court. Lord Coleridge, in delivering the judgment of the Court, said: 'The making of peace and the making of

war, as they are the undoubted, so they are, perhaps, the highest, acts of the prerogative of the Crown. The terms on which peace is made are in the absolute discretion of the sovereign. The Queen might or might not, as she thought fit, have made peace at all; she might or not, as she thought fit, have insisted on this money being paid her. She acted throughout the making of the treaty and in relation to each and every of its stipulations in her sovereign character, and by her own inherent authority; and, as in making the treaty, so in performing the treaty, she is beyond the control of municipal law, and her acts are not to be examined in her own Courts. It is a treaty between herself as sovereign and the Emperor of China as sovereign, and though he might complain of the infraction, if infraction there were, of its provisions her subjects cannot. It seems clear to us that in all that relates to the making and performance of a treaty with another sovereign the Crown is not, and cannot be, an agent for any subject whatever.' In citing this case in support of the defendant's position his counsel mainly rely upon the passage, 'As in making the treaty, so in performing the treaty, she (the Queen) is beyond the control of municipal law, and her acts are not to be examined in her own Courts.' This language has never been quoted by jurists, nor cited by judges as possessing the meaning contended for on behalf of the defendant. The case is one in which the Queen herself was sued, and the ruling upon this point amounts simply to this, that the sovereign is not liable to be called to account by her subject for the manner of fulfilling the terms of a treaty in a matter which is only capable of being called in question by the other high contracting party. In the action now under consideration the sovereign is not the defendant; the question is one, not of the mode of fulfilling a treaty, but it relates to that which is in its very nature a temporary expedient during the existence of which the fulfilment of a treaty or treaties is suspended, something done in the meantime for the convenience of the Queen's Government, and the cause of complaint is one arising within the jurisdiction of Her Majesty's Courts, in which both the parties to the action are her subjects. I have no doubt that, where the terms of a treaty are such that the property of the subject within the territory of his State is affected by them, any contests between subjects of the Crown as to their lawful or unlawful execution is cognisable by the municipal Courts, and that 'the meaning of treaties and of all measures for their execution is to be ascertained by the same rules of construction and course of reasoning which we apply to the interpretation of private contracts.' This is not one of those cases to which the maxim 'Inter arma silent leges' applies. There may be, I admit, a territorial cession of public property in time of peace, although such is not the case here—the territory is British and its internal administration remains untouched; but, even in the case of transfer of territory from one State to another, the status of the inhabitants with regard to their real property would, I imagine, remain as before in the absence of stipulations to the contrary. It is possible to understand the existence of treaties the provisions of which might in certain events and under certain conditions be actively employed to control or qualify rights of property, but which in other events and under other conditions would leave those rights to their ordinary operation; but this would be a matter of construction, and such treaties would have to be administered as occasion might require according to their legal interpretation and the legal means of enforcing their provisions. No mere subsequent agreement in the nature of a *modus vivendi* in time of peace could, without Parliamentary sanction, modify such rights of property as between subject and subject to a greater extent than that for which the antecedent treaty or a prior statute-made provision. In this action of *Baird* v. *Walker*, no such case is presented to us for adjudication. We are not invited at present to decide upon the construction of treaties or the lawful means for their enforcement; we are only asked by the defendant to say that the alleged authority of the Crown contains in itself a sufficient defence to force the plaintiff out of Court. Under the pleadings and all the circumstances, so far as it is open to the Court now to notice them, we must hold that the defence is not a sufficient answer to the claim. It may not be generally known, and I would here note, that this is not the first instance in which a project in the nature of a *modus vivendi* has been proposed with regard to the joint occupation of part of the coast by French and English fishermen. In December, 1763, a project of an agreement was in view, proposed by the French ambassador, for the avoidance of disturbance and dispute between the English and French in carrying on the concurrent fishery. It was referred to the Crown law officers of the day, who were asked whether the Crown could legally enter into it, and would have power to enforce such regulations so far as they related to the subjects of Great Britain; and those eminent authorities answered that the project contained many things contrary to the Act of William III., as well in respect of the king's subjects as to the mode of determining controversies arising there, and that the Crown had no power to enter into or enforce such regulations (Reeve, p. 120; Chalmer's 'Colonial Opinions,' 545). At this point I cannot do better than adopt the following passages from Brown's 'Constitutional Law': 'As for the most petty and inconsiderable trespass committed by his fellow-subject, so for the invasion of property by his sovereign does our law give to a suppliant, fully, freely, and efficiently, redress. One exception, and one only, to this rule occurs; and that is, where the sovereign has himself personally done an act which injures or prejudices another, for the King of England can theoretically do no wrong. Our law thus recognises his supremacy—it has omitted to frame any mode of redress for that which it deems to be impossible; and yet the law, whilst holding the sovereign personally irresponsible for his acts, will virtually limit this irresponsibility by visiting strictly upon the ministers or agents of the Crown the consequences flowing from obedience to its command. The rule *respondeat superior* being here inapplicable, a remedy may be had against the agent, and so the suitor shall not retire from the King's Court without having justice done him.' And again: 'The civil irresponsibility of the supreme power for tortious acts could not be theoretically maintained with any show of justice if its agents were not personally responsible for them. In such cases the Government is morally bound to indemnify its agent, and it is hard on such agent where his obligations are not satisfied; but the right to compensation in the party injured is paramount to this consideration, that is to say, special circumstances may render even a public servant personally responsible for acts *bonâ fide* done by him on behalf of the public, which in contemplation of law injuriously affect another.' In *Feather* v. *Reginam*, 6 B. & S. 296, Lord Chief Justice Cockburn, in delivering a judgment upon a petition of right, said: 'Let it not, however, be supposed that a subject sustaining a legal wrong at the hands of a minister of the Crown is without a remedy. As the sovereign cannot authorise wrong to be done, the authority of the Crown would afford no defence to an action brought for an illegal act committed by an officer of the Crown. The learned counsel for the suppliant rested part of his argument on the ground that there could be no remedy by action against an officer of State for an injury done by the authority of the Crown, but he altogether failed to make good that position. The case of *Buron* v. *Denman*, which he cited in support of it, only shows that where an act in-

jurious to a foreigner, and which might otherwise afford a ground of action, is done by a British subject, and the act is adopted by the Government of this country, it becomes the act of the State, and the private right of action becomes merged in the international question which arises between our own Government and that of the foreigner. The decision leaves the question as to the right of action between subject and subject wholly untouched. On the other hand, the case of the general warrants, *Money* v. *Leach*, and the cases of *Sutton* v. *Johnstone*, in error, and *Sutherland* v. *Murray* there cited, are direct authorities that an action will lie for a tortious act, notwithstanding it may have had the sanction of the highest authority in the State. But in our opinion no authority is needed to establish that a servant of the Crown is responsible in law for a tortious act done to a fellow-subject, though done by the authority of the Crown, a position which appears to us to rest on principles which are too well settled to admit of question, and which are alike essential to uphold the dignity of the Crown on the one hand, and the rights and liberties of the subject on the other.' To sum up in short terms, for general information, our conclusion upon the issue before us, the Court holds: That in an action of this description, to which the parties are British subjects, for a trespass committed within British territory, in time of peace, it is no sufficient answer to say, in exclusion of the jurisdiction of the municipal Courts, that the trespass was an 'act of State' committed under the authority of an agreement or *modus vivendi* with a foreign power. That in such a case, as between the Queen's subjects, the questions of the validity, interpretation and effect of all instruments and evidences of title and authority rest in the first place with the Courts of competent jurisdiction within which the cause of action arises. That, therefore, the decision upon the present issue, which is confined to these points, is found in favour of the plaintiffs in this action, with leave to the defendant (should it be desired) to amend upon payment of costs. At the bar we had the voluntary statement of the Attorney-General (who appeared with Mr. Kent, Q.C.), on the part of the defendant, to uphold the 'legal and constitutional rights of the Crown,' that, with regard to those who had suffered loss, there could not be the remotest doubt but that inquiry would be made and that compensation would follow. It is to be hoped, therefore, that it will be found unnecessary to prolong the litigation in the present case.—Sir J. S. Winter, Q.C., and Mr. Greene, Q.C., for the plaintiffs; Mr. Kent, Q.C., and the Attorney-General (Sir W. V. Whiteway, Q.C.) for the defendant.

## CALLS TO THE BAR.

THE following gentlemen have been called to the bar during the present Easter Term:—

*By the Honourable Society of Lincoln's Inn.*

Benjamin Plunkett Lentaigne, B.A., Dublin.
Frederick William Moore.
The Hon. George Charles Colville, B.A., Cambridge.
Donald Fortescue Wilbraham, Trinity College, Oxford.
Sirdar Gurcharn Singh, University of Cambridge and Punjab University, Lahore College.
Philip Spencer O'Bryen Taylor, B.A., Oxford.
Mohamad Ahmad, Downing College, Cambridge.
Frederick Broadbridge, University of London.

*By the Honourable Society of the Inner Temple.*

Oldham Whittaker, LL.B., Cambridge, holder of a first-class studentship awarded Hilary Term, 1889.
Thomas Lowndes Bullock, B.A., Oxford.
Charles Peter Caspersz, London.
Harry Lawson Webster Lawson, M.P., M.A., Oxford.
John Ryan, M.A., LL.M., Cambridge, D.Sc., London.
Robert Moritz Meyer, B.A., Cambridge.
Percy Bagnall Evans, B.A., Oxford.
Charles Churchill Branch, B.A., Oxford.
Thomas Greig, B.A., Cambridge.
Walter Samuel Glynn, B.A., Cambridge.
Charles Sansome Preston, B.A., Oxford.
Vivian Morten.
Henry Staveley Hill, Oxford.
Thomas Dalton Lawrance, M.A., Oxford.
Edward Acton, B.A., Oxford (holder of a scholarship in common law, awarded July, 1890).
John William Aizlewood, LL.B., London.
Ernest Hamilton Sharp, B.A., Oxford.
Francis Herrick Birch, B.A., Cambridge.
William Cunliffe Pickersgill Jay, B.A., LL.B., Cambridge.
Francis Pelham Whitbread, Cambridge.
Henry Percy Hussey, B.A., Oxford.
Paul Connolly.
Charles Leete Attenborough.
Roger Charnock Richards.

*By the Honourable Society of the Middle Temple.*

Lovegrove Griffin Hubert Mayer.
Reginald Ker Kays.
Herbert Sandford Thorne, B.A., Oxford.
Thomas James Chesshyre Tomlin, B.A., Oxford.
Felix Emile André Ange Galdemar, University of London.
Henry Arthur Hannen, B.A., Cambridge.
Jean Edmond Rouillard.
John Wyatt Peters.
William Loftus Thompson.
Herbert Guy Snowden, B.A., Oxford, first-class Middle Temple international law scholar, 1889.
Percy Edward Baldwin, first-class scholar Middle Temple real and personal property, 1889 and 1891.
William Herbert Evans.
Percy Mackenzie Skinner.
Pestanji Jamasji Padshah, M.A, Bombay University (Fellow Elphinstone College, Cobden Club medallist, first Middle Temple equity scholar, June, 1889, prizeman in common law, 1890, 1891, professor Gujerat College).
Philip Le Maistre.
Tennant Macfarlane.
Fatch Chand (first arts Calcutta University, fourth common law prizeman, 1890, 1891).
Shiavex Rustomji Master, F.B.A., Elphinstone College, Bombay University.
George Francis Pires (Hunter prizeman, Arnott and M'Lenan medallist, Grant Medical College, Bombay, L.R.C.P. (London), M.R.C.S. (England)).
Frederick Edwin Bushell.

*By the Honourable Society of Gray's Inn.*

Sasi Bhushan Sarbadhicary, Punjab, India (member of the University of Edinburgh, the only son of Ras Govinda Sarbadhicary, Chief of Caste of Bengal, India.

UNITED LAW SOCIETY.—The usual weekly meeting of this society was held in the Inner Temple Lecture Hall, Mr. C. W. Williams in the chair. Mr. Moyle moved: 'That in view of the recent disclosures as to the nature of the trust deed of the Salvation Army, General Booth's scheme is unworthy of any further support.' Mr. J. R. Atkin opposed. The debate was continued by Messrs. E. F. Spence, J. L. V. S. Williams, Arthur Gilbert, Davis (visitor), G. D. Elliman, G. Washington Fox, D. T. Tudor, H. W. Marcus, L. W. Browne, and C. H. A. Maistre. The opener replied, and the motion was put to the house and was carried by one vote. On Monday next the debate is on the subject of the legality of strike combinations.

## CALENDAR OF THE COUNTY COURTS.

FROM APRIL 27 TO MAY 2.

| No. of Circuit | His Honour | April 27 | April 28 | April 29 | April 30 | May 1 | May 2 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Birkenhead | — | Warrington | Leigh | — |
| 8 | Judge Heywood | Manchester | Manchester | Manchester | Manchester | Manchester | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | Middlesbrough | Stockton-on-Tees | — | — | — | — |
| 19 | Judge Barber | — | Ilkeston | Derby | Burton | — | — |
| 26 | Judge Jordan | — | — | — | — | Tunstall | Cheadle |
| 47 | Judge Powell | — | Lambeth | Greenwich | Lambeth | Lambeth | — |
| 54 | Judge Metcalfe | Bristol | Bristol | Bristol | Bristol | Bristol | — |

## CLAIMANTS WANTED.

MR. SIDNEY H. PRESTON, of 1 Great College Street, Westminster, writes as follows:—

In the olden time the *London Gazette* was the chief medium used by solicitors and others for conveying to next-of-kin, heirs, or relations the news of a 'windfall' or for seeking information as to missing relations. Now, however, the 'agony' columns of the leading dailies constantly contain particulars of this description. During the past few months an unusual number of these announcements have been made; and I therefore venture to send you an index of the names of the deceased, with the hope that some of your readers who do not con 'agony' column notices may thus come in for unexpected assets. The following are the more important cases:—

Rose Archer (or Mendham), Elizabeth Bailey (Kent), Baldock Family, Samuel Bingham (living in 1821), Emma H. Brookhouse, John Brenan (late of the Liverpool Police), Sir Alexander Caldwell, G.C.B. (died 1839), Catherine B. Chappell, Henry S. Church (Australia), William Clark (Kent), Mary Cole, Robert Copely, John Donegan (Cork), Eliza Mary Duggan, Jane Farncombe, Alexander Forbes, Elizabeth J. Fry, Susannah E. Galpine, Charlotte E. Garrod, George Glover (Suffolk), Eduard Griffiths-Boteler, Samuel Hadfield, William Harrington, Margaret Hartliffe, John Hickman (died 1860), Elizabeth C. Keene, William King (son of John), William N. Knight, Duncan M'Intyre, Frederick M'Namara, Elias Manning (gamekeeper), Anne Manser, Joseph A. C. Morrison, Peters Family (6,000*l.*), Richard Pickin (horsebreaker), Charles Rankin, Francis Robinson, Mary Ann Russell, Mary Sandall, Elizabeth Skelton (Wakefield, 1857), Sedgwick Family (3,000*l.*), Elizabeth Ann Stone, Mary Jane Turnage, Euphemia Tibbets, John J. Waddington (India), Agnes Warn, Alexander K. Wauchop, George and Gerald Webster, Eliza Wilson (Middlesex), George and John Wood, and Eliza Wright (Middlesex).

## LAW STUDENTS SOCIETIES.

DEBATING. — The ordinary weekly meeting of this society was held at the Law Institution, Chancery Lane, on Tuesday, April 21, Mr. Douglas in the chair.—The subject for discussion, 'That our fiscal policy ought to be changed so as to give greater advantages to our colonies than to other countries,' was opened by Mr. Wheeler.—Mr. T. W. Williams opposed.—The debate having been declared open, the following gentlemen spoke in the affirmative: Messrs. Archer-White and Stewart-Smith; in the negative, none.—Mr. Watkins replied for Mr. Wheeler.—On the motion being put to the meeting, it was carried by a majority of two.—The subject for discussion at the next meeting of the society, on Tuesday, April 28, is, 'That this society disapproves of the Public Trustee Bill.'

LIVERPOOL.—At a meeting of this association on Monday, the 20th inst., a debate was held on the following subject for discussion: 'Ought the decision in *Regina* v. *Jackson* to be reversed on appeal?'—Mr. Barnes opened in the affirmative, which was also supported by Messrs. Martin, Bagshaw, Todd, and Finch.—Mr. M'Master opened in the negative, which was also supported by Messrs. Inman, Wilson, Sedgwick, Glover, Wainwright, and Watkins.—The question was decided in the negative by a majority of two.

## NOTICES FOR THE WEEK.

ROTA OF REGISTRARS.

MONDAY, April 27.—Court of Appeal No. 2: Mr. Clowes. Mr. Justice Chitty: Mr. Carrington. Mr. Justice North: Mr. Farmer. Mr. Justice Stirling: Mr. Pemberton. Mr. Justice Kekewich: Mr. Beal. Mr. Justice Romer: Mr. Leach.

Tuesday, April 28.—Court of Appeal No. 2: Mr. Jackson. Mr. Justice Chitty: Mr. Lavie. Mr. Justice North: Mr. Rolt. Mr. Justice Stirling: Mr. Ward. Mr. Justice Kekewich: Mr. Pugh. Mr. Justice Romer: Mr. Godfrey.

Wednesday, April 29.—Court of Appeal No. 2: Mr. Clowes. Mr. Justice Chitty: Mr. Carrington. Mr. Justice North: Mr. Farmer. Mr. Justice Stirling: Mr. Pemberton. Mr. Justice Kekewich: Mr. Beal. Mr. Justice Romer: Mr. Leach.

Thursday, April 30.—Court of Appeal No. 2: Mr. Jackson. Mr. Justice Chitty: Mr. Lavie. Mr. Justice North: Mr. Rolt. Mr. Justice Stirling: Mr. Ward. Mr. Justice Kekewich: Mr. Pugh. Mr. Justice Romer: Mr. Godfrey.

Friday, May 1.—Court of Appeal No. 2: Mr. Clowes. Mr. Justice Chitty: Mr. Carrington. Mr. Justice North: Mr. Farmer. Mr. Justice Stirling: Mr. Pemberton. Mr. Justice Kekewich: Mr. Beal. Mr. Justice Romer: Mr. Leach.

Saturday, May 2.—Court of Appeal No. 2: Mr. Jackson. Mr. Justice Chitty: Mr. Lavie. Mr. Justice North: Mr. Rolt. Mr. Justice Stirling: Mr. Ward. Mr. Justice Kekewich: Mr. Pugh. Mr. Justice Romer: Mr. Godfrey.

MR. JUSTICE BUTT.—It is stated to be doubtful whether Mr. Justice Butt will resume his seat in Court during the present sittings. The learned judge is undergoing medical treatment and is progressing favourably.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the utmost service to me.' Post free, 4*d*. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

# Court of Appeal Register.

## APPEAL COURT I.

Before the Lord Chief Justice, the Master of the Rolls, and Fry, L.J.

Thursday, April 16.

*De Sousa* v. *Cobden* (appeal of defendant from judgment of Day, J., dated November 24, at trial without jury in Middlesex).—Dismissed.

*Murray* v. *Warren* (appeal of defendant Warren in person from judgment of Day, J., dated December 2, with a special jury in Middlesex).—Dismissed.

Friday, April 17.

*In re L. J. Twyne, ex parte the Debtor* (appeal of debtor from receiving order, dated March 12, made by Mr. Registrar Linklater on petition of Jukes Coulson).—Stand over.

*Tynedale Steamship Company (Lim.)* v. *Newcastle-on-Tyne Home Trade Insurance Association* (appeal of plaintiffs from judgment of Day, J., dated November 20, at trial without a jury in Middlesex).—*Cur. adv. vult.*

Saturday, April 18.

No sitting.

Monday, April 20.

*Hellewell and another* v. *Rawstorn* (appeal of defendant from judgment of Lawrance, J., dated March 3, at trial of interpleader issue at Manchester).—Allowed.

*Unwin, petitioner* v. *M'Mullen, respondent* (appeal of petitioner from order of Cave, J., and Grantham, J., dated March 19, declaring petitioner duly elected town councillor).—Dismissed.

*Barlow* v. *Forbes* (appeal of defendants from order of Mathew, J., and Day, J., dated April 9, setting aside order for commission to Manila).—Dismissed.

Before the Lord Chief Justice, the Master of the Rolls, Lindley, L.J., Bowen, L.J., Fry, L.J., and Kay, L.J.

Tuesday, April 21.

*Bonnard* v. *Perryman* (appeal of defendant C. W. Perryman from order of North, J., dated March 3, restraining until trial publication and sale of *Financial Observer* for February 7; *cur. adv. vult.* April 10).—Allowed.

Before the Master of the Rolls, Fry, L.J., and Lopes L.J.

*Worswick* v. *A. C. W. Hobman & Co.* (application of plaintiff for new trial on appeal from nonsuit directed by Stephen, J., dated February 10, at trial with a special jury in Middlesex).—Dismissed.

*Wilkinson* v. *Offord* (application of plaintiff for new trial of appeal from verdict and judgment dated February 4 at trial before Stephen, J., with a special jury in Middlesex).—Dismissed.

*Daye* v. *Krauss* (application of defendant for judgment or new trial on appeal from verdict and judgment dated February 12 at trial before Mathew, J., and a special jury in Middlesex).—Dismissed.

Wednesday, April 22.

*Smith* v. *North Metropolitan Tramways Company* (application of plaintiff for judgment or new trial on appeal from verdict and judgment dated February 17 at trial before Cave, J., with a special jury in Middlesex).—Allowed.

*Stookings* v. *Lambeth Waterworks Company* (application of defendants for judgment or new trial on appeal from verdict and judgment, dated February 25, at trial before Cave, J., with special jury in Middlesex).—Dismissed.

*Crichton, trading, &c.* v. *Saunders* (application of defendant from judgment or new trial on appeal from verdict and judgment, dated February 24, at trial before Pollock, B., with a jury at Norwich).—Part heard.

## APPEAL COURT II.

Before Lindley, L.J., Bowen, L.J., and Kay, L.J.

Thursday, April 16.

*In re H. Woolcombe, deceased; Woolcombe* v. *Woolcombe (construction)* (appeal of plaintiff from order of Chitty, J., dated December 11, 1890).—Varied.

Friday, April 17.

*Walthamstow Local Board* v. *Staines* (appeal of defendants H. Staines and others from judgment of Chitty, J., dated July 16, 1890).—Dismissed.

Saturday, April 18.

*In re J. K. Mainwaring, dec. Crawford* v. *Royal Infirmary and other Charities. In re J. K. Mainwaring, dec. Crawford* v. *Forshaw* (appeal of plaintiffs from judgment of Kekewich, J., dated January 11, 1890; heard April 8).—Allowed.

*Angus* v. *Clifford* (appeal of defendants from judgment of Romer, J., dated December 2, 1890; heard April 14).—Allowed.

*M. P. Reeves (otherwise Stonehill, spinster)* v. *E. Pennington* (application of defendant to enter verdict for appellant or for new trial on appeal from verdict of special jury in favour of codicil at trial before Jeune, J., on February 7).—Part heard.

Monday, April 20.

*M. P. Reeves (otherwise Stonehill, spinster)* v. *E. Pennington.*—Compromised.

*In re Lacon, dec. Lacon* v. *Lacon* (appeal of defendant E. De M. Lacon from judgment of Romer, J., dated February 2, 1891).—Part heard.

Tuesday, April 21.

*In re Lacon, dec. Lacon* v. *Lacon.*—Allowed.

*In re Aurum Company and Companies Act, ex parte S. M. Sulzbach & Co.* (appeal of S. M. Sulzbach & Co. from order of Stirling, J., dated January 21, 1891, refusing to rectify register of members).—Allowed.

Wednesday, April 22.

*Mary D. Wood (petitioner)* v. *Percy A. N. St. L. Wood (respondent)* (appeal of petitioner from order of Jeune, J., dated February 27, varying registrar's report as to permanent maintenance; heard April 15).—Allowed.

*Salomons* v. *Knight* (appeal of plaintiff from order of North, J., dated March 6, refusing to restrain publication of alleged libellous circulars).—Dismissed.

*In re W. Cheesman, one, &c. (application of W. L. Vernon)* (appeal of W. Cheesman from order of Kekewich, J., dated February 16, for taxation).—Dismissed.

*Pneumatic Dynamite Gun Company (Lim.)* v. *Eichbaum* (appeal of defendants from order of North, J., dated April 13, refusing delivery of particulars of beneficial title alleged in claim).—Dismissed.

*Catherine O'Shea, Wife of W. O'Shea* v. *C. P. Wood and another and A. C. Steele and others intervening* (appeal of A. C. Steele from orders of Jeune, J., dated April 7, for further affidavit of documents relating to intervener's banking accounts).—Dismissed, no one appearing for appellant.

## HONOURS AND APPOINTMENTS.

THE Queen has been pleased to confer the dignity of a baronetcy of the United Kingdom upon Sir James Fitzjames Stephen, K.C.S.I.

Mr. T. C. Granger, who has been appointed County Court Judge, is the son of the late Mr. Granger, M.P., who represented Durham in Parliament from 1841 till his death in 1852. Mr. T. C. Granger was called to the bar in 1874, practises on the North-Eastern Circuit, and is a revising barrister. He married, in 1886, a daughter of Mr. James Payn, the novelist.

Mr. J. H. Balfour Browne, Q.C., of the Parliamentary bar, has been elected a Bencher of the Honourable Society of the Middle Temple, in succession to the late Sir Francis Roxburgh.

Mr. Oliver J. Williams, LL.B. (Lond.), solicitor, of Swansea and Llanelly, has been appointed District Registrar of the High Court and County Court Registrar of Cheltenham. Mr. Williams was admitted in 1884.

Mr. William Hodgkinson, of Acocks Green and Birmingham, has been appointed a Commissioner for Oaths. Mr. Hodgkinson was admitted in 1884.

Mr. Richard Gray, of Bangor, has been appointed a Commissioner for Oaths. Mr. Gray was admitted in 1884.

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THE JUDICATURE ACTS.—Mr. Atherley-Jones will take an early opportunity to move that an address be presented to Her Majesty praying that she may be pleased to appoint a royal commission for the purpose of inquiring how far the Judicature Acts have contributed to the more speedy, efficient, and economical administration of justice, and in what respects an amendment thereof is desirable.

THE LATE SIR THOMAS GABRIEL.—The will of Alderman Sir Thomas Gabriel, late of Edgcombe Hall, Wimbledon Park, who died on February 23 last, was proved on the 3rd inst. by Dame Mary Dutton Gabriel (the widow), Mr. Thomas Gabriel (the nephew), Mr. John Fenwick Fenwick, and Mr. Lumley Smith, Q.C., the executors, the value of the personal estate amounting to upwards of 371,000*l.* The testator bequeaths 2,000*l.* and all his household furniture, plate, pictures, books, horses, carriages, and effects to his wife; 5,500*l.* per annum to his wife for life; 10,000*l.* upon trust for his daughter, Hester Caroline Gabriel; 250*l.* to each of his sons-in-law and executors, Mr. Fenwick and Mr. Lumley Smith; annuities of 100*l.* each to his brother, Mr. James Wild Gabriel, and his sister, Miss Martha Wild Gabriel; and two or three other legacies. His leasehold houses at Queen Anne's Gate he leaves to his wife for life, and Holland Wharf, Blackfriars, to his grandson, Thomas Gabriel Lumley Smith, for life, and then to his children or issue as he shall appoint. As to the residue of his real and personal estate, he leaves one-third upon trust for his daughter, Mrs. Mary Pearson Fenwick, her husband, and children; one-third (subject to annuities to his son-in-law, Mr. Lumley Smith), upon trust in equal shares for his grandchildren, Thomas Gabriel, Sibyl Gabriel, and Alice Gabriel Lumley Smith, the children of his deceased daughter, Mrs. Lumley Smith, and the remaining one-third upon trust for his daughter, Miss Hester Caroline Gabriel.—*City Press.*

RENTS COLLECTED AND DISTRAINTS LEVIED TO RECOVER SAME, by Messrs. HENRY C. WOOD (Surveyor to the Parish of Tooting) and HENRY KIRBY (Wood & Kirby), Certificated Brokers, 1 Great James Street, Bedford Row, W.C. No charge made to Landlords if Rent over 20*l.* Troublesome tenants got rid of. Possession also taken under Bills of Sale, Mortgages, &c. Bailiffs to the Parish of St. Dunstan in the West and City of London (Farringdon Ward). Money paid over same day received. Bankers: City Bank, Holborn Viaduct. References, if desired, to clients of many years' standing. Prompt and personal attention given.—ADVT.

THE Temple show of the Royal Horticultural Society will be opened by Princess Christian at 1 o'clock on Thursday, May 28.

OPEN SPACES ABOUT HOUSES.—In the debate on the second reading of the London Public Health Bills, Mr. Stuart urged that the London County Council should possess the same power of making bye-laws as to open spaces about houses as was enjoyed by every urban authority in England and Wales, and referred to a recent article in the *Lancet* in which this necessity was pointed out. The bills now before Parliament do not contain these provisions, but this circumstance is to be explained by the fact that, whereas urban authorities generally possess these powers under a section of the Public Health Act of 1875, which authorises them to make bye-laws for new streets and buildings, the London building provisions are not incorporated in the Public Health Bills. The evident interest Mr. Ritchie takes in municipal government, and the zeal he has shown in consolidating and amending the Housing of the Working Classes and the Public Health Acts, create the hope that it is his intention to consolidate and amend the Building and Metropolis Local Management Acts. There would then be ample opportunity for incorporating the provisions as to open space to which Mr. Stuart referred. For our own part we think it matter of little importance whether London is to be dealt with in this respect by bye-laws or by statute. The question is really whether Parliament or the London County Council would be prepared to make the most adequate provision. The council at the present time is so fully alive to the necessity of air-space within the metropolis that there is no doubt the subject would be dealt with liberally. Whether the next council will be equally appreciative of this health necessity in London can only be seen after the next election in January. On this point we are quite prepared to trust Mr. Ritchie, who has in his own department at Whitehall all the experience which would enable him to frame an admirable measure if he intended the details to be settled by Parliament. If our hopes are well founded, we may at no distant time see London in one way or the other given all necessary opportunity for preventing the crowding of houses, and for bringing to an end the preparation of areas for improvement schemes, to which the London County Council has now to resort, at enormous cost to the ratepayers.—*Lancet.*

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## BIRTHS.

On April 14, at Eversley, St. Augustine's Road, Edgbaston, Birmingham, the wife of Jesse Herbert, Barrister-at-Law, of a daughter.

On April 17, at Berkhamstead, Herts, the wife of John Toovey, Solicitor, of a son.

On April 18, at 16 Queensborough Terrace, Hyde Park, W., the wife of Lawrence Jackson, Barrister-at-Law, of a daughter.

On April 18, at 76 Burnt Ash Road, Lee, the wife of William Tyndall Barnard, jun., Barrister-at-Law, of a son.

On April 19, at 1 Radnor Place, Hyde Park, the wife of Arthur Turnour Murray, Barrister-at-Law, of a daughter.

On April 20, at 12 Chepstow Place, Pembridge Square, W., the wife of T. W. Rossiter, of Ely Place, E.C., Solicitor, of a daughter.

On April 20, at Langley House, Dorking, the wife of William J. Hodges, Solicitor, of a son.

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## MARRIAGES.

On April 16, at St. Mary's, Stoke Newington, Dugald William Barrett Tayler, Solicitor, to Marion, youngest daughter of Thomas Carpenter, of Cambridge.

On April 18, at the Cathedral, Colombo, Ceylon, L. B. Clarence, Esq., Barrister-at-Law, of Coaxdon, Axminster, a Judge of the Ceylon Supreme Court, to Elizabeth, daughter of the late J. S. Whittem, Esq., of The Moat House, Walsgrave, Coventry.

On April 21, at St. John's, Blackheath, Reginald Cooper, second son of E. Cooper Willis, Q.C., to Grace Forbes, youngest daughter of Major-General Elliett Ashburner, Bombay Army, Retired List, and of 18 St. John's Park, Blackheath.

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# The Law Journal.

*SATURDAY, MAY 2, 1891.*


## 'OBITER DICTA.'

COURT OF APPEAL No. I. has again dealt very summarily with the New Trial Paper. One week has sufficed to enable the judges of that Court to dispose of the list, which contained fifteen entries, the last five applications being dealt with on Friday and Saturday last and all being refused. The list, however, only contained cases entered up to March 26 last; and as a large number of Courts have been sitting for the trial of actions during the past three weeks, there have, no doubt, been many cases entered since that date.

MR. JUSTICE GRANTHAM and Mr. Justice Wright left London on Saturday last to open the Manchester Assizes, and will proceed to Liverpool for the same purpose to-day. Mr. Justice Day will open the commission at Leeds on the North-Eastern Circuit. The assizes at both Liverpool and Leeds are likely to last for some time, so that the judges of the Queen's Bench Division available for practically the rest of the present sittings will be thus reduced to twelve.

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MR. ROWLANDS'S Leasehold Enfranchisement Bill was rejected on Wednesday afternoon by a narrow majority —168 voting for and 181 against the second reading. Mr. Haldane moved and Mr. Munro Ferguson seconded an amendment of a more revolutionary character than the bill itself. The amendment embodied the late Mr. J. S. Mill's theory of unearned increment in the value of land, and sought to secure such increment for the benefit of the community. This doctrine of what the seconder of the amendment called 'the municipalisation of land,' or, as Mr. Matthews called them, those 'Georgian' views, did not find much favour with the House, and the amendment only found thirty-nine supporters, whilst 314 voted against it. The bill was supported on the Opposition benches by Mr. W. A. M'Arthur (who seconded Mr. Rowlands), Mr. Lawson, and Sir H. Davey, and by two Conservatives, Mr. Bartley and Mr. Hughes. No member save Mr. Haldane and Mr. Munro Ferguson spoke in favour of the amendment.

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IN connection with the approaching Government bill for providing free education, it may be useful to direct attention to the existing enactments of the Education Acts under which a certain amount of free education is already provided. By section 17 of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), it is enacted that 'every child attending a school provided by any school board shall pay such weekly fee as may be prescribed by the school board, with the consent of the Education Department; but the school board may from time to time, for a renewable period not exceeding six months, remit the whole or any part of such fee in the case of any child when they are of opinion that the parent of such child is unable from poverty to pay the same;' and by section 74, subsection 3, of the same Act, 'every school board may from time to time, with the approval of the Education Department, make bye-laws for providing (*inter alia*) for the remission or payment (*sic*) of the whole or any part of the fees of any child where the parent satisfies the school board that he is unable from poverty to pay the same.' Section 10 of the Elementary Education Act, 1876, repealing section 25 of the Act of 1870 (by which school boards were enabled to pay the fees of children at 'voluntary schools'), enacts that 'the parent, not being a pauper, of any child who is unable by reason of poverty to pay the ordinary fee for such child at any public "elementary school" (which term, by section 3 of the Act of 1870, means a school at which elementary education is the principal part of the education there given, and does not include any school at which the ordinary payments from each scholar exceed 9*d.* a week) may apply to the guardians' having jurisdiction in his parish, 'and it shall be the duty of such guardians, if satisfied of such liability, to pay the said fee, not exceeding 3*d.* a week, or such part

thereof as he is, in the opinion of the guardians, so unable to pay.' Finally, by section 26 of the Act of 1870, any school board may, on satisfying the Education Department that 'on the ground of the poverty of the inhabitants of any place in their district it is expedient for the interests of education to provide a school at which no fees shall be required,' provide such school, 'and admit scholars to such school without requiring any fee;' but we believe this enactment has been little, if at all, put into practice.

---

MR. GOSCHEN, in his Budget speech, mentioned the death duties and the stamp duties as being subjects too extensive and complicated for him to grapple with just now, but pretty plainly intimated an intention of dealing with them at the first convenient opportunity. We are very strongly of opinion that a consolidation of the two sets of statutes under which these two sets of duties are imposed should precede any substantial amendment of them. The death duties are imposed by a series of complicated Acts beginning with 36 Geo. III. c. 52, passed nearly a hundred years ago, under which the legacy duty is calculated, and ending with part 2 of the Customs and Inland Revenue Act, 1889 (52 Vict. c. 7), which imposes an additional 1 per cent. duty on personal property passing by will or intestacy, where the value exceeds 10,000*l.* The stamp duties do not depend on statutes so venerable or so numerous, for Lord Sherbrooke's Consolidating Act of 1870 was accompanied in the same year by an Inland Revenue Acts Repeal Act (33 & 34 Vict. c. 99), which swept away huge masses of complicated and perplexing legislation on the subject. But since 1870 hardly a year has passed without some amendment of the consolidating statute being placed amongst the varied enactments of the annual Customs and Inland Revenue Act, ten of which now contain enactments relating to stamps, while the subject is still further complicated by the death duties themselves being now treated as stamp duties in the statute-book. Let Mr. Goschen, if he really means business, by way of amendment in the no distant future, proceed to the all-important work of consolidation without any delay.

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*De Souza* v. *Cobden* (Notes of Cases, p. 61) is merely a corollary of *Beresford-Hope* v. *Lady Sandhurst*, 58 Law J. Rep. Q. B. 719, in which the Court of Appeal had held on petition that a woman was incapable of being elected to the office of county councillor, having regard to the Municipal Corporations Act, 1882, and especially to section 63 thereof, from which women derive their qualification as voters. Miss Cobden, having sat and voted notwithstanding this decision, was sued for penalties under section 41 of the Act of 1882, by which, 'if any person acts in a corporate office without having made the declaration by the Act required, or without being qualified at the time of making the declaration, or after ceasing to be qualified, or after becoming disqualified, he shall for each such offence be liable to a fine not exceeding 50*l.* recoverable by action.' Mr. Justice Day had given judgment for the plaintiff for five penalties of 25*l.* each (see LAW JOURNAL for November 29, 1890, at p. 701). The Court of Appeal has now affirmed this judgment in substance, but reduced the penalties to 10*s.* in each case. The judgment is indisputably correct in substance, and the power to vary the amount of the fine appears to be fairly deducible from rule 4 of Order LVIII. of the Rules of the Supreme Court, by which the Court of Appeal may 'make any order which ought to have been made by the High Court or a judge thereof.' If, however, a jury had awarded the full penalty, Miss Cobden might perhaps have had some difficulty in getting it reduced (see LAW JOURNAL for March 22, 1890).

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THE question whether women ought to be qualified for the office of county councillor or not is one which we will not presume to discuss in these columns, but it is important from the legal point of view to call attention to two points. In the first place, if women are to become qualified to sit on county councils, *à fortiori* ought they to become qualified to sit on town councils, for it is on the municipal borough franchise that the county council franchise is based. The most cursory reference to the Local Government Act, 1888, and its frequent incorporation by reference of the Municipal Corporations Act, 1888, will show this. In the second place, it is a very serious matter to make measures of this kind retrospective, so as to extinguish liabilities to penalties incurred before the passing of such measures. No doubt in many cases, where vexatious actions have been brought by common informers for penalties (see, for instance, the Larceny (Advertisements) Act, 1870) an Act has been passed to restrict such actions in one way or another, providing, for instance, that all actions brought before the passing of the Act shall be stayed, but even in these cases it is usual to provide that the proceedings be stayed on payment by the defendant of the plaintiff's costs out of pocket, and there is a wide difference between actions brought against persons who have offended in pure ignorance of the law, and actions brought against persons who have offended in spite of their perfect knowledge of it, with the object of getting the law altered. The question whether penalties already incurred should be extinguished is a very difficult one, and should be determined not so much with reference to a particular case in which the cause of the defendants may be highly popular in some quarters, but on general grounds. The penal or 'popular' action is still retained in scores of cases as a weapon for use on behalf of the public, and any weakening of one of these weapons must inevitably tend to weaken them all.

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WE have before us the 'Tithe Rent-charge Recovery Rules, 1891,' made by the Lord Chancellor 'after consultation with the Rule Committee of County Court Judges' under section 3 of the Tithe Act, 1891, which direct that 'in framing such rules regard shall be had to make the procedure as simple and inexpensive as possible.' There are fifty-eight rules and thirty-four forms. The matters dealt with are the procedure for the recovery of tithe by the appointment of a receiver (see s. 2 of the Act); the remission of tithe where it exceeds in amount two-thirds of the value of the land out of which it issues (see s. 8); the certificate of the County Court where the occupier's liability notice (see s. 2, subs. 6) has not been served; and the procedure for recovery of rates from the tithe-owner (see s. 6). There are also nearly a score of pure practice rules, amongst which may be noticed rule 42, that costs 'subject to the provisions of the Act' (see s. 2, subs. 8,

and s. 5, subs. 2) are to be in the discretion of the Court, and rule 55, that non-compliance with any of the rules is 'not to render any proceedings void, unless the Court shall so direct.' Rules 36–38 are of the most pressing importance at the present time. It will be remembered by those who have studied the Act, that in the very numerous cases in which tenants are bound by contract made before the passing of the Act—*i.e.* before March 26—to pay the tithe, landlords are bound to serve notices on the tithe-owners to that effect on pain of forfeiting their rights to recover the tithe from the tenants under s. 2, subs. 2 of the Act, *unless* they succeed in obtaining from the County Court certificates that 'there was good and sufficient cause for failure to give the notice, and that the occupier was not prejudiced thereby.' Rules 36–38 deal with this all-important matter by providing that 'where an owner has failed to serve an occupier's liability notice,' and wishes to obtain the required certificate, he must send an application to the registrar 'according to the form in the Appendix'—which Appendix, so far as we have been able to discover, contains no form of 'occupier's liability notice'—and a copy of such application to the occupier. The registrar is then to send notice to the occupier of a day for hearing the application, and 'all costs of any such application shall be paid by the owner of land making the same, unless the Court is of opinion that the opposition to the application is frivolous and vexatious.' The Rules can be had at Eyre & Spottiswoode's for 2½*d.*

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THE Court of five judges, which has been sitting last week to hear *Gibson* (*appellant*) v. *Lawson* (*respondent*) and two other cases arising out of section 7 of the Conspiracy and Protection of Property Act, 1875, is constituted under section 4 of the Judicature Act, 1884. By that enactment 'a Divisional Court of the Queen's Bench Division of the High Court of Justice may at any time be constituted of more than two judges if the president of the said division, with the concurrence of not less than two other judges thereof, shall be of opinion that it is expedient so to constitute the same.' Prior to that Act, in *Saunders* v. *Richardson*, 50 Law J. Rep. M. C. 137, and *Winyard* v. *Toogood*, 52 Law J. Rep. M. C. 25, Divisional Courts of five judges had sat to hear cases on the construction of the Education Acts, under the authority of section 17 of the Appellate Jurisdiction Act, 1876, by which the concurrence of all the judges (then only five in number) of the division or a majority of them was necessary for authorising a Divisional Court of more than two. Since the Act of 1884 a Divisional Court of five judges has, we believe, sat but once only—namely, in *Regina* v. *Dudley and others*, 54 Law J. Rep. M. C. 32, the case in which, on a motion for judgment on a special verdict, the Court found the prisoners guilty of murder and sentenced them to death—which sentence was afterwards commuted to six months' imprisonment.

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IF, in speculating for 'differences,' a man sells on the Stock Exchange shares which he has not got, and on being compelled to deliver them has to buy them at an exorbitant price, he cannot sue any persons who, by false representations to any particular person or to the public generally, as to the value of the shares, may have unnaturally forced the price up. Such appears to be the result of the judgment of the Court of Appeal in *Salaman* v. *Warner and others*, in which the plaintiff was a broker who claimed more than 7,000*l.* damages against the defendants, who were the promoters, stock-brokers, and financiers of Warner's Safe Cure Company, 'for fraudulently rigging the market,' and thereby causing him to lose that sum in fulfilling his contracts to deliver shares. The High Court held that no specific fraud had been committed which affected the legal rights of the plaintiff. 'The fraud, if any,' observed Mr. Justice Day, in delivering judgment, 'which was practised on the committee of the Stock Exchange is not one which the plaintiff can connect with the original transaction out of which his losses occurred.' 'The plaintiff,' said the Master of the Rolls, 'claimed a right of action because, as he said, the defendants had not told someone else, who was in no way connected with the plaintiff, the truth. There is no such right as this by the law of England.' Upon the authorities there is no doubt of the correctness of these views, *Bedford* v. *Bagshawe*, 4 H. & N. 538, so far as it points the other way, having been overruled in *Peek* v. *Gurney*, 43 Law J. Rep. Chanc. 19. The Court of Appeal has further and expressly laid down that no civil action can be maintained for a conspiracy unless the conspirators conspire to do something against the rights of the plaintiff, and effect their purpose and commit a breach of those rights, the Master of the Rolls stating that the fact of a conspiracy does not increase a right of action in the least—a statement which should be compared with the judgment of the Exchequer Chamber in *Gregory* v. *The Duke of Brunswick*, 16 Law J. Rep. C. P. 35, in which a declaration for conspiracy to hoot an actor off the stage was held good.

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THE final report of the Royal Commission on Market Rights and Tolls affords some very interesting reading on the history and origin of markets in Great Britain and Ireland, on the modern legislation which has dealt with the question, and on markets in foreign countries. A market is defined as 'an authorised public concourse of buyers and sellers of commodities meeting at a place more or less strictly limited or defined, at an appointed time.' 'A fair,' they say, 'has been defined as a larger market.' Thus in Comyn's Digest it is said: 'Every fair is a market—not *e contrà* . . . therefore when any statute speaks of a fair, a market should also be comprehended.' The commissioners' view is that the difference consists in the fairs being less frequently held, extending over a longer continuous period, and being of a more miscellaneous character. Is not the difference rather that the fair is of a less local character, so that it is both naturally larger than an ordinary market and tends to last longer? The Great Book Fair at Leipzig is, we believe, for the whole of Germany at least, and is confined to one commodity. There are also geese fairs at Nottingham and, if we mistake not, other fairs specially for a particular class of goods. There is also another element, absent from markets, but sometimes the principal factor in fairs, and that is festivity. In some parts of the country what were invariably called fairs are or were held on Whit Mondays and Tuesdays, indicating the origin of the word from 'feria,' the proper ecclesiastical term for a saint's-day, at which there was nothing in

he nature of a market. These fairs were devoted to merry-go-rounds, penny theatres, and other like amusements, and to the exhibition of every species of human deformity and affliction.

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THE origin of the custom of market overt is traced to the ninth century, when Notker of St. Gall declared that purchases made at annual fairs should always be valid. In England a market was the subject of a royal grant, and until a comparatively recent period the ordinary means of establishing a market was by obtaining a grant from the Crown. Between 1199 and 1483 more than 2,800 such grants were made. A complete list of those recorded in the Patent Rolls since 1700 is given in the appendix. They extend to 1846, and are for the most part in favour of individuals, among whom, in the 6 Geo. IV., it is interesting to observe the name of Henry John Viscount Palmerston, though there are a few grants to corporations and parishes. The Markets and Fairs Clauses Act, 1847, was the first step in this country to attach a municipal character to markets. As, however, its title indicates, it was rather a common form to be incorporated in special Acts than a piece of substantive legislation. The Local Government Act, 1858, really marks the new era by giving to local authorities conditional powers to establish markets. After a brief review of Ireland the commissioners give a short account of foreign systems. Continental countries appear to have been distinctly ahead of us in this respect. In France the privilege of establishing 'halles' or markets, formerly appertaining to the 'seigneurs justiciers' was established in 1790 without compensation. Now markets are held under the authority of the prefects, and new ones established at the instance of the commune interested. In Belgium, market rights are vested by prescription in the communal councils. The commissioners sum up generally by saying that in France, Belgium, Germany, and Austria market rights are privileges possessed by municipalities with certain powers, controlled by the State, to originate new markets; and that vested rights of individuals are not allowed to obstruct the public interest. In the United States, as might be expected, market monopoly or privilege is unknown.

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THE Custody of Children Act, 1891 (54 Vict. c. 3), which received the royal assent just before Easter, no doubt owes its origin to Dr. Barnardo's case. It contains six sections. By section 1 the Court has express power to refuse a writ to a parent for the production of a child if the Court be of opinion that the parent has deserted the child, or 'has otherwise so conducted himself' that his right to the custody of the child ought not to be enforced. By section 2 the Court may order a parent, on application for a writ, to repay the costs of bringing up a child to any 'person,' which term, by section 5, includes 'school or *institution*.' By section 3, where a parent has allowed his child to be brought up by another person at that person's expense 'for such a length of time and under such circumstances as to satisfy the Court that the parent was unmindful of his parental duties,' the Court '*shall not* make an order for the delivery of the child to the parent unless the parent has satisfied the Court that, having regard to the welfare of the child, he is a fit person to have the custody of the child.' By section 4 the Court may order that a child, though not delivered to the parent, is to be brought up 'in the religion in which the parent has a legal right to require that the child should be brought up;' but it is added that 'nothing in the Act shall affect the power of the Court to consult the wishes of the child in considering what order ought to be made, or diminish the right which any child now possesses to the exercise of his own free choice.'

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THE point raised in the case of *The London County Council* v. *Candler & Sons* upon the construction of the proviso attached to section 13 of the Metropolis Management and Building Acts (Amendment) Act, 1882, is of some practical importance. The section prohibits the erection in the metropolis of temporary wooden structures without a license in writing from the County Council, as successors of the Metropolitan Board of Works, and the proviso exempts from the operation of the section wooden structures of a temporary character 'erected by a builder for use' during the repair of any building. In the case in question, a firm of builders engaged in carrying out alterations and repairs to a public-house erected in front of it a temporary wooden structure for the proprietor to carry on business in during the alterations. The County Council, whose sanction had not been obtained, charged the builder with a breach of the section, and the builder endeavoured to shield himself under the proviso. The structure was clearly 'erected by a builder for use during the repairs,' and so within the just meaning of the words used, but, on the other hand, it was so clearly within the mischief against which the Act was directed, that the Court was reluctant to construe the section in the manner suggested. Such a building would clearly be exceedingly likely to get on fire, and very inflammable and dangerous to the public if it did so; and if a temporary wooden public-house may be used pending alterations and repairs, why might not a temporary wooden theatre? Moreover, it is very probable that the proviso was inserted in consequence of the case of *Fielding* v. *The Rhyl Commissioners*, L. R. 3 C. P. Div. 272, in which it was argued that a workmen's shed was a new building within the meaning of a local bye-law. In the result the Court interpreted the section in accordance with this more restricted view; and the proviso, therefore, will in future only apply to structures erected by a builder for *his* use—such as an office for the inspection of plans and the payment of wages or a shed for the shelter of the workmen and the storage of their tools.

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ARE we to have a change in what the Courts have generally recognised as the 'mercantile rate' of interest, that is, interest at the rate of 5 per cent. per annum? The appreciation of first-class securities, which has been going on for some years past, has not been without its influence on this question, which has been pointedly referred to in two recent cases. In one of them (*Wainwright's Case*, 59 Law J. Rep. Chanc. 281), Mr. Justice Kay allowed interest at 4*l.* per cent. only on deposits directed to be repaid to a shareholder on the rescission of his contract to take shares, remarking that it was 'very hard to say now that 5 per cent. was the mercantile rate of interest when from real *bonâ fide* security you cannot get more than 3 per cent. In the later case of *The London, Chatham, and Dover Railway Company* v. *The South-Eastern Railway Company* (26 Notes of Cases, p. 64), in settling accounts

between the two companies the official referee allowed interest at 5 per cent. on balances which ought to have been paid by the defendant company to the plaintiff company, and Mr. Justice Kekewich refused to alter the rate to 4 per cent. The observations of the learned judge, however, though he disclaimed any intention of fully considering the subject, tell in the same direction as those of Mr. Justice Kay. 'Since the statute (3 & 4 Will. IV. c. 42, s. 28),' observed Mr. Justice Kekewich, 'I believe that it has always been the habit of judges directing juries to tell them they may give 5 per cent.—that what is called in the statute "the current rate of interest" may be 5 per cent.—and that that view 'has prevailed until now, as a rule, notwithstanding that it is extremely difficult for prudent persons to get so much as even 3 or 4 per cent. on investments, and notwithstanding that persons engaged in trade do not gain those large returns which were formerly frequent. The question,' he thought, 'deserves more consideration than it has hitherto received; . . . but any change must be made with some consensus of opinion, and the alteration must emanate from a higher authority than myself.'

## 'LAW JOURNAL REPORTS' FOR MAY.

THE May number of the LAW JOURNAL REPORTS contains an instalment of the Statutes of the Realm—viz. three Irish Acts (Seed Potatoes and Railways), the Custody of Children Act, Consolidated Fund (No. 1), Army Annual, and Technical Instruction Acts. In the Reports there will be found eighteen cases in the Chancery Division, of which four are appeal cases (pp. 241–312); twenty-four cases in the Queen's Bench Division, including eighteen appeal cases (pp. 209–280); one Scotch appeal in the House of Lords and two cases in the Privy Council (pp. 1–16).

*Johnston* v. *Mappin*, in the Chancery Division, was a curious case as to the construction of voluntary articles executed under seal by a father in favour of his daughters; the operation of the articles on the marriage of one of the daughters; and the effect of a verbal agreement to allow an annuity, on the faith of which the married daughter alleged that she had married. *In re The National Debenture and Assets Corporation* was a case of the invalid incorporation of a company, the memorandum of association on which the certificate of incorporation was granted not having really been signed by seven persons. There was thus no jurisdiction to make a winding-up order. This decision of Mr. Justice Kekewich has since been affirmed by the Court of Appeal. In *Jenkins* v. *Bushby* the Court of Appeal held that Order XXXVI., rule 6, 1883, does not give a right to an order for a trial with a jury in an action in the Chancery Division. In such an action the Court has a discretion under rule 7 (*a*) to order a trial by a jury, but the onus is on the party asking for it to show some good reason for such a trial. *In re Drummond & Davies's Contract* illustrated the effect of the Married Women's Property Act, 1882, s. 1, subs. 1, and s. 2, on the Fines and Recoveries Act, s. 40, with respect to the acknowledgment of a deed by a married woman. *In re Arbib & Class's Contract* was a decision of the Court of Appeal that the appointment of a person as trustee 'if and when he shall return to England' took effect on that person's coming to England on a visit only. *In re Holmes* was a case in which corporation stock was held by Mr. Justice Kay to be an interest in land not bequeathable to a charity: *Bedford* v. *Teal*, 59 Law J. Rep. Chanc. 689, was distinguished. *Moore* v. *Knight* was an application of the doctrine of *Blair* v. *Bromley*, 16 Law J. Rep. Chanc. 105, 495; 5 Hare, 542; 2 Phil. 354. An innocent partner, notwithstanding the Trustee Act, 1888, s. 8, was held not entitled to the benefit of the Statute of Limitations as a protection from liability for the frauds of his firm. The Court of Appeal decided, in the case of *Mundy's Settled Estates*, that money bequeathed to trustees to be laid out in land in trust for persons in succession, but not yet so laid out, may, under section 33 of the Settled Land Act, 1882, be applied as capital money arising under the Act. In the case of *In re Harding's Settled Estates*, in peculiar circumstances, notwithstanding that there were trustees and a trust for sale, leave to sell was, under section 7 of the Settled Land Act, 1884, given to the tenants-for-life. *In re Mabbett* was a case involving the right of the representatives of annuitants to receive the value of the annuities when the annuitants themselves had died before the purchase of the annuities had been actually completed. According to *Knowles* v. *Scott* the voluntary liquidator of a company is not a trustee of the assets of the company for the creditors or contributories. He is the agent of the company, and in the absence of misfeasance or wilful misconduct, an action will not lie against him for damages resulting from his delay in distributing the company's assets. *In re Harrison* decides that to an action for a breach of trust against a surviving trustee, when a general account is claimed, the plaintiff is no longer required to make the representatives of deceased trustees defendants, as they can, when necessary, be added as parties under Order XVI., rule 11. In *Stone* v. *Lickorish* it was held that an objection is valid against the allowance of profit costs to a solicitor-mortgagee in a redemption action, though the objection was taken for the first time before the taxing-master and not at the hearing. In the case of *The Standard Manufacturing Company*, the Appeal Court held, under the Bills of Sale Act, 1882, s. 17, that the mortgages or charges of any incorporated company for the registration of which provision has been made under the Companies Clauses Act, 1845, or the Companies Act, 1862, are not subject to registration under the Bills of Sale Act, 1882—*Jenkinson* v. *The Brandley Mining Company*, L. R. 19 Q. B. Div. 568, overruled. It was held in *The Westmorland Green and Blue Slate Company* v. *Fielden* that an action lies by the liquidator against the contributory of a company for moneys payable on the allotment of his shares and for calls before the winding-up, notwithstanding that the liquidator has obtained a balance order in the winding-up for payment of the same moneys under the Companies Act, 1862, s. 101, but no action lies on the balance order itself. *Ashling* v. *Boon* decides that a promissory note, which is sufficiently stamped as a note, cannot be made available as evidence of the receipt of the money by the maker of the note. In *Fuentes Trade-marks* registration was refused of a new trade-mark, unobjectionable in itself, which from previous association with fraudulent matters was calculated to secure to the proprietor the benefit of the fraud. *Myers* v. *Myers* decides that when a partnership of which the term is expired is continued only for the purpose of winding up the business, a clause

providing for the purchase of a deceased partner's share is no longer binding.

In the Queen's Bench Division the Court of Appeal, in *Medawar* v. *The Grand Hotel Company*, defined the duration and extent of an innkeeper's liability. *Hunt* v. *The Great Northern Railway Company* illustrated the meaning of the words 'engaged in manual labour' in the Employers and Workmen's Act, 1875, s. 10, and their effect on the Truck Acts, 1831 and 1887. In *Pittard* v. *Oliver* the Court of Appeal held that the presence of reporters at a meeting of a board of guardians did not destroy the privilege of a guardian in adversely criticising the conduct of a former servant of the board. In *Wenman* v. *Lyon* (*Honeyman, claimant*) a memorandum of agreement for a marriage settlement was held not to require registration as a bill of sale. The Court of Appeal, in *Madell* v. *Thomas, Sons & Co.*, decided that they were entitled to inquire into the real transaction outside the document in order to decide whether it was a bill of sale or hiring agreement. In *Speight* v. *Gosnay* the Court of Appeal held that an action for slander could not be maintained where the repetition of the slander was unauthorised and the damages remote. *Surman* v. *Wharton* explains the liability of a husband in respect of his deceased wife's separate estate for her debts. In the case of *In re Griffin* the Court of Appeal defined what constituted an omission to keep books in a business for the purposes of the Bankruptcy Act, 1883, s. 28, subs. 2, 3. In *Abrahams* v. *Deakin* the Court of Appeal held an action for false imprisonment not to be maintainable against a master when the arrest was effected at the instigation of a servant acting without his master's authority. *Joyce* v. *Beall* was a case of the construction of Order XXXI., rule 26, with respect to the security for costs of the discovery of documents. In *In re Tobias & Co.* the Court refused a second application for the discharge of a bankrupt on the ground of want of jurisdiction. *Turner* v. *Goldsmith* was a case of principal and agent and wrongful dismissal in which the Court of Appeal reversed Mr. Justice Grantham. *Boydell* v. *Millar* involved a question of taxation under the County Courts Act, 1888, s. 118. In *De Pass* v. *The Capital and Industries Corporation* (*Vinall, garnishee*) the Court of Appeal decided on the sufficiency of an affidavit in support of a garnishee order. The same Court, in *Steel* v. *The Dartford Local Board*, decided a question of liability for injuries sustained in consequence of the subsidence of a road. It was held, on appeal, in *Jones* v. *Macaulay*, that judgment in default of pleading cannot be entered upon a counterclaim unless upon motion for judgment under Order XXVII., rule 11. The Appeal Court reversed the Divisional Court in *The South Staffordshire Tramways Company* v. *The Sickness and Accident Assurance Association* with respect to the construction of a policy. The appeal in *Bolton* v. *Buckenham* was dismissed, and a defendant was discharged from liability as surety because time had been given to the principal debtor. In *Drew* v. *Lewis* the Court of Appeal refused to rescind a charging order absolute under 1 & 2 Vict. c. 110, ss. 14, 15. They also held, in the case of *In re Low*, that two or more judgment debts cannot be included in one bankruptcy notice under section 4, subsection 1, of the Act of 1883. In *Monk* v. *Bartram* the Court of Appeal lay down rules according to which a stay of execution pending an application for a new trial will be granted. They also declined, in *Hewitt* v. *Barr*, to enlarge the time for renewing a writ of summons when the claim would otherwise be barred; and in *Bell & Co.* v. *The Antwerp, London and Brazil Line* they lay down the general principle that service of a writ out of the jurisdiction can only be allowed where the contract expressly or by implication is to be performed within the jurisdiction. The Court of Appeal also, in *The Western National Bank of the City of New York*, lay down the rules applicable to the service of a writ on a foreign partnership, and by a majority overrule several recent cases.

In the Privy Council and Scotch and Irish appeals (pp. 1-16) *Hogarth* v. *Miller* was an appeal from the Second Division of the Court of Session involving the construction of a charterparty. In *Jenoure* v. *Delmege*, an appeal from Jamaica to the Privy Council, it was held that in an action for defamation no distinction can be drawn between one class of privileged communication and another. *King* v. *Frost* was a New South Wales appeal deciding the construction of a will.

## THE PARTNERSHIP ACT, 1890.—II.

In construing section 2, which prescribes rules for determining the existence of partnership, a fine point has been raised in Lord Justice Lindley's recent work on the Act. A loan on the terms that the person making the advance is to have a share of the profits does not constitute a partnership if there be writing. What is the result if there be no writing? Is the lender to be in a better position than if he had made the advance under a written agreement? Lord Justice Lindley says, good sense will probably lead the Courts to construe the section so as to avoid this absurdity. Let us hope the Courts will do so. The point ought obviously to have been guarded by the draftsman.

The next group of sections dealing with the relations of partners and persons dealing with them contains very little change in the law. It is, however, pointed out by the authority to whom we have previously referred that section 8, which provides that if it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement, is probably an alteration of the law, and, in some cases, it might be important.

By far the most important change introduced by the Act is that which is contained in section 23, dealing with the subject of the mode of procedure against partnership property for a separate judgment against a partner. This puts an end to the anomalous and unsatisfactory condition of things which existed previously to the Act.

In *Helmore* v. *Smith*, 56 Law J. Rep. Chanc. 145; L. R. 35 Chanc. Div. 436, Lord Justice Lindley, after pointing out that a sheriff could not under a *fi. fa.* seize book debts or goods, and that it was 'a mistake, a very serious mistake' to suppose that a sheriff under a separate execution against one of several partners could sell the whole of the partner's interest in the partnership, proceeded as follows: 'There are always in practice assets which cannot be reached by a *fi. fa.* What the sheriff has got to sell is not the share and interest of the execution-debtor in the partnership, but the share and interest of the execution-debtor in such of the chattels of the partnership as are seizable under a

*fi. fa.* The unfortunate purchaser from the sheriff has to find out what he has really had assigned to him, and that he can only do by a partnership account; there is no other method of proceeding. That does involve practically a dissolution of the whole concern.'

Under the new law the procedure is to be by charging order (obtainable on summons), and the appointment of a receiver with all necessary accounts, orders, and directions. The other partners are to be at liberty at any time to redeem the interest charged, or, in case of a sale, to purchase it. Section 24 lays down a series of rules as to the interests and duties of partners subject to special agreement. The whole section is simply declaratory of the settled law and practice, unless, indeed, an exception is to be made in favour of subsection 8, which definitely states what was hitherto considered to be the law as to the rights of the majority. It is now provided that any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners. It must, however, be borne in mind that the power here mentioned must be exercised in good faith and without oppression.

A doubtful point is settled by section 26, subsection 2, which provides that a partnership which is not for a fixed term may be dissolved by notice in writing signed by the partner giving it. This deserves to be noticed as a statutory exception to the rule, 'Unumquodque ligamen dissolvi eodem modo quo et ligatur.'

A nice question may possibly arise as to whether the assignment by a partner of a share may give a right to a dissolution (section 31). It would seem very doubtful whether the subsection (*f*), section 35, has added anything to the power of the Court to order a dissolution by providing that it may be done 'whenever in any case circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.'

It must not be forgotten that the present Partnership Act is by no means a complete code of the law. The principal points of partnership law which might have been dealt with, and which, as the Act stands, are conspicuous by their absence, are as follows: Nothing is done with regard to procedure in proceedings against partners, except so far as section 23, which we have previously mentioned as introducing the important change in respect of proceedings against partnership property in respect of a partner's separate interest, can be said to affect procedure. Nothing is enacted with regard to the goodwill of a partnership. The administration of partnership assets in the cases of death or bankruptcy is not dealt with. The Scotch law of bankruptcy is specially preserved by section 47. The rules of equity and law applicable to partnership, except so far as inconsistent with the express provisions of the Act, are saved by section 46. The rule that there is no survivorship is passed over in silence, and is consequently preserved.

## LEGISLATIVE PROGRESS.

IN the House of Lords:—

Bills read a third time and passed:—
Public Bodies (Provisional Orders) Bill.
Taxes (Regulation of Remuneration) Bill.

Bills beyond second reading:—
The Betting by Infants and Borrowing (Infants) Bills have been consolidated under the title Loans (Infants) Act, 1891, and have passed through Committee.
Intermediate Schools, &c. Sites.
Registration of Electors Acts Amendment Bills.
Report agreed to.

Bills passed through Committee:—
Charities Recovery Bill.
Marriage Acts Amendment Bill.
Merchandise Marks Bill.
London (City) Trial of Civil Causes Bill.

Second readings:—
Newfoundland Fisheries Bill.
Savings Banks Bill.

In the House of Commons.

Third readings:—
Presumption of Life Limitation (Scotland).
Trusts Amendment (Scotland) Bill.
London City (Trial of Civil Causes) Bill.

Bills through Committee:—
Mail Ships Bill.
Commissioners for Oaths Act, 1889, Amendment Bill.

Second readings:—
Summary Jurisdiction (Youthful Offenders) Bill.

New bills:—
To Enable County Councils to Value and Purchase Land.
To Amend the Law of Vagrancy in Scotland.
Customs and Inland Revenue.

The Midwives' Registration Bill was withdrawn.
The Leasehold Enfranchisement Bill was thrown out on the second reading.

# Reviews.

## PATERSON'S INTOXICATING LIQUOR LICENSING ACTS.

*The Intoxicating Liquor Licensing Acts*, 1872, 1874, *&c.* Eighth Edition. By JAMES PATERSON, M.A. London: Shaw & Sons, Fetter Lane. 1891.

THE fact that the table of sections in Acts of Parliament relating to licensing matters occupies sixteen pages in this book, shows the difficulty a writer on the subject must experience in clearly setting forth the law, and also shows that the Legislature should interfere and codify the various statutes that have accumulated during the last sixty years. Licensing law comprises on the one hand statutes and the cases decided upon them, and on the other hand case law of a very diversified character. We think, with regard to the latter, that it should be separated from that part founded upon statutes. The author has placed a note on contracts of sale of licensed houses under section 14 of the Licensing Act, 1828, and on the innkeeper's duties with regard to the person of his guest under 26 & 27 Vict. c. 41; we venture to think that such notes could not be discovered without reference to the index. In such cases the plan of following the statutes should be discarded, and a chapter devoted to the rights and liabilities of license-holders

generally; such a chapter would include contracts of sale of licensed houses, goodwill, leases, covenants, mortgages, and, perhaps, the Innkeepers Acts, leaving the statutory arrangement to apply only to the licenses. So far as the subject is based on statutes, we think that the author has succeeded in presenting his subject in a very clear and satisfactory shape, and, after careful examination, we are sure that every recent decision has been referred to. The case of *Pulbrook* v. *Ashby* (very recently approved in *Stevens* v. *Marston*, 60 Law J. Rep. Q. B. 192), upon page 217, seems to have been placed by error under the head of Contracts of Sale of Licensed Premises. We think that the notes upon covenants on pp. 233-236 should be more full to save reference to the reports, and that the rule generally adopted of giving references to every series of reports in which any cited case appears should be carried out in every instance. Apart from the question of arrangement, we commend this book to the profession, and think that it is indispensable to those who are engaged in licensing matters.

## SAUNDERS'S INDEX TO THE *LOCUS STANDI* REPORTS.

*The Consolidated Index of Cases Decided by the Court of Referees, and Contained in the 'Locus Standi' Reports* 1867 *to* 1890. Compiled by Reginald C. Saunders, Barrister-at-Law, Joint Editor of the New Series of *Locus Standi* Reports. London: Butterworths. 1891.

The gratitude of all practitioners in the Court of Referees is unquestionably due to Mr. Saunders for his production of the book which is now before us. Until its appearance there existed no guide to the mass of decisions, teeming with technicalities, contained in the '*Locus Standi* Reports' for the past twenty-four years. The reports are, of course, indexed in the usual way, but the indexes are calculated to give but little assistance to any one wishing immediately to lay his finger upon a decision of which his recollection is perfect in every respect except the all-important point of knowing where to find it. Mr. Saunders's experience as a reporter in the Court has shown him exactly what was required in practice, and by his industry he has succeeded in supplying the want. The book mainly consists of two parts—a table of bills and petitions, and an index to subjects. The first part consists of the titles of the bills arranged in alphabetical order, while under each bill are grouped the names of the petitions which have formed the subject of decisions by the Court, with proper references to the reports. The index of subjects is in fact a very complete digest of all the points decided by the Court during the period which it embraces. This part of the book appears to be exceedingly well done. The titles and sub-titles are well chosen, and the cross-references numerous and complete. The book also contains a Table of Statutes specially referred to, a table showing the titles of the *Locus Standi* Reports from 1867 to 1889, and a Table of Titles, Sub-titles, and Cross-references. Mr. Saunders has evidently bestowed great pains upon his work, and he is to be congratulated upon having produced a book which must be an absolute necessity to all who practise in the Court of Referees, for we venture to think that no practitioner will give his opponent the great advantage of the exclusive use of so formidable a weapon.

## PRIDMORE'S GUIDE TO THE PREPARATION OF BILLS OF COSTS.

*Guide to the Preparation of Bills of Costs.* With Practical Directions for Taxing Costs and Precedents of Bills of Costs in all the Divisions of the High Court of Justice, with Notes and Decisions thereon. Ninth Edition. By Charles W. Scott, one of the Principal Clerks in the Chancery Taxing-Office. London: Waterlow & Sons (Lim.). 1891.

This is a most carefully revised edition of an exceedingly valuable book. The work of revision has been very heavy owing to the numerous alterations that have taken place in the practice of the various Divisions of the Courts since the publication of the last edition, much new matter has been added, and the decisions under the Solicitors' Remuneration Act have been incorporated. Amongst the new matter may be mentioned the Rules and Scales of Charges under the Transfer of Land Act, 1862, and the Land Transfer Act, 1875; the new Lunacy Rules, so far as they relate to costs; the Scale of Fees under the recent Act dealing with the registration of limited companies; the additional Bankruptcy Rules, 1890, and the new Scale of Fees thereunder; the new Orders and Scales of Costs of the Houses of Parliament; the last County Court Rules as to costs; and the new Mayor's Court Rules. A great quantity of entirely new precedents have also been added, and the whole of the precedents have been thoroughly revised, so that Mr. Scott may fairly claim to have produced a complete 'Guide to the Preparation of Bills of Costs.' We imagine that no solicitor will like to be without it.

# Correspondence.

## COURT ROLLS.

Sir,—In response to the appeal of 'T. K.,' appearing at p. 287 of your last week's issue, I would refer him to 'Greenwood on Courts' (the ninth edition of which was published in 1730), where he will find several specimens of court rolls, in the old abbreviated Latin; and to 'Jacob's Complete Court Keeper' (the eighth edition of which was published in 1819), where he will find many specimens of court rolls which, although in English, will help him to pick out the meaning of any entries in Latin.

A. K. C.

April 27.

Sir,—I should advise your correspondent 'T. K.' to apply to Mr. James Coleman, the well-known genealogical bookseller, Tottenham Terrace, White Hart Lane, Tottenham, N. If anyone can give him the required information, Mr. Coleman can do so.

London: April 24. F. F.

## INJUNCTION AGAINST LIBEL.

Sir,—I have noticed your comments upon the libel injunction case. I wish to point out to you that your deductions are made on an erroneous basis.

I have been in the habit of making accusations in the strongest possible manner against Beak and Marks, but it was never stated, nor was it a fact, that I have made any observations upon the plaintiff other than the

alleged libel in one number of my paper. I am well able to prove and have proved the truth of these allegations as against these two people, but, of course, they do not affect the plaintiff. The plaintiff endeavoured to get an injunction against me, not because I had done anything against him or ever threatened to do anything against him, as far as repetition of any alleged libel went, but because he said I might repeat perhaps the alleged libel, because I repeated a proved libel against other people. There is no doubt that this far-fetched assumption went some way to ridicule the plaintiff's case, because a Court has seldom been troubled with such a *reductio ad absurdum* case before.

I may say that I fought the case in order to get the law settled, not that I had any intention to be so silly as to repeat at my peril an article at present challenged as libellous and not proved to the contrary by me as yet.

A. W. PERRYMAN.

# Unreported Cases.

## COUNTY COURTS.

### DEEDS OF ARRANGEMENT ACT, 1887—NON-AVOIDANCE OF DEED BY OMISSION IN AFFIDAVIT.

His Honour Judge Stonor, at the Brompton County Court, delivered an important judgment on April 23 in the case of *Evans* v. *Hopkins and Fletcher*. The facts were these: The defendant Hopkins being indebted to the plaintiff on a bill of exchange for 15*l.* 2*s.* 4*d.*, dated May 5, 1890, by a deed dated July 28, 1890, assigned all his property to the defendant Fletcher, as a trustee for the benefit of his creditors. The deed was registered under the Deeds of Arrangement Act, 1887, within seven days, and at a meeting of creditors on August 22 a resolution confirming and assenting to the deed was passed by the creditors present, including the plaintiff, who afterwards frequently applied to the defendant Fletcher for the payment of his debt and the realisation of the assets, but did not sign any form of assent. In January last Hopkins settled with all the creditors who had executed or signed formal assents to the deed, and Fletcher thereupon executed a reassignment to Hopkins of the property assigned by the deed of arrangement and delivered the same to him. It was admitted that such property was sufficient to pay the plaintiff's debt and all the other creditors of whom the defendant Fletcher had notice. Hopkins also admitted the debt, and was willing to have judgment entered against him, notwithstanding a release contained in the deed of arrangement. The question whether Fletcher was liable to the plaintiff remained for decision, and it was contended that he was not liable on the ground that the deed of arrangement became void immediately on its registration because the defendant Hopkins omitted this debt and the name and address of the plaintiff in the affidavit of his liabilities which accompanied the deed as required by section 6 of the Deeds of Arrangement Act, 1887. His Honour held that, but for the decisions on the Bills of Sale Acts, he would have had no doubt in the matter, as it seemed monstrous that because a debtor omits in the affidavit a debt of any amount which he might dispute or even forget the deed should become absolutely void, so that a deed of arrangement comprising property of the value of 10,000*l.* with an affidavit disclosing liabilities to the same amount would be void on account of the omission in the affidavit of a disputed or forgotten debt of 10*s.* No difference, however, was observable between the language of the Bills of Sale Acts and the Deeds of Arrangement Act, 1887, in the clauses relating to the avoidance and the registration of the respective instruments and the affidavits accompanying them, and there was no doubt that almost any omission or error, however trifling, in the affidavit accompanying a bill of sale has been held to vitiate its registration and render the deed void, and that an affidavit of the debtor's liabilities must mean of all his liabilities, and the names and addresses of his creditors must mean all of his creditors (*per* Lord Esher, *Re Batten, ex parte Milne*, 58 Law J. Rep. Q. B. 336; L. R. 22 Q. B. Div. 694), and consequently that there was an error and omission in the affidavit in the present case. There were, however, his Honour said, some important distinctions between the affidavits required by the two Acts, particularly as to the matters contained in them respectively, and, whilst there were provisions as to the inspection and office copies of the one, there were no such provisions as to the other (see the judgment of Lord Justice Fry, *Re Batten, ex parte Milne*, 58 Law J. Rep. Q. B. 338; L. R. 22 Q. B. Div. 700), and, rather than come to the absurd conclusion pointed out, his Honour said he should, relying upon these distinctions, hold that the omission of the plaintiff's debt in the affidavit does not vitiate the registration of this deed of arrangement and render it void. It followed that the trustee having reassigned the trust property, and so made away with the assets without discharging the plaintiff's debt, of which he had notice, was liable for the same as well as the defendant Hopkins, he having been a party to that transaction. There would be a verdict for the plaintiff against both defendants for the amount of the bill of exchange—15*l.* 2*s.* 4*d.*—with interest and costs, payable in fourteen days.

## ASSIZE CASE.

### FRAUDS ON INSURANCE COMPANIES.

At the Manchester Assizes, on April 27, before Mr. Justice Grantham, David Mackinson brought an action to recover damages for libel. The plaintiff was for some years an insurance agent at Horwich, and in 1890 was suspended by the Royal Liver Society, which he had been representing. Some correspondence took place, in which plaintiff made certain statements respecting a Mr. Moffatt, another official of the Royal Liver, which the latter emphatically denied. Walls, who was a Royal Liver agent at Horwich, then wrote a letter to a newspaper, in which he described Mackinson as an unscrupulous man, who had misrepresented five different companies in a few years, who had shamefully abused his privilege, and who had insured a lot of the worst lives possible. Justification was pleaded, and plaintiff was cross-examined at considerable length. He stated that the insurance agents were authorised to book the names of proposers and then to fill up the papers at night. The policies were filled up in a coffee tavern, and plaintiff certified that he had witnessed the signature, although the person who was supposed to make his mark on the form was not present. The learned judge said it was a fraud, the witness could be placed in the dock for forgery, and the whole thing would be annulled. The plaintiff was further examined as to certain cases in which policies were taken out, although he knew the persons insuring would not be able to receive the money because they had no interest in the life insured. Several instances were also mentioned in which people had been insured who, it was alleged, were in bad health, and who died soon after the taking out of the policies. Evidence in support of the defendant's allegations was adduced, and the judge in summing up declared that he had no sympathy with either the plaintiff or defendant. He hoped, however, that the evidence given that day would

make people hesitate very long before taking out fresh insurances in companies where business was carried out in the way described. The jury returned a verdict for the plaintiff, with 10*l.* damages.

## QUARTER SESSIONS.

### COMMISSIONERS OF SEWERS—COMPENSATION FOR COMPULSORY TAKING OF PREMISES.

On April 29, at the Guildhall, the Recorder and a special jury, sitting as a Special Court of Quarter Sessions, had before them the case of *Goodman* v. *The Commissioners of Sewers*. The claimant, a dentist, of 1 Ludgate Hill, sought to recover from the Commissioners of Sewers compensation for the compulsory seizure of his premises in the course of the Ludgate Hill improvement. It appeared that the claimant had carried on business in London and the provinces for some years as a dentist, making a speciality of guinea sets of teeth. Ludgate Hill was said to be the best thoroughfare in London for dentists, and, therefore, it was necessary for the claimant to have premises there. He had formerly occupied premises at 41 Ludgate Hill, but those had been taken by the Commissioners, and he then removed to his present premises, No. 1 Ludgate Hill. Evidence was also given that it was necessary for a dentist to have a private entrance, because patients were very sensitive, and did not like being overlooked. The claimant was called, and gave evidence in support of his claim.—Cross-examined by the Solicitor-General: I believe you have a very large business?—Claimant: Yes.—The Solicitor-General: What are your profits?—Claimant: Three thousand a year.—The Solicitor-General: What, out of guinea sets of teeth?—Claimant: Yes. I have 20,000 patients on my books, and have supplied over 100,000 sets of teeth during the time I have been in practice.—The jury found for the claimant for 1,570*l.*—Mr. Lockwood, Q.C., and Mr. Bray were counsel for the claimant; the Solicitor-General (Sir E. Clarke, Q.C.) and Mr. P. Rose-Innes for the Commissioners.

## LAW AND PROFESSIONAL NOTES.

By T. F. Uttley, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### FORFEITURE CLAUSES AND INSURANCE POLICIES.

Proposals for a life insurance are usually accompanied by certain questions that have to be answered, and the answers constitute what is called a declaration in writing. There is no invariable form for the declaration which constitutes the first step towards life insurance, but, as has been pertinently pointed out, there is a stain of family likeness between one form and another which stamps them all with pretty much the same character. When the proposal is to insure the life of the proposer himself, the essence of the proposal should be not only candour but care, as the interests of the survivors may be sacrificed many years afterwards by a mere inadvertence at the time of the proposal, for, if a material fact be left out, it matters not whether it be designedly or accidentally omitted. Every statement actually made by the proposer must be not only substantially, but literally, true in the narrowest and broadest sense, for it has been judicially decided, more than once, that any statement of the proposer, however trifling it may appear, may render the policy invalid if it proves to be untrue. Such, indeed, happened in a case recently at the Blackburn County Court, where it appeared that a fish hawker had claimed 23*l.* 9*s.* 2*d.* from a life assurance company, but he had previously, through an agent, made a proposal to another insurance company to insure his life for 1,000*l.* He was examined by this company's own medical man, and a policy was refused. Subsequently he proposed to the defendants, and on the proposal-form said he had never been refused by any office. The proposal form also contained a declaration, which he signed, and in which he said that, if the answers were not true, any policy granted upon that proposal should be null and void, and all moneys that should have been paid on account of the insurance should be absolutely forfeited. The proposal was accepted, and the plaintiff paid 23*l.* 9*s.* 2*d.* as one year's premium. The defendants, however, on afterwards hearing of the previous application and refusal by the other insurance company, refused to issue the policy. The questions were whether a false statement had been made out on the proposal form by the plaintiff knowingly and fraudulently, and, if so, were the defendants justified in refusing to issue the policy? The judge answered both these questions in the affirmative, and also held that the claim for damages failed, and the only question was whether the plaintiff could get back the premium as money paid on a voided contract. After looking up the authorities he had convinced himself that the risk did attach directly the defendants accepted the plaintiff's proposal on September 9, and this being so, he thought the forfeiture clause was a good defence to the action. Furthermore, he thought that, even if the plaintiff had not signed the forfeiture clause, he must still have failed in this action, as he should be bound to hold that, under the circumstances of the case, the plaintiff could not recover back the premium paid by him to the defendants. Insurance companies will doubtless hail this decision with satisfaction. It is said that the judgment affected about 300 cases.

### SHOULD LEGISLATION BE ABOLISHED?

So far as regards the Conspiracy and Protection of Property Act, 1875, an enthusiastic lecturer and his supporters, at a recent meeting at Leeds, thought such legislation ought to be exterminated. The lecturer in question was Mr. John Judge of that town, who, after stating that the above statute was brought about because of a commission that sat to inquire into the subject consequent upon the excitement caused by the conduct of gas workers in London who, whilst on strike, had placed one portion of London in darkness; and, reviewing the history of the Acts from the time of 1867 to 1871 and to 1875, said that, when the saving clause to section 7 was inserted, trade-unionists thought themselves safe, but since that time various interpretations had been put upon them, many of them logical, and he thought that the word in the old Act, 'coerce,' was more definite than the present of 'compel.' Subsection 4 made picketing illegal, whilst the saving clause was intended (and they had thought, until the recent rude awakenings, that it was so) to make it legal. It had been held to be legal to picket and illegal to announce to their employers their intention to picket. It had been held that anything that caused a man to be afraid to do that which he might otherwise do was intimidation, whilst Mr. Gurney, whose judgment a few years ago in a London trial—*Regina* v. *Hibbert*—had been sent by the authorities to all magistrates and stipendiaries, held that intimidation consisted of actual or threatened violence. All these definitions were strictly logical, taking the words with 'a view to compel.' He held that the laws did not want amending but abolishing. Some trades-unionists did not want them abolished, as they thought they were a recognition of trades-unionism. But he did not want such recognition. Others did not want them abolished, as their imagination led them to believe that the punishment was not so severe as it might be under the common law. That was a mistake, for the Act contained a section which said that, if the offence

merited a more severe sentence than the Act specified, it could be administered under the common law. He held that trades-unionists ought not to have exceptional legislation levelled against them, and that, if they did wrong, the common law was sufficient to try them under. Some questions and other discussion ensued, in which Mr. Judge's views were mainly supported, though one speaker held that some kinds of intimidation should be punished. Picketing when people struck work was right, but if they had a thick stick with them as well he thought they would be going too far. Though the law may at present be somewhat unsettled, it is unreasonable to expect the statutes to be abolished to suit the interests of a class. It is fortunate for the good of the British constitution that such wholesale measures are not likely to be adopted, and so long as class exists against class the one will check the other to the mutual benefit of both.

### THE LAW OF PUBLIC MEETING.

Interrupting public crossings or obstructing public footways are offences which various statutory provisions consider ought to be punished by fine or imprisonment. Therefore, when a person is taken into custody for causing an obstruction upon highways and footpaths, it is plain that the constables are only acting in the pursuance of their duty. It was under circumstances such as these that two constables have been charged at Bradford with assaulting a town councillor on the occasion of the dispersal of a meeting in that town. The counsel's statements on both sides are of interest as dealing with a question of public meetings of some importance. Counsel for the complainant said the summons had been taken out in order to test the right of public meeting in the square referred to; inasmuch as the square was a public space, and there was no obstruction to the traffic on the adjoining highways, the police had no right to disturb the meetings, and the councillor was entitled to a remedy for being taken into custody, which became, in the eyes of the law, an assault. The law did not render the meeting unlawful in itself, and the propriety of it could not be determined without an opportunity of judging of its effects, which opportunity was never given. He contended that the corporation had not the power to prevent a meeting in this place by proclamation or by law. The corporation could, of course, use the land in question for any purpose they thought fit by a proper resolution. He submitted, however, that the corporation having handed over the place to the public, the public had a right to use it. It was also urged that, if the councillor had committed an offence by refusing to move on when requested, the constables had no right to arrest, they had only a right to demand the name and address of the person. Counsel for the defendant submitted that at common law people were restricted in their use of the highway and also in their use of a place of resort, though these were different in some respects, by the principle that they should not interfere with anybody else's lawful user. He contended that the meeting in question could not be held without interference with such lawful user, for the people extended over the tram lines. The land was neither a place of resort nor a highway, but the private property of the corporation, which the public could only use upon sufferance. Ultimately the magistrates said the bench did not think a right of public meeting was involved in the case. They did not think it necessary to decide whether the ground in question was or was not a highway. It was undoubtedly a place of public resort. They found plaintiff was causing an obstruction not only upon the plot of land, but upon the highways and footpaths. Defendants were acting in the execution of their duty in requiring plaintiff to move or to remove the obstruction, and the constables were justified in arresting him, and they accordingly dismissed the summons.

### A QUESTION OF FRAUD.

'Fraus est celare fraudem.' 'Fraus latet in generalibus.' These maxims are called to mind by a commercial case of some importance heard the other day in the Queen's Bench Division. It appeared that the owner of a crane offered to sell it to a purchaser for 200*l.*, and the purchaser in his turn then offered it for sale to a sub-purchaser for 250*l.* The sub-purchaser subsequently discovered from the original vendor's foreman that the price of the crane was really 450*l.* This the original purchaser did not then know, and, of course, when his sub-purchaser wished to close the bargain at 250*l.* he assented. The original purchaser, hearing afterwards from original vendor the mistake as to the price, then refused to deliver to the sub-purchaser, and the latter, of course, sued him for damages for breach of contract. The question, therefore, was whether a buyer is entitled to take advantage of a mistake under which he knows the seller is acting, though the mistake is not on his part, but on that of a third person, the original owner. When the case was first tried the sub-purchaser obtained judgment with damages, it being held that he was under no legal obligation to reveal the error as to the price. On appeal, however, this decision was reversed, it being pointed out that the sub-purchaser knew that the original purchaser was acting under a mistake, known to himself and not known to the former; and not only that, but he told the original purchaser that the foreman wanted to enter into the price, but that he declined to enter into it, whereas the truth was that he knew all about it. The concealment of the truth, coupled with the untruth, disentitled the sub-purchaser to sue on the contract so obtained, for he knew that his vendor was contracting to sell a 200*l.* crane, whereas in truth it was a 450*l.* crane. There was apparently in this case both concealment and fraud, and the two together would go far in entitling the purchaser to a verdict. This case further pertinently illustrates the maxim, 'Dolus et fraus una in parte sanari debent, nam dolus circuitu non purgatur.'

### THE PREVENTION OF BREACH OF PROMISE OF MARRIAGE CASES.

Human ingenuity does not stand still. The latest idea is a scheme for the prevention of breach of promise of marriage cases. It is suggested that in future no promise of marriage is to be binding unless written on stamped paper, to be signed by the party promising and attested by two independent witnesses, who must be in no way related to the person on whose behalf the agreement is drawn. A penalty must be fixed upon and shown in the document. The following is an example of a form:—

'*Form.*

'Deed of Promise of Marriage.

'I, Adam Gardner, residing at No. 1 Folly Gardens, Liverpool, on this, the 25th day of February, 1891, do hereby promise, in the presence of Herbert Hane and Abel Lambie, to marry Eve Appleworth on or before the 31st day of December, 1891, and, failing to do so, I do further, of my own free will and in good faith, agree to pay a penalty of (two hundred pounds) sterling (say 200*l.* to the herein-mentioned Eve Appleworth) on the proof of such failure on my part. 'ADAM GARDNER.

'Witness, HERBERT HANE, 10 Lord Street, Liverpool.

'" ABEL LAMBIE, 13 Clayton Square, Liverpool.'

Such a form, it is further suggested, should be stamped at the rate of 2*s.* 6*d.* for a promise without a penalty or with any penalty up to and including 100*l.*, and afterwards 2*s.* 6*d.* for every 100*l.* or part of 100*l.* This remarkable scheme is propounded by Mr. W. A. Sloan in the April number of the *Ladder*, and he pertinently adds that parties would reflect twice prior to signing such a document, and be sure whether they meant marriage or not.

### LEGAL FEES IN ENGLAND AND CANADA.

Now and again there appear inquiries in our columns as to the advantages of practising in Canada, and it is always interesting to get facts on these points. Not long ago an English firm were instructed to draw a certain instrument; their charges came to five guineas; an exactly similar document had to be drawn by a Canadian firm, whose charges came only to fifteen shillings, or seven times less than the sum paid to the English firm. If one is to assume that the law forms in Canada are similar to those usual in England, the disparity between these fees is remarkable. Either the Canadian lawyers must do a much larger business than their English brethren, or the fees of the latter must be unduly heavy. Probably the fact is that Canada is much less overridden by officialism than England is, for it may be said without error that many of the items charged in a modern lawyer's bill go into the pockets of the State officials, and but a small percentage is left to remunerate the lawyer.

## LAW STUDENTS SOCIETIES.

DEBATING.—The ordinary weekly meeting of this society was held at the Law Institution, Chancery Lane, on Tuesday, April 28, Mr. Pattinson in the chair. The subject for discussion: 'That this society disapproves of the Public Trustee Bill' was opened by Mr. Marshall. Mr. Bunting and Mr. Besant opposed.—The debate having been declared open, the following gentlemen spoke: in the affirmative—Messrs. Jones, Woodhouse, Watkins, Crawford, Parker, and Windsor; in the negative—Messrs. Watson, Bolton, Bower, and Parkes.—Mr. Marshall replied. —The chairman having put the motion to the meeting, it was carried by a majority of seven.—The subject for discussion at the next meeting of the society, on Tuesday, May 5, is: 'That, in view of the recent judgment of the Court of Appeal in *In re Jackson*, legislation is urgently needed to amend the laws relating to husband and wife.'

LAW OF DIVORCE.—One effect of the Jackson case is to be seen in Mr. Hunter's Divorce Bill. This proposes to give a man the right to a divorce whenever his wife deserts him without reasonable excuse for four years. A corresponding right would also be conferred on the wife. An additional proposal of the bill is to give a woman the right to a divorce whenever her husband is guilty of adultery. In this case the existing necessity for further proving cruelty or desertion would be done away with.

UNITED LAW SOCIETY.—The usual weekly meeting of this society was held at the Inner Temple Lecture Hall on April 27, Mr. C. W. Williams in the chair. Mr. C. Herbert Smith moved: 'That the recent decisions of Mr. Bompas, Q.C., Recorder of Plymouth, and Mr. Digby Seymour, Q.C., Recorder of Newcastle, are contrary to the policy of the Trades Unions Acts, 1871 and 1875.' Mr. W. F. Symonds opposed. The debate was continued by Messrs. M. S. Nathan, J. L. V. S. Williams, L. W. Browne, J. R. Atkin, H. W. Marcus, F. B. Moyle, and B. B. Sapwell. Mr. Smith replied, and the motion was put to the House and rejected by the casting vote of the chairman.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## SUCCESSFUL CANDIDATES.

THE following candidates (whose names are in alphabetical order) were successful at the Final and Intermediate Examinations of the Incorporated Law Society held on April 7, 8, and 9, 1891:—

### FINAL EXAMINATION, APRIL 7 AND 8.

Allen, George William
Alston, Hallam Newton, B.A.
Anderson, Charles Augustus
Armstrong, John Backhouse
Ashworth, Thomas Wilding
Bate, George
Belk, Thomas
Bevon, Samuel Peter
Brown, Charles Watson
Bullock, Frederick Acton
Burke, Patrick
Burrow, Frederic
Burrow, Raymond
Byrne, Edward Cotton, B.A.
Clutterbuck, Charles Romanes Coleridge
Collyer, William John
Cornish, Charles Landsborough, B.A.
Coveney, Arthur
Crouch, Frederick Stanley
Daniell, George Henry
Dickins, Herbert Arthur
Duncan, Henry Hunter
Eve, Herbert Frederick
Freeman, Charles Arthur
Freeman, Walter Oakes
Frost, Thomas Richard
Gush, Frank
Harris, Francis William
Heaton, Arthur Woodall
Hebden, Brian Newell
Holehouse, George
Huband, Thomas
Hudson, Harry
Hyde, Robert
Ingham, William Constantine
James, Daniel Pennant
James, George Francis
Johnston, Henry
Jones, Cyril Lloyd, M.A.
Lewis, Walter Reginald, B.A.
Lockwood, William
Mackay, Douglas
Maffey, George
Matthews, Charles Edward
Middleton, Joseph
Mimpriss, Sydney Trevor
Mortimer, Francis Richard
Norfolk, Edward
Park, John Robert
Parkes, John Amery
Pearson, John Alfred Shaw
Pomeroy, John Bartle
Potts, Thomas Worthington
Preston, Arthur Sansome
Robinson, Frederic William
Rodgers, Reginald Arthur
Rowley, Henry Gowland
Seddon, Frank Jervis
Sedgwick, Harold James, B.A.
Seeley, Henry
Simpson, Harry Faulkner
Smith, James Alexander, M.A.
Stack, Maurice Redfern
Steed, Joshua Owen
Strode, Edmund, M.A.
Stuttaford, Frank
Surtees, Henry Patrick
Swann, Arthur Henry
Thirlby, Frank Stuart
Trevor-Roper, Claude Henry
Tweedale, John Howarth
Waistell, Charles Rowland
Wakeman, George Herbert
Walker, Stephen Arthur
Williams, Hugh Henry
Wilson, Herbert Duckworth
Wilson, Reginald Thorp, B.A.
Wood, Robert Percival
Young, George James, B.A.

### INTERMEDIATE EXAMINATION, APRIL 9.

Addams-Williams, Ernest Trevor
Allistone, Alfred
Alvis, Charles Frederick Brinkley
Ames, Alfred Percy
Anderson, Adolphus
Applewhaite, Henry Churchill
Armstrong, Frank
Aske, Robert William
Aston, Frederic Marriner, B.A.
Atkinson, Thomas
Bowler, Thomas Chesters
Brett, Alexander Dallas
Broadbent, Frederic William
Brown, Charles Stubbs
Buckley, George Dyson
Burton, Albert
Burton, Charles Henry, B.A.
Burton, Edwin Hubert
Bygott, Edward
Chance, Cyril Charles
Charnock, John James
Chesney, Edward Shuldham
Chorlton, Alfred Ethelbert Gospatric
Clark, Edwin Ebenezer

Clarke, Charles Frederick Loriston
Clayton, Henry Thomas Seymour
Cobb, Cecil Henry, B.A.
Cosens, Alan
Crossfield, William Arthur
Cuff, William Charles
Cumsty, William John
Davenport, Ernest Newton
Davies, Alexander Reid
Davies, Evan Robert
Davies, William Thomas
Deheer, John
Drake, Bernard Charles
Duncan, Albert Charles
Edmonds, David John
Emanuel, Charles Herbert Lewis, B.A.
Emson, Charles Herbert, B.A.
Evershed, Edwin John
Ford, Mortimer Brutton
Gibson, Charles, B.A.
Giles-Holder, Percy
Gittins, John Thorne Christopher
Greenwood, Robert Morrell, B.A.
Hair, Archibald
Hall, James Robert
Ham, William Herbert
Hamer, Frederick
Harrison, Arthur Gordon
Harry, Leslie Warlow, B.A.
Haslam, Anderson
Henry, Thomas Gibson
Hewitt, Tom Edwin
Hind, Charles Sidney
Hingley, John Allan
Hitchins, William Stanley
Hogarth, Harry Gilbert
Hooper, Sydney
Hope, Henry Green, B.A.
Huson, William Richard
Ingram, Rowland Welldon
Ireson, Charles Herbert
Jenkins, Charles Griffith
Jones, Harold Vivian
Jones, Hugh Lloyd
Kershaw, George Frederic
Knight, Fritz Chester
Knight, William Stanley Macbean
Langfield, John William Chandler
Large, Robert
Lawson, Robert Gerald, B.A.
Lees, William
Leonard, Albert Edward
Lewis, Charles Edgar
Littlewood, Arthur Birkin
Lloyd, John Wheller
Lloyd, Robert Evan
Mellersh, Herbert Lewis
Merson, Thomas
Michelmore, Harold Gaye
Millington, George
Milnes, Herbert Eli
Milnes, William Newton
Morley, James, LL.B.
Motabhoy, Rustomjee Naorosjee
Nicholls, Joseph Godfrey
Nicholson, Henry Walter
Norgate, Percival Edward
Norris, John Lapage
Norris, Joseph Raphael Francis
Ogle, James Hodgson, B.A.
O'Neill, John Hollier
Oxley, Francis Meldrum
Passman, Alfred Ernest
Patey, Henry William
Payne, Richard
Peace, John
Pearce, Alfred James
Peed, Samuel Wilton, B.A.
Pinniger, Broome
Powell, John Powell Jones
Prescott, Ernest, B.A.
Price, Lawrence
Prosser, William Wozencraft Thomas
Pughe, Kenneth Mackenzie
Ratcliffe, Henry Beanland
Richardson, Albert Osborne
Richardson, Edward Silvester
Richardson, Herbert Joseph, B.A.
Roberts, Richard Gordon
Rowcliffe, Edward Lee
Sass, Francis Jerome
Schofield, Thomas Broadbent
Seligman, Oscar William, B.A.
Sheppard, Gerald Arthur, B.A., LL.B.
Sillem, Louis Richard, B.A.
Simons, Frederic Dyke Sydney
Simpson, George Harold
Sinnott, George Stanley
Slaughter, Edward Mihill, B.A.
Smith, Charles Lakin
Smith, Frederick Charles, B.A., LL.B.
Squire, Alfred Hugh Knight
Stevenson, Harold Thomas, B.A.
Steward, Henry
Stone, Park Nelson, B.A.
Stothart, James Bell, B.A.
Strickland, George John
Taunton, Sidney Charles, B.A.
Thompson, Septimus Constantine
Toller, Francis Holford
Tolley, Frank Gordon, B.A.
Tulloch, Angus Alexander Gregorie, B.A.
Tuppen, Claud Ernest
Turner, Cyril Edward
Waldy, Alfred, B.A.
Waldy, John Bradshaw de Garmundesway, B.A.
Ward, Francis Bertie
Warren, Bertram Reginald, B.A.
Waterhouse, Samuel Sharpe
Watney, Frank Dormay
Wellbeloved, John Kenrick
Weller-Poley, Walter John
Whalley, James
Whiston, William Reginald Harvey
White, Herbert Meadows Frith, B.A.
White, James Kemp, B.A.
White, Montague White
Wilkins, William Harry
Williams, Blair Hamilton Lee
Williams, John Thomas
Williams, Lionel Leigh
Willoughby, Richard Lionel Grey
Wing, Arthur Percy
Woodbridge, Algernon Rivers
Woods, George Calder
Worthington, Frank, B.A.
Wratislaw, Theodore William Graf
Yeo, Richard Forster, B.A.
Yglesias, Herbert Ramon, B.A.

# House of Lords Register.

FRIDAY, APRIL 24.

*Barnardo* v. *Ford* (*Habeas corpus*—custody of child—order making absolute rule *nisi* for writ—jurisdiction to entertain appeal. The case is reported below, 59 Law J. Rep. Q. B. 345; L. R. 24 Q. B. Div. 283).—*Cur. adv. vult.*

*Barnardo* v. *M'Hugh* (*Habeas corpus*—custody of illegitimate child—rights of mother—appointment of guardian).—Part heard.

MONDAY, APRIL 27.

*Barnardo* v. *M'Hugh*.—*Cur. adv. vult.*

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, FRY, L.J., and LOPES, L.J.

THURSDAY, APRIL 23.

*Crichton, trading, &c.* v. *Saunders* (application of defendant for judgment or new trial on appeal from verdict and judgment, dated February 24, at trial before Pollock, B., with a jury at Norwich).—Refused.

*Butler* v. *Birnbaum & Son* (application of plaintiff for judgment or new trial on application from judgment of nonsuit, dated February 11, at trial before Stephen, J., with special jury in Middlesex).—Withdrawn on terms.

FRIDAY, APRIL 24.

*Walter* v. *Everard* (application of defendant for judgment or new trial on application from verdict and judgment, dated March 3, at trial before Grantham, J., with a special jury at Lincoln).—Refused.

*Greening* v. *Ingram* (application of defendant for judgment on appeal from verdict and judgment, dated February 27, at trial before Stephen, J., with a jury at Guildford).—Refused.

*Cotton* v. *Palmer* (*executrix, &c.*) (application of defendant Palmer for judgment or new trial on appeal from verdict and judgment, dated March 6, at trial before Charles, J., with a jury in Middlesex).—Refused.

SATURDAY, APRIL 25.

*Comfort* v. *Betts* (application of defendant for entry of verdict and judgment for appellant on appeal from verdict and judgment dated February 18, at trial before Pollock, B., with a jury at Cambridge).—Refused.

*Knollys* v. *Mudford and another*. *Same* v. *Cross and another*. *Same* v. *Goulden* (consolidated actions) (application of plaintiff for judgment or new trial on appeal from verdict and judgment, dated February 20, at trial before Stephen, J., with a special jury in Kent).—Refused.

MONDAY, APRIL 27.

*Salaman* v. *Warner and others* (appeal of plaintiff from order of Day, J.; and Lawrance, J., dated April 14, on point of law raised by defendant Warner on the pleadings).—Part heard.

TUESDAY, APRIL 28.

*Salaman* v. *Warner*.—Dismissed. *Same* v. *Same* (appeal of plaintiff from order of Day, J., and Lawrance, J., dated April 14, on point of law raised by defendants Coates & Co. on the pleadings).—Dismissed. *Same* v. *Same* (appeal of plaintiff from order of Day, J., and Lawrance, J., dated April 14, on point of law raised by defendant Foster on the pleadings).—Dismissed.

Before the LORD CHANCELLOR, the MASTER OF THE ROLLS, and FRY, L.J.

WEDNESDAY, APRIL 29.

*In re Kent County Council and Council of Borough of Sandwich and Local Government Act*, 1888 (Q. B. *Crown Side*) (appeal of Kent County Council from decision of Stephen, J., and Williams, J., dated January 31, on questions submitted under Local Government Act, 1888, s. 29). *In re Kent County Council and Council of the Borough of Dover and Local Government Act*, 1888 (Q. B. *Crown Side*) (appeal of Kent County Council from like decision as in previous case; heard March 11).—Dismissed.

Before the MASTER OF THE ROLLS, FRY, L.J., and LOPES, L.J.

*Unwin* v. *Hanson* (appeal of plaintiff from judgment of Pollock, B., dated July 29, at trial without a jury in Middlesex).—Allowed.

*Newman* v. *London and South-Western Railway Company* (appeal of plaintiff from judgment of nonsuit, dated December 6, after trial before Stephen, J., with a jury in Middlesex).—Part heard.

## APPEAL COURT II.

Before LINDLEY, L.J., BOWEN, L.J., and KAY, L.J.

THURSDAY, APRIL 23.

*R. S. Hall, petitioner* v. *Ada M. Hall, respondent* (*J. Kay, co-respondent*) (application of respondent for dismissal of petition or new trial on appeal from verdict and judgment at trial before Jeune, J., and special jury in Middlesex).—Refused.

*In re National Debenture and Assets Corporation* (*Lim.*) *and Co.'s Acts* (*petition*) (appeal of Bread Union (Lim.) (petitioners) from order of Kekewich, J., dated February 19).—Stand over for further evidence.

FRIDAY, APRIL 24.

*In re V. Nevin, an infant* (appeal of infant by next friend from order of Chitty, J., dated January 29).—Dismissed.

SATURDAY, APRIL 25.

*Cossey* v. *Roper* (appeal of defendant from judgment of North, J., dated February 19).—Dismissed.

MONDAY, APRIL 27.

*In re J. Thorley, deceased; Thorley* v. *Massam*. *In re W. R. Thorley, deceased; Thorley* v. *Massam* (appeal of T. Massam and others from judgment of North, J., dated January 24, declaring legacy duty payable under J. Thorley's will).—Dismissed.

TUESDAY, APRIL 28.

*In re National Debenture and Assets Corporation* (*Lim.*) *and Companies Acts* (*petition*).—Allowed.

WEDNESDAY, APRIL 29.

*Stewart* v. *Bessler, Waechter & Co. and others* (appeal of defendants Bessler, Waechter & Co. from order of Kekewich, J., dated February 27 and April 11, refusing to strike out claim).—Dismissed on terms as to costs.

*Katherine O'Shea, Wife of W. H. O'Shea* v. *C. P. Wood and another and A. C. Steele and others intervening* (appeal of A. C. Steele from orders of Jeune, J., dated April 7, for further affidavit of documents relating to intervener's banking accounts).—Dismissed.

*Edison and Swan United Electric Light Company* (*Lim.*) v. *Woodhouse* (appeal of defendant F. L. Rawson from order of North, J., dated March 25, refusing to allow further evidence to be read in chief clerk's certificate).—Allowed.

*Hurlbatt* (*trustee; &c.*) v. *Bath*. *Hurlbatt* (*trustee, &c.*) v. *Sanz* (appeal of plaintiff from refusal of Stirling, J., dated April 24, to continue injunction against dealing with shares belonging to Artola Hermanos and from refusal to appoint receiver).—Part heard.

*Goodall, Backhouse & Co.* v. *Wilkinson and another* (appeal of plaintiffs from judgment of Stirling, J., dated March 5).—Allowed by consent on terms.

## ORDERS OF TRANSFER.

Monday, April 20, 1891

WHEREAS, from the present state of the business before Mr. Justice Chitty, Mr. Justice North, Mr. Justice Stirling, Mr. Justice Kekewich, and Mr. Justice Romer respectively, it is expedient that a portion of the causes assigned to Mr. Justice Chitty, Mr. Justice North, Mr. Justice Stirling, and Mr. Justice Kekewich should for the purpose only of hearing or of trial be transferred to Mr. Justice Romer; now I, the Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, do hereby order that the several causes and matters set forth in the schedules hereto be accordingly transferred from the said Mr. Justice Chitty, Mr. Justice North, Mr. Justice Stirling, and Mr. Justice Kekewich to Mr. Justice Romer, for the purpose only of hearing or of trial, and be marked in the Cause-books accordingly. And this order is to be drawn up by the registrar and set up in the several offices of the Chancery Division of the High Court of Justice.

FIRST SCHEDULE.

*From* MR. JUSTICE CHITTY.

George v. Greener—1890 G. 1,982
Beecham v. Thompson—1890 B. 3,346
Gunnell v. Woods—1890 G. 707
Brear v. Hirst—1890 B. 4,083
Bliss v. Hart & Levy—1890 B. 3,260
Oleworth v. National Provident Institution—1889 O. 2,554
Aston v. Grazebrook—1889 A. 563
In re G. Freeland, dec. Freeland v. Freeland—1890 F. 1,082
Hamerton v. Bex—1890 H. 3,346
Copping v. Gilmore—1890 C. 2,129
Jackson, Clayton & Co. v. Baker—1890 J. 462
Thomas v. Gillard—1890 T. 984
Wood v. Dunn—1890 W. 774
Howard v. Goode—1890 H. 2,144
Savage v. Jessup—1890 S. 2,063
Thornton v. Union Discount Co. of London (Lim.)—1890 S. 1,861
Wintle v. Oldridge—1890 W. 2,532
Ogilvie v. Blything Union Rural Sanitary Authority—1890 O. 1,338
Barker v. Pybus—1890 B. 2,811
Eastwood & Co. v. Craig—1890 E. 1,193

SECOND SCHEDULE.

*From* MR. JUSTICE NORTH.

In re Bliss
Bliss v. Bliss—1889 B. 2,568
Automatic Weighing Machine Co. (Lim.) v. National Exhibitors Association (Lim.)—1890 A. 326
Jensen v. Hilder—1890 J. 527
Booty v. Goodwin—1890 B. 1,764
Lincoln Brick Co. (Lim.) v. Handley—1890 L. 1,349
Oldham v. Metherell—1890 O. 1,007
Wilson v. Queen's Club (Lim.)—1890 W. 3,016
Alliance Pure White Lead Syndicate v. McIvors Patents (Lim.)—1890 A. 931
Morris, Wilson & Co. v. Coventry Machinists Co. (Lim.)—1890 M. 906
In re Morris, Wilson & Co. Motion
Viney v. Lewis—1890 V. 809
Tims v. Schell
Schell v. Cutler—1890 T. 306
Thesiger v. York—1890 T. 1,451
Lloyd v. Clingo—1890 L. 1,879
Belsey v. Brooks—1890 B. 2,190
Westinghouse Brake Co. (Lim.) v. Williamson—1890 W. 1,373
Norton v. Burr—1890 N. 313
T. & W. Smith v. Bullivant—1890 S. 812
Brett v. Bowles—1890 B. 899
Beaumont v. Provident Assurance Co. (Lim.)—1890 B. 3,462
Ward v. Langdon—1889 W. 912
Faull v. Harding—1890 F. 57
In re Stevens
Stevens v. Stubbington—1890 S. 3,287
In re Cooper
Cooper v. Coope—1890 C. 2,401
Byers v. Grey—1890 B. 2,802
Laurance v. Edge—1890 L. 1,184
Bolton v. Natal Land and Colonisation Co. (Lim.)—1886 B. 2,055
Webb v. Harden—1890 W. 3,501
Kennedy v. Smith—1890 K. 742
Fairfax v. Lyons & Co. (Lim.)—1890 F. 1260
Robinson v. Trust and Investment Corporation of South Africa (Lim.)—1890 R. 1,537

THIRD SCHEDULE.

*From* MR. JUSTICE STIRLING.

In re Park
Cole v. Park
Park v. Cole—1887 P. 1,073
Coombes v. Wilks—1890 C. 999
Lloyd's Banks (Lim.) v. Keen—1890 L. 367
In re Casey's Trade-marks and Patents, Designs, &c. Acts—Motion
Stewart v. Casey—1890 S. 2,809
Duke of Sutherland v. Heathcote—1890 S. 999
Heathcote v. Blair—1890 H. 1,335
Jones v. Merionethshire Permanent Benefit Building Society—1890 J. 158
Froude v. Wilberforce—1890 F. 1,061
Western Counties Railway Co. v. Anderson & Co.—1886 W. 2,151
Adney v. Adney—1890 A. 840
Vernall v. Reed—1890 V. 326
Cunliffe v. Bellite Explosives (Lim.)—1889 C. 1,166
Farbenfabriken Vorm. Fried. Bayer & Co. v. Bowker—1890 F. 834
Hampton v. Davis—1890 H. 1884
Wrensted v. Rede—1890 W. 1,578
Wagner v. Costerlitz—1890 W. 417
Jones v. Wemyss—1890 I. 26
Lewis v. Oldroyd—1889 L. 935
Lloyd v. Fox—1889 L. 1,861
In re Heywood
Heywood v. Heywood—1890 H. 1,157
Williams v. Gregory—1890 W. 1,537
In re Carruthers
Talbot v. Carruthers—1887 C. 4,565
Simeon v. Freshwater, Yarmouth, and Newport Railway Co.—1890—S. 1,960
Wroath v. Coathupe—1890 W. 2,320
Bank of British North America v. Anderson & Co.—1890 B. 2,061
Young v. Harris—1889 Y. 895
Twyeroud v. Chamber Colliery Co. (Lim.)—1890 T. 614
Render v. Macpherson—1890 R. 96
Radway v. Titmas—1890 R. 1,248

FOURTH SCHEDULE.

*From* MR. JUSTICE KEKEWICH.

Bellite Explosive (Lim.) v. Bellite Co. (Lim.)—1890 B. 1835
Brandon v. Viscount Bury—1887 B. 970
Godfrey v. Walker—1889 G. 1,463
Denny v. Frisby—1890 D. 896
Alcock v. Smith—1890 A. 572
Dawson v. Church
Church v. Dawson—1889 D. 1,990
In re Parker
Lowe v. Parker
Parker v. Lowe—1890 P. 1,233
Nicol v. Charsley—1890 N. 1270
Leach v. Gough
Gough v. Hayward—1890 L. 1,434
Horwood v. Wilkins—1890 H. 567
Munns v. Howard—1890 M. 1,474
Benson v. D'Arey—1890 B. 2,570
In re C. I Kinahan and Trade-mark 14,646 and Trade-marks, &c. Act, motion
Coulson v. Look—1890 C. 2,636
Savoy Publishing Co. (Lim.) in liquidation v. O'Reilly—1890 S. 1,781
Bendall v. Alexander, Daniel, Self & Co.—1890 B. 1,454
Duncan v. Baird—1890 D. 1,344
Wood v. Lamplough—1888 W. 2,171
l'Anson v. Turner—1890 J. 1,078
Lewis v. Ellis—1890 L. 1,757

HALSBURY, *C.*

N.B.—The parties concerned in the above causes and matters must be ready for trial on and after Monday, April 27, 1891.

N. WARD, Senr. Regr.

Tuesday, April 28, 1891.

Whereas, upon the request of the Lord Chancellor, the Honourable Mr. Justice Vaughan Williams has, with the concurrence of the Lord Chief Justice of England, consented to sit and act as an additional judge of the Chancery Division for the purpose of hearing any causes or matters which may be assigned to him by the Lord Chancellor, or any application therein; I, the Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, do, pursuant to the Supreme Court of Judicature Act, 1884, s. 5, here order that the several causes set forth in the schedules hereto be assigned to Mr. Justice Vaughan Williams for the purpose of hearing the same or any application therein, and be marked in the cause books accordingly. And this order is to be drawn up by the registrar and set up in the several offices of the Chancery Division of the High Court of Justice.

FIRST SCHEDULE.

*From* MR. JUSTICE CHITTY.

Birmingham Canal Navigation v. Tupper & Co. (Lim.)—1889 B. 2,709
Croydon Ironmongery Co. v. Davies—1890 C. 2,356
Look v. Ross—1890 L. 1,069
Wenham Co. (Lim.) v. Champion Gas Lamp Co.—1890 W. 3,003
Acme Wood Flooring Co. v. Vigers—1890 A. 681
Green v. Wyatt—1890 G. 799
Marquess of Bute v. Barry Docks and Railway Co.—1890 B. 1,535
Patent Enamel Co. (Lim.) v. Baugh—1890 P. 1,772
Layton v. Patent Lithographic Zinc Plate Co. (Lim.)—1890 L. 2,165
Co-operative Fish Supply Co. v. Grimsby and East Coast, &c. Association—1890 C. 3,685
Lane v. Bailey—1891 L. 256

SECOND SCHEDULE.

*From* MR. JUSTICE NORTH.

A. Pirie & Sons (Lim.) v. Goodall & Sons—1888 A. 1,287
Leveson-Gower v. Jarrett—1890 L. 1,063
Douglas v. Gerald & Co. (Lim.)—1890 D. 2,029
Attorney-General v. Vestry of St. James and St. John, Clerkenwell—1890 A. 1,159
London Printing and Publishing Alliance (Lim.) v. Cox—1890 L. 2,387
Harris v. Hackett—1890 H. 3,162
Hartley v. Jones—1889 H. 1,149
Choudens Fils v. Lago—1890 C. 4,098
Clark v. Orchard—1890 C. 4,246

THIRD SCHEDULE.

*From* MR. JUSTICE STIRLING.

Edwards v. Beckett—1889 E. 962
Rugby Portland Cement Co. v. Rugby and Newbould Cement Co. (Lim.)—1890 R. 614
Beecham v. Fisher—1890 B. 4,167
Farr v. Bristol Sublimed Lead, &c. Co.—1890 F. 887
Foster v. Rowe—1890 F. 1,245
Sugden v. Oridland—1890 S. 2,970
Earl de la Warr v. King—1890 D. 1,776
Swift v. Copeland—1889 S. 3,496
Fearnley v. Clydesdale Bank (Lim.)—1890 F. 1,799
Lines v. London Printing and Publishing Alliance (Lim.)—1890 L. 2,441
Nelson v. Worssam—1890 N. 1,298
Everitt v. Automatic Photograph Co. (Lim.)—1890 E. 586
Starley v. Pollard Brothers—1891 S. 402
Parsons v. Hollender—1891 P. 324
Battye v. Nettleton—1890 B. 2,790
Dunston v. Arthur & Co.—1890 D. 1,896

FOURTH SCHEDULE.

*From* MR. JUSTICE KEKEWICH.

Edison and Swan United Electric Light Co. (Lim.) v. Woodhouse and Rawson United (Lim.)—1890 E. 426
Harrison v. Southwark and Vauxhall Water Co.—1890 H. 3,681
Jahncke v. R. Bell & Co. (Lim.)—1889 J. 1,011
Beecham v. Clue—1890 B. 4,924
Nettlefolds (Lim.) v. Reynolds—1890 N. 15
Same v. Same—1890 N. 809
Lane-Fox v. Kensington and Knightsbridge Electric Lighting Co.—1890 L. 2,713
Kearney v. Blake—1890 K. 487
Cellular Clothing Co. (Lim.) v. Marsh—1890 C. 2,048
Hampton Wick Local Board v. Southwark and Vauxhall Water Co.—1891 H. 72
Defries v. Molineaux, Webb & Co. (Lim.)—1890 D. 1780

HALSBURY, *C.*

N.B.—The parties concerned in the above causes must be ready for trial on and after Thursday, April 30, 1891.

N. WARD, Senr. Regr.

## CALENDAR OF THE COUNTY COURTS.

FROM MAY 4 TO MAY 9.

| No. of Circuit | His Honour | May 4 | May 5 | May 6 | May 7 | May 8 | May 9 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Pfoulkes | — | Runcorn | — | — | Birkenhead | — |
| 8 | Judge Heywood | Manchester | Manchester | Manchester | Manchester | Manchester | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | Middlesbrough | — | Middlesbrough | — | Stockton-on-Tees | — |
| 19 | Judge Barber | — | Derby | Derby | Chesterfield | Chesterfield | — |
| 26 | Judge Jordan | Stoke | Newcastle | Lichfield | Stafford | Leek | Stone |
| 47 | Judge Powell | — | Lambeth | Woolwich | Lambeth | Greenwich | — |
| 54 | Judge Metcalfe | Weston-supr-Mare | Wells | Axbridge | — | — | — |
| 55 | Judge Machonochie | Shaftesbury | Wincanton | Crewkerne | Yeovil | Salisbury | — |
| 58 | Judge Edge | — | Exeter | Exeter | Exeter | Newton Abbot | Newton Abbot |

## NOTICES FOR THE WEEK.

ROTA OF REGISTRARS.

MONDAY, May 4.—Court of Appeal No. 2: Mr. Carrington. Mr. Justice Chitty: Mr. Pugh. Mr. Justice North: Mr. Ward. Mr. Justice Stirling: Mr. Jackson. Mr. Justice Kekewich: Mr. Godfrey. Mr. Justice Romer: Mr. Rolt.

Tuesday, May 5.—Court of Appeal No. 2: Mr. Lavie. Mr. Justice Chitty: Mr. Beal. Mr. Justice North: Mr. Pemberton. Mr. Justice Stirling: Mr. Clowes. Mr. Justice Kekewich: Mr. Leach. Mr. Justice Romer: Mr. Farmer.

Wednesday, May 6.—Court of Appeal No. 2: Mr. Carrington. Mr. Justice Chitty: Mr. Pugh. Mr. Justice North: Mr. Ward. Mr. Justice Stirling: Mr. Jackson. Mr. Justice Kekewich: Mr. Godfrey. Mr. Justice Romer: Mr. Rolt.

Thursday, May 7.—Court of Appeal No. 2: Mr. Lavie. Mr. Justice Chitty: Mr. Beal. Mr. Justice North: Mr. Pemberton. Mr. Justice Stirling: Mr. Clowes. Mr. Justice Kekewich: Mr. Leach. Mr. Justice Romer: Mr. Farmer.

Friday, May 8.—Court of Appeal No. 2: Mr. Carrington. Mr. Justice Chitty: Mr. Pugh. Mr. Justice North: Mr. Ward. Mr. Justice Stirling: Mr. Jackson. Mr. Justice Kekewich: Mr. Godfrey. Mr. Justice Romer: Mr. Rolt.

Saturday, May 9.—Court of Appeal No. 2: Mr. Lavie. Mr. Justice Chitty: Mr. Beal. Mr. Justice North: Mr. Pemberton. Mr. Justice Stirling: Mr. Clowes. Mr. Justice Kekewich: Mr. Leach. Mr. Justice Romer: Mr. Farmer.

GRAY'S INN.—April 29 being Grand Day at Gray's Inn, the treasurer (Mr. Arthur Beetham) and benchers entertained at dinner the following guests: The Hon. Mr. Justice A. L. Smith, the Hon. Mr. Justice Jeune, Sir Dyce Duckworth, Sir Peter Edlin, Q.C., the treasurer of the Hon. Society of Lincoln's Inn (Mr. J. Napier Higgins, Q.C.), his Honour Judge Stonor, Major Rasch, M.P., Mr. E. Goodwyn, Mr. Harfield, Mr. F. Beetham, and Mr. D. Shaw, and the masters of the bench present, in addition to the treasurer, were Masters Fooks, Q.C., Griffith, Bowen Rowlands, Q.C., M.P., James Shell, Jeremy, Forbes, and Rose, and the rev. the preacher (the Rev. J. H. Lupton).

RENTS COLLECTED AND DISTRAINTS LEVIED TO RECOVER SAME, by Messrs. HENRY C. WOOD (Surveyor to the Parish of Tooting) and HENRY KIRBY (Wood & Kirby), Certificated Brokers, 1 Great James Street, Bedford Row, W.C. No charge made to Landlords if Rent over 20*l*. Troublesome tenants got rid of. Possession also taken under Bills of Sale, Mortgages, &c. Bailiffs to the Parish of St. Dunstan in the West and City of London (Farringdon Ward). Money paid over same day received. Bankers: City Bank, Holborn Viaduct. References, if desired, to clients of many years' standing. Prompt and personal attention given.—ADVT.

## HONOURS AND APPOINTMENTS

MR. ERNEST HOWARD (of the firm of Howard & Atherton), of Suffolk House, Laurence Pountney Hill, Cannon Street, City, has been appointed a Commissioner for Oaths. Mr. Howard was admitted in 1882.

Mr. William Lansdown Goldsworthy, of 16 Furnival's Inn, E.C., has been appointed a Commissioner for Oaths. Mr. Goldsworthy was admitted in 1884.

Mr. Herbert Comins, of 3 and 4 Great Winchester Street, E.C., has been appointed a Commissioner for Oaths. Mr. Comins was admitted in 1884.

Mr. Daniel Henry Lambert, of 4 New Inn, London, has been appointed a Commissioner for Oaths. Mr. Lambert was admitted in 1884.

THE INCORPORATED LAW SOCIETY.—The hall of the Law Society in Chancery Lane was the scene of a brilliant gathering on April 29, when the president (Mr. Robert Cunliffe) had a *conversazione* and a ball. The guests numbered nearly a thousand. After the reception there was a concert, Mme. Fanny Moody, Miss Marian Mackenzie, and Mr. Ben Davies being among those who took part in it. Dancing began at half-past ten o'clock, and was kept up until a late hour. Amongst the invited guests were the Lord Chancellor and Lady Halsbury, the Lord Chief Justice and Lady Coleridge, Lord and Lady Herschell, Lord and Lady Esher, the Lord Mayor and Lady Mayoress, Lord and Lady Macnaghten, Mr. Justice and Lady Chitty, Mr. Justice and Lady Wills, Mr. Justice and Lady Grantham, the Attorney-General and Miss Webster, the Solicitor-General and Lady Clarke, Sir Horace and Lady Davey, the President of the College of Surgeons and Mrs. Bryant, the Master of the Clothworkers' Company and Mrs. Angell, Mr. and Mrs. Napier Higgins, Mr. and Mrs. W. W. W. Leadam, and Sir John and Lady Monckton.

## MARRIAGES.

On April 18, at St. Giles's, Camberwell, Mohamad Ahmad, Barrister-at-Law, only son of the Nawab Vicar-Ul-Mulk Bahadur, Revenue Secretary to the Nizam's Government, Hyderabad, Deccan, to Charlotte, youngest daughter of the late Alfred Fitch, Esq., of London, and of Mrs. Fitch, of East Dulwich.

On April 27, at St. George's, Bloomsbury, Henry A. B. Rattigan, Esq., Barrister-at-Law, eldest son of W. H. Rattigan, Esq., of Lahore, India, to Edith, elder daughter of the late Charles A. Thorne, Esq.

## DEATHS.

On April 23, at Albert Terrace, Rochdale, Robert Jackson, Solicitor, aged 74.

On April 24, at 7 Tamar Terrace, Stoke Damerel, Devon, Elizabeth, wife of Thomas H. Gill, Solicitor, Devonport, aged 70.

On April 25, at 7 Grafton Road, Birmingham, Arthur, youngest son of the late Charles Augustin Smith, Solicitor, Greenwich, S.E., aged 37.

On April 26, Alexander Martin, formerly of 10 King's Bench Walk, Temple, and late of 171 Queen Victoria Street, E.C., and 418 Clapham Road, S.W., Solicitor, in his 81st year.

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# The Law Journal.

*SATURDAY, MAY 9, 1891.*


## 'OBITER DICTA.'

THAT mysterious and insidious malady called, for the want of a better name, 'the Influenza,' is unhappily very busy amongst the ranks of the legal profession. Mr. Aspland, Q.C., whose untimely death we record in another column, has succumbed to an attack of the epidemic at the early age of forty-eight. Among those who are still suffering may be mentioned the names of Mr. Bigham, Q.C. (who, we are glad to hear, is recovering), Mr. Cock, Q.C., and Mr. Ambrose, Q.C. Mr. Whitehorne, Q.C., is about again after a sharp attack, while many members of the junior bar have either passed through the ordeal or are still suffering from the scourge. We understand, too, that some of the registrars are laid up, and that the malady is very prevalent amongst the general staff at the Royal Courts. Just before going to press we learn with great regret that Mr. Justice Romer, the first of the judges to be attacked, has been suddenly taken ill with the prevailing symptoms.

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WE last week drew attention to the fact that, owing to the Spring Assizes on the Northern and North-Eastern Circuits, the number of judges of the Queen's Bench Division available for business in London was reduced to twelve. That number has been further diminished by the fact that Mr. Justice Henn Collins is now doing duty in the Divorce Court in the continued absence of Mr. Justice Butt, while Mr. Justice Vaughan Williams is sitting as an additional judge of the Chancery Division. It may safely be said that the present state of business in the Queen's Bench Division is not such as to warrant even the temporary transfer of two of its judges to other divisions.

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THE ways of some of the County Court judges are certainly inscrutable! A case which last week came before the Lord Chief Justice and Mr. Justice Mathew on appeal disclosed a very curious state of facts. The action had been brought in the County Court for breach of warranty of a mare. The County Court judge found that a warranty had been given, and that it had been broken, and assessed the damages for the breach at 27*l.*, but was of opinion that, since the decision of the House of Lords in *Derry* v. *Peek*, 58 Law J. Rep. Chanc. 864, it was necessary for the plaintiff to prove that the defendant gave the warrant fraudulently—*i.e.* knowing it to be false—and that as the plaintiff in the case before him had failed to show this, he was not entitled to recover. The plaintiff wisely appealed, and the counsel for the defendant having admitted his inability to find any case to support the ruling of the County Court judge, the appeal was at once allowed. It was stated in the course of the case that ever since the decision in *Derry* v. *Peek* the learned judge referred to has held that it applied to actions for breach of warranty, though when the wide difference which exists between such actions and an action of deceit for a misstatement in a prospectus is borne in mind, it seems difficult to understand by what process of reasoning the judge could have arrived at such a conclusion.

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SIR HENRY JAMES has introduced a bill, which has, no doubt, been in some measure suggested by recent scandals, to enable a member of the House of Commons to resign his seat. It must often have struck the intelligent foreigner that the method by which a member of Parliament is alone able to relieve himself from the performance of his duty at St. Stephen's is somewhat strange and cumbrous. But even in these days Englishmen cling to old customs, which in their eyes receive additional recommendation from their being either anomalous or picturesque. Perhaps the existing practice is justified to some extent by the discouragement which it offers to anything like wholesale resignations, and however remote the probability of members desiring to retire in a body may seem, there was actually a danger of this kind during the recent Irish Parliamentary crisis. The bill is backed by Sir John Mowbray, Mr.

Dillwyn, and Mr. Asquith, and is stated to be receiving general support on all sides of the House. The bill is not yet published; but it is stated that, with the object of preventing the unpleasant necessity for motions of expulsion, it proposes to enable a member to apply for leave to resign his seat, which leave, after an interval, may be granted or refused by the House. Both Houses of Parliament seem laudably anxious to possess themselves of additional disciplinary powers, and it is certainly desirable to obviate the need for recourse to such powers. But it is worth considering whether the scope of the bill might not be usefully enlarged by providing for the vacation of a seat by the protracted absence of a member or his systematic neglect of his Parliamentary duties. During a great part of the present Parliament the constituency of Aston Manor was deprived of the services of its member, a deprivation which at a critical period might be of national importance.

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Mr. Atkinson, M.P., is a gentleman of comprehensive interests and great legislative ambition. He recently introduced a bill, which we noticed at the time, to relieve Wesleyan wedding-parties from the attendance of the registrar, and this bill, with an extension to other Nonconformist bodies, is likely to pass into law. He is also, in emulation of Lord Denman in the Upper House, the author of a Duration of Speeches Bill, which was intended to abate the flow of Front Bench and other eloquence in the House, and now, in conjunction with Mr. Johnston of Ballykilbeg, and Mr. Howorth, the omniscient correspondent of the *Times*, he has brought forward a bill to abate the claims of dowagers, and provide that their allowances, when secured on landed estates, shall in future be diminished in proportion to the fall in the net income of such estates since the allowances were granted. The abatement is to be decided upon by the County Court judges with an appeal to the High Court. The bill may secure the support of members with mothers-in-law, and of Mr. Henry Fowler, who thinks that County Court judges have not enough to do; but it is difficult to see why dowagers, of all persons, in whose favour rent-charges are created, should be chosen as the objects of special attack, whilst younger children and others should escape from the loss arising from depreciation in land.

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The case of *Regina* v. *The Judge of the City of London Court and Hirschman* (noted last week) involved the important question whether an action of contract can be remitted to the County Court under section 65 of the County Courts Act, 1888, where the plaintiff has discontinued his claim in the action, and only the counter-claim is in dispute. An order for the trial of a counter-claim in the City of London Court having been made under such circumstances, the judge of that Court held that he had no jurisdiction to try it; and a rule for a *mandamus* having been obtained, the Court were of the same opinion, and refused to make it absolute. When the language of section 65 is considered, it seems clear that the decision was correct, and that the power to order an action of contract to be tried in the County Court under that section only exists 'if the whole or part of the demand of the plaintiff be contested.' It would seem to follow that there can be no jurisdiction to remit an action to the County Court in a case where the plaintiff's claim, instead of being discontinued, is admitted by the defendant subject to a counter-claim.

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Railway companies have apparently given up the doubtful and occasionally expensive practice of advertising in their stations the names of passengers convicted of offences against their bye-laws, but, from the case of *Hunt* v. *The Great Northern Railway Company*, recently before the Court of Appeal, it would appear that a monthly list of the breaches of discipline committed by their servants and the punishments inflicted in respect of them is still published for the edification of their brethren. This was an action for libel brought by a servant of the company who had been dismissed for gross negligence causing considerable damage to the rolling-stock. The plaintiff objected to the blame being placed upon his shoulders, and in an action in a County Court for wrongful dismissal succeeded in establishing that the accident was due to the negligence of others. In the meantime the company had included his name in the monthly list of punishments hung up in the rooms occupied by their staff throughout the system. The plaintiff sued for libel, but Mr. Justice Stephen held that the occasion of the publication was privileged, and the Court of Appeal have now confirmed this ruling. The case of *Somervill* v. *Hawkins*, 20 Law J. Rep. C. P. 131, is more nearly in point than any other. There the defendant had dismissed the plaintiff on suspicion of theft, and, upon the plaintiff coming for his wages, called in two other of his servants and said: 'I have dismissed that man for robbing me; do not speak to him any more in public or in private, or I shall think you as bad as him.' This communication was held to be privileged, but it was argued that the case did not apply, because the *ratio decidendi* was that it was the duty and interest of the defendant to prevent his servants from associating with such a person, a consideration which did not apply in the case of a railway company and their servants. But, although this phrase is used by Mr. Justice Maule in delivering the judgment of the Court, and has been culled therefrom by text-book writers (see 'Odgers on Libel,' 2nd edit. p. 231), it only refers to the form of the particular slander; and the general principle on which the case rests is that it was a communication made with a fair and reasonable purpose of protecting the party making it. The Court of Appeal, however, in the case in question, preferred to proceed on the ground of 'common interest,' and, considering that the railway company had an interest in informing their *employés* that negligence would be punished, and the *employés* a corresponding interest in learning that carelessness would be followed by dismissal, upon this ground affirmed the nonsuit. The arguments of the plaintiff that the purposes of the company could have been attained without publishing his name, and that the publication over such a wide area as the system of the Great Northern Railway Company was not justified, would have been more in point in considering whether the privilege conferred by the occasion had been abused, a question which it was not open to the Court of Appeal to enter upon.

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After considerable delay, probably caused by considerations in connection with the recently passed American Copyright Bill, the motion for the second

reading of Lord Monkswell's Consolidating and Amending Copyright Bill is fixed to come on in the House of Lords on Monday, the 11th inst. The law of this subject, as pointed out in the Report of the Copyright Commissioners of 1878, has long been in a state of hopeless confusion, and has also long required amendment in respect of the dramatisation of novels, the copyright of newspapers, the copyright in abridgments, the public exhibition of the photographs of private persons, and other matters. By Lord Monkswell's bill it is proposed to repeal and re-enact the statutes dealing with the subject from 8 Geo. II. c. 13 (amended by 7 Geo. III. c. 38, 'for securing to Jane Hogarth, widow, the property in certain prints'), to the Copyright (Musical Compositions) Act, 1888, 'further' protecting the public from vexatious proceedings for the recovery of penalties for the unauthorised performance of musical compositions, with such amendments as the report of the commissioners, and after experience, has shown to be desirable. The recommendations of the commissioners are followed in the main, and departed from, where departed from, for reasons given in a very full memorandum prefixed to the bill. The principal amendment proposed is that the copyright shall endure for the life of the author and thirty years after, instead of, as now, for the life of the author and seven years after his death or forty-two years, whichever shall be the longer period. The commission of 1878 is fortunately represented in the House of Lords by the Duke of Rutland (who was its chairman as Lord John Manners, and in 1879 introduced a comprehensive bill upon the subject), by Lord Herschell, and by Lord Knutsford. One of the leading members of it was Sir James Stephen, whose vigorous denunciation of the vile language of the existing Acts, and whose lucid presentment of the existing law (so far as it can be made out) in the form of a code, can be studied in the report with great advantage to all interested in the subject.

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THE Standing Committee on Law has greatly strengthened clause 23 of the Health of London Bill which imposes penalties for the sale of unsound food. On the motion of Mr. Bartley (so it is stated in the *St. James's Gazette*) words have been added giving the convicting justices discretion to compel a convicted offender to placard his own premises for a given period with a record of the facts. An exactly similar punishment, borrowed, we believe, from New Zealand, was directed, not only allowed, to be imposed by section 19 of the Licensing Act, 1872, in the case of convictions of licensed persons for adulteration of intoxicating liquor with *cocculus indicus* and other deleterious ingredients; but that and other sections of the Act relating to adulteration were shortly afterwards repealed and replaced by the Licensing Act, 1874, which does not re-enact that part of the Act of 1872 which directed the police authority to cause a placard of the conviction to be affixed to the licensed premises 'of such size and form, and printed with such letters, and containing such particulars' as the police authority might think fit. Similarly, the provisions of the Adulteration Act, 1872, which authorised justices to publish convictions for adulteration in newspapers, were repealed by the Sale of Food and Drugs Act, 1875. The Sale of Bread Act, 1836 (6 & 7 Wm. IV. c. 36), however, the Adulteration of Seeds Act, 1869, and the more recent Weights and Measures Act, 1889, authorise justices to publish convictions for offences against such Acts respectively, the words of section 14 of the Act of 1889 being that, 'where a person is convicted before any Court of any offence under the principal Act' [of 1878] 'or this Act, the Court may, if it thinks fit, cause the conviction to be published in such manner as it thinks desirable.'

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*Joyner* v. *Weeks* (Notes of Cases, p. 75) is a case of very great interest on the construction of the ordinary repairing covenants of a lease. The plaintiff sued at the end of a lease on the covenant to leave in repair, and the dilapidations had been assessed by an official referee at 70*l.* It appeared that on the last day of the lease thus sued on the plaintiff had granted a new lease to another tenant (who happened to be tenant of an adjoining house) containing a covenant that such other tenant should put the demised premises into repair, which covenant had been, in fact, complied with, the result being that the official referee had found that the plaintiff had suffered no loss, had given judgment for him for one farthing damages, and ordered him to pay the costs of the action. On the plaintiff moving to enter judgment for 70*l.* or, in the alternative, for a new trial, the Court (Mr. Justice Wills and Mr. Justice Wright) has granted a new trial, 'the question to be decided being how much, *if at all*, the value of the plaintiff's interest in the premises was diminished by the non-repair, regard being had to the consideration, amongst others, that a tenant of an adjoining house might be willing to give as much for the plaintiff's house in its unrepaired condition as he would have given if the covenant had been performed. This judgment, though at first sight it may seem to be rather hard on the defendant, is indisputably correct. It was long ago held, in *Rawlings* v. *Morgan*, 34 Law J. Rep. C. P. 185, that on a repairing lease a landlord is entitled to substantial damages for breach of covenant to leave in repair, even though the demised premises are about to be pulled down, and this judgment was followed with approval by Mr. Justice Lopes in *Inderwick* v. *Leach*, 1 C. & C. 412.

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THE extent of privilege in actions for slander at private meetings where reporters happen to be present will be found very fully discussed in *Pittard* v. *Oliver* which we report this month, 60 Law J. Rep. Q. B. 219. There was a meeting of a board of guardians, and the defendant, a guardian, 'honestly, in the discharge of a public duty without malice, but carelessly,' made statements as to the plaintiff's conduct which were incorrect and untrue. The defendant knew that reporters were present, but he had not invited them to come. Mathew, J., directed a verdict for the defendant, and the Court of Appeal affirmed this ruling. The judgment proceeds on the ground that, reporters or no reporters, the defendant owed a duty to his fellow-guardians and the ratepayers to speak freely on the question brought before the meeting, which was whether the plaintiff, who was clerk to the board, should receive a certain sum in settlement of his claim against them. Lord (then Sir J.) Hannen expressed the opinion that he thought it very desirable, where discussions as to the character of individuals take place at meetings of boards of guardians, that the guardians should bear in mind what

was said by Lord Chief Justice Cockburn in *Purcell* v. *Sowler*, 46 Law J. Rep. C. P. 308, and should conduct such discussions *in camerâ*. It should be pointed out in connection with this remark that, by the Law of Libel Amendment Act, 1888, s. 4, 'a fair and accurate report published in any newspaper of the proceedings of a public meeting, or (except where neither the public nor any newspaper reporter is admitted) of any meeting of a vestry, town council, school board, *board of guardians*,' or other bodies therein mentioned, 'shall be privileged, unless it shall be proved that such report or publication was published maliciously. In *Pittard* v. *Oliver* the reporters appear to have discreetly refrained from publishing the defamatory matter for which the action of slander was brought.

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In view of the possible immigration of many thousands of paupers, Mr. Howorth has announced his intention of asking the Home Secretary whether by increase of fees chargeable on naturalisation (see Naturalisation Act, 1870, s. 11, subs. 7), or otherwise, the Government proposes to take any steps to check or discourage the immigration of aliens into this country. The matter is a very serious one. As has been shown by Mr. Craies in the *Law Quarterly* for January, 1890, the Crown has no prerogative to interfere with the free ingress of alien friends, and the Act 6 & 7 Wm. IV. c. 11, which provides for the registration of aliens (see LAW JOURNAL for July 5, 1890, p. 398), is not only a dead letter, but does not authorise expulsion for disobedience to its provisions. Furthermore, it seems absolutely certain that alien paupers have just as much right to be maintained at the expense of the rates as home paupers have. Lord Holt is reported to have said, in *St. Giles's* v. *St. Margaret's*, 1 Sess. Ca. 97, that a pauper alien might be left to starve; but Lord Ellenborough, in *Regina* v. *Eastbourne*, 4 East, 103, after observing that the Court 'owed it to the memory of Lord Holt to believe that he never uttered such a sentiment,' and emphatically declaring that 'as to there being no obligation for maintaining poor foreigners before the statutes ascertaining the different methods of acquiring settlements, the law of humanity, which is anterior to all positive laws, obliges us to afford them relief, to save them from starving,' held that a foreigner may gain a settlement in this country. From this it would follow that he might also acquire, under the Union Chargeability Act, 1865, a *status* of irremovability from any union after one year's residence therein. The maintenance, however, of alien paupers in this country, when they have to be maintained, would seem to be rather a matter of Imperial than local concern, so that it might be desirable to provide for the repayment of the cost of such maintenance by the public exchequer to the various unions. But a distinction may fairly be drawn between paupers who have practically become such before they land in this country and paupers who become such afterwards. In regard to the latter class there is a certain kind of reciprocity, and in France, at any rate, although there is no legal claim to poor relief, we learn from a work of authority ('Encyc. Brit.' tit. Poor Law, ed. 1885) that 'the majority of the indigent who receive relief from the *quasi*-public' *Maisons de Bienfaisance* 'are foreigners,' amongst whom, no doubt, not a few British subjects may occasionally be found. In regard to the former class, who have practically become paupers before they land, reciprocity will, as is shown by the recent laws of the United States of America against Chinese immigration, gradually disappear, and the country may eventually become the recipient of all the paupers of the two hemispheres. Against this some remedy more sharp and effective than the raising of the naturalisation fees should speedily be devised by the Government.

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ALL interested in the Government Public Trustee Bill (No. 2), which we recently (see *ante*, p. 269) reviewed, should compare it carefully with the Public Trustee Bill (No. 1), backed by Mr. Howard Vincent, Mr. Warmington, Sir Albert Rollit, and the late Mr. Bradlaugh, and very properly preceded, as the Government bill most unaccountably *is not*, by a memorandum of its contents. In many points this measure is better, and in many points it is worse, than the Government bill. In prohibiting the public trustee from investing in shares not fully paid up, and in providing for the discontinuance of the office of public trustee, if it should not be found to be for the public advantage, after five years, it is, we think, better; while in prohibiting the public trustee from being associated with anyone else in the management of a trust it is not nearly so good. Why should not both bills be referred to the same select committee?

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## CASES UNDER THE TRUSTEE ACT, 1888.

THE cases hitherto decided upon the Trustee Act, 1888, which has now been in operation for more than two years, appear to be confined to its retrospective sections. The first of these is section 4, which enacts that no trustee 'shall be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value' of the property, provided that he acted upon a report as to the value made by a person whom he 'reasonably believed to be an able practical surveyor or valuer instructed or employed independently of any owner of the property,' and provided, also, that the loan does not exceed two equal third parts of the value. In *In re Walker*, 59 Law J. Rep. Chanc. 386, trustees invested trust-money on mortgages of two uncompleted houses. The investment was made through their solicitors, whom they instructed 'to find a thoroughly good mortgage security.' The solicitors had at the time in their possession a report by competent surveyors made to another client with respect to a number of houses, including the two in question, and appear to have relied on this in making the investment, and there the matter ended. In an action to render the trustees responsible, Mr. Justice Kekewich held that they could not escape the responsibility of an improper investment under section 4. 'The surveyor,' he says, 'was certainly not employed by the trustees, and I cannot adopt the construction that the words "reasonably believed" apply to instructing and employing. . . . I do not think they do grammatically, or that that is the right construction.' In *Blyth* v. *Fladgate*, 60 Law J. Rep. Chanc. 66, Mr. Justice Stirling, dealing with the same section, says: 'Lastly, the defendants (the trustees) claimed the benefit of the Trustee Act, 1888, s. 4. To this the answer is, that the trustees were not charged with a breach of trust by reason only of the proportion borne by the amount of the loan to the value of the mortgaged property at

the time when the loan was made. They were so charged because the security was, in the language of Lord Watson in *Learoyd* v. *Whiteley*, 57 Law J. Rep. Chanc. 390; L. R. 12 App. Cas. 727, one of a class which is attended with hazard.' Next comes section 5, which provides that where a trustee advances trust money on what would have been a proper investment for a less sum, he is only to be answerable for the excess beyond what he might have advanced. The trustees in *In re Walker* claimed the benefit of this section also, but the Court held that, the investment being improper in itself, the section did not apply. The trustee, said Mr. Justice Kekewich, 'must establish the propriety of the investment independently of value; and then he has the benefit of the section to save him from any loss greater than that which would have been incurred by advancing too large a sum on what otherwise would have been a proper security.' The judgments in these two cases are of interest as illustrating the limits of the new law, but it must be admitted that they do not add much to the clear and precise language of sections 4 and 5. The next case deals with a more difficult subject, and arose on section 6, which gives the Court a discretionary power to impound by way of indemnity to a trustee the interest of a beneficiary at whose 'instigation' or 'request,' or 'with whose consent in writing,' he has committed a breach of trust, and the enactment is expressly made applicable to the case of a married woman entitled for her separate use, whether with or without a restraint upon anticipation. Under the previous law a restraint upon anticipation was an effectual bar to such an indemnity, and, even where there was no restraint, the Court would not impound the separate estate of a married woman by way of indemnity to the trustee, on the ground of her having approved a breach of trust, unless she was fully informed of the state of the case, and, in the language of the Court of Appeal, had been 'an actual actor in the transaction herself.' (See *Sawyer* v. *Sawyer*, 54 Law J. Rep. Chanc. 444; L. R. 28 Chanc. Div. 595.) In the case under the Act—*Ricketts* v. *Ricketts*, 64 L. T. (N.S.) 263—the trustees of a sub-settlement sued the trustees of the original settlement for breach of trust committed at the request of the beneficiaries under the sub-settlement, one of whom was a married woman, and the defendants counterclaimed for indemnity out of the interests of the beneficiaries under the sub-settlement. Mr. Justice Romer held that the interest of the married woman being derived under the sub-settlement was not an interest of a beneficiary in the trust estate of which the defendants were trustees, and that the case, therefore, did not fall within the section at all; and he added these words, which deserve the careful attention of trustees and their advisers: 'And even if it did, I should not feel myself justified, in the exercise of the judicial discretion vested in me by that section, in impounding any part of that interest by way of indemnity to the defendants in this case, seeing that the defendants committed their breach of trust, not owing to any misrepresentation or deceit on her part, but with their eyes open—when they must be taken to have known that her interest could not be validly dealt with—and seeing that to declare that her interest ought to be impounded would be in effect now to give the trustees the benefit of a charge on that interest to cover their breach of trust.' If the interests of married women are still to be protected against themselves, and if, in this sense, the restraint upon anticipation is to remain of any effect, the discretion of the Court will probably have to be guided by similar considerations in other cases. It may be conjectured, however, that the Courts will have to bestow considerable attention upon this section in the future. The next section on which we have a reported decision is section 8, empowering a trustee, with certain exceptions in the case of fraud or retention or conversion of the trust property, to plead in any action (*a*) any statute of limitation in the same way as he might have done in such action if he had not been a trustee, or (*b*) if the action is one to recover money or property, and there is no existing statute of limitation applicable, then, in effect, to plead the lapse of time in the same manner as in an action of debt for money had and received. The intention of the draftsman probably was, subject to the stated exceptions, to place an action for breach of trust on the same footing as an action for breach of contract. In the case of *Andrew* v. *Cooper*, 59 Law J. Rep. Chanc. 815; L. R. 45 Chanc. Div. 444, an action came before Lord Justice Fry, sitting for Mr. Justice Kekewich, to make trustees liable for losses arising from investments negligently made on insufficient security more than six years before the action. Lord Justice Fry held that, as there was no existing statute of limitation to such an action against trustees, the case was not within clause *a*, but he also held that under clause *b* the action was barred. The case seems an exact illustration of the benefit intended to be conferred by the Act upon trustees. As regards clause *a*, Lord Justice Fry asked in the course of argument: 'How can section 8, subsection 1 (*a*) apply? An action for breach of trust cannot be brought against anyone who is not a trustee. Of what statute of limitations do you claim the benefit under that clause?' And, again, in his judgment he says: 'In the first place, it is obvious that, if a person had not been a trustee, he could not be sued for a breach of trust; and, further, that there is no right or privilege, that I am aware of, conferred by any statute of limitation in respect of the breach of trust. Therefore I should have great difficulty in applying that subsection to the present case.' If these observations are well founded, it would appear that clause *a* is likely to remain a dead letter; at any rate, it is not easy to conceive a case to which it can apply. In another case of *Moore* v. *Knight*, 60 Law J. Rep. Chanc. 271; L. R. (1891) 1 Chanc. Div. 547, the representatives of a deceased solicitor invoked the aid of this section in an action to make his estate responsible for the embezzlement of a client's moneys by a clerk of the firm. The moneys had been deposited in or before the year 1874 with the firm for investment, and representations from time to time made to the client on behalf of the firm that the investments had been made and interest paid to her down to 1886, when it was discovered that the moneys had never in fact been invested but had been embezzled, the deceased solicitor being himself innocent of the fraud. The facts of this case clearly brought it within the authority of *Blair* v. *Bromley*, 2 Ph. 354; 16 Law J. Rep. Chanc. 105, 495, where under similar circumstances an innocent partner was held answerable notwithstanding the Statutes of Limitation, but it was contended that the change made in the law by section 8 had rendered that decision no longer applicable. Mr. Justice Stirling, however, held that that case and the case before him depended on principles of law relating to representation and partner-

ship, and not on those which relate to trusts, and that those principles were unaffected by section 8 of the Trustee Act, whether reliance was placed on clause *a* or clause *b* of subsection 1. In other words, he decided that, if the representations made by the firm prevent the discovery of the fraud until the period of six years has expired, the innocent partner is still deprived of the benefit of the Trustee Act, being liable by virtue of the representations which are binding on him as a partner, and that this liability which arises out of the law of agency and concealed fraud is unaffected by the new Act.

## DESERTED HUSBANDS.

*Michell* v. *Michell* (noted *ante*, p. 68) seems to show conclusively that it is perfectly useless for a husband to take proceedings for the restitution of conjugal rights if the wife is restrained from anticipating her property. When the recent *cause célèbre* was decided, and the Court of Appeal refused to allow Mr. Jackson to regain possession by force of his wife's person, there was still left for a husband, who had obtained the decree which the wife would not obey, a right to apply to the Court for an allowance out of her property. The Act of 1884 provides that 'where the application for restitution of conjugal rights is by the husband, if it shall be made to appear to the Court that the wife is entitled to any property, either in possession or reversion, or is in receipt of any profits of trade or earnings, the Court may, if it shall think fit, order a settlement to be made to the satisfaction of the Court of such property, or any part thereof, for the benefit of the petitioner and of the children of the marriage, or either or any of them,' &c. On the strength of this section last year, in *Swift* v. *Swift*, 59 Law J. Rep. (N.S.) 61; L. R. 15 P. Div. 118, a wife, who had refused to obey a decree for restitution, was compelled to pay an annuity to her husband. Part of her income, from which this annuity was to be raised, was settled on her for her separate use, and part for her separate use without power of anticipation. The registrar submitted that the Court could not vary the marriage settlement as to the first part, and could not deal with the second part, which she was restrained from anticipating. The answer of the present president was: 'I agree that I cannot alter the marriage settlement; and, if I were asked to do it, I should refuse. But, if I find the lady in possession of an income, I need not ask where she gets it from; I can order her to pay out of it a certain sum annually to her husband, and I have no hesitation in making such an order in the present case.' Relying on this case, the unfortunate petitioner in *Michell* v. *Michell* essayed to obtain some maintenance out of his wife's income to console him for the loss of her company, and Mr. Justice Jeune acceded to his petition. The Court of Appeal, however, reversed this decision, holding that, as the wife was restrained from anticipation, the Court could not deal with her property. The only consolation to the husband is that the petition was dismissed without costs, except those of the application to dismiss after the judgment of the Court of Appeal. The present position of affairs is, then, that a husband may, if he chooses, for the look of the thing, obtain a decree for restitution of conjugal rights, but, if the wife is possessed of a large income which she cannot anticipate, she can treat the decree with contempt. Someone has described war as 'that appeal to force that lies behind every tribunal of justice;' but behind this tribunal of justice, if the wife is restrained as above mentioned, no appeal to force can be made, and the thunder of the judicial decree is a mere *brutum fulmen*.

It is an interesting speculation as to the reason why a husband should wish a wife to be compelled to live with him when she is unwilling, and will therefore probably make him much unhappier by her presence than she has done by her absence. Perhaps it is an offended pride which delights in showing its power over the object which has wounded it, or perhaps he supposes that his presence will have the power of winning back the love which he has temporarily forfeited. But the question of practical importance is, What power has the absent wife to bind her husband and make him liable for her necessaries, when she thus willingly, and against his will, absents herself from the home and food with which he would provide her? One of the best known cases on the wife's power to bind her husband by her contracts for necessaries is *Debenham* v. *Mellon*, 50 Law J. Rep. Q. B. 155; L. R. 6 App. Cas. 34. In that case, Lord Selborne said, with reference to the question whether the mere fact of a marriage implies a mandate by law making the wife the agent in law for the husband, to bind him and to pledge his credit, 'all the authorities show that there is no such mandate in law, except in the particular case of necessity—a necessity which perhaps *primâ facie* may arise when the husband has deserted the wife, or compelled her to live apart from him, without properly providing for her.' Obviously that is exactly the converse of the case which we are now discussing. If the husband refused to restore conjugal rights to his wife, apart from any power which the Court has of compelling him to make a settlement under the Act of 1884, he would be liable to supply his neglected wife with necessaries, or to pay for the same if she furnished herself with them. In Macqueen's 'Law of Husband and Wife' (3rd edit. p. 101) it is stated that 'when the wife is living apart from her husband the presumption changes sides, and the *onus probandi* is thrown on the party alleging the authority (*i.e.* of the wife to bind the husband by her acts done 'as his agent in the ordinary course of and as part of domestic administration'); for the law casts upon married persons the duty of cohabitation, and a husband is not bound to support a wife who, without just cause, refuses to cohabit with him. *Primâ facie*, therefore, a woman living apart from her husband has no authority to bind him. In order to fasten liability upon the husband, therefore, the separation must be justified.' The same learned authority gives, on p. 103, three grounds of separation sufficient to constitute her his agent, though they are living apart: '(1) Where she has been deserted by her husband; (2) where her husband has turned her out of doors; (3) where her husband's misconduct has compelled her to leave him.' Husbands whose wives have treated them, and the decree of the Court ordering restitution of conjugal rights, with contempt, have thus no grounds to fear that their wives can be still regarded as their agents, and that long bills for necessaries, according to their station in life, may be mounting up against them. The burden of proof being already on the wife, when they are separated, the decree of the Court will prevent its being successfully sustained by the wife, and the presumption will become absolute instead of *primâ facie* in favour of the husband.

## LEGISLATIVE PROGRESS.

IN the House of Lords the following is the week's record:—

Bills read a third time and passed:—

Army Schools Bill.
Charities Recovery Bill.
Merchandise Marks Bill.
London (City) Trial of Civil Causes Bill.
Registration of Electors Acts Amendment Bills.

Bills passed through Committee:—

Newfoundland Fisheries Bill.
Savings Banks Bill.

In the House of Commons.

Third reading:—

Slander of Women Bill.

Bill through Committee:—

Reformatory and Industrial School Children Bill.

Second reading:—

Labourers' Cottage Gardens Bill.

New bills:—

To Consolidate the Enactments Granting and Relating to the Stamp Duties upon Instruments and certain other Enactments Relating to Stamp Duties.

To Consolidate the Law Relating to the Management of Stamp Duties.

To Enable Members to Resign their Seats.

To Amend the Law Relating to Industrial Assurance Societies and Companies.

Forged Transfers (No. 2) Bill.

To Amend the Elementary Education Act, 1870, and the School Board Act, 1885, so far as relates to the Election of the School Board for London.

To Limit the Rating Powers of the School Board for London.

To Amend the Mortmain and Charitable Uses Act, 1888.

Bills withdrawn:—

Superannuations (Officers of County Councils) Bill.
Forged Transfers Bill.
Payment of Members Bill.

# Reviews.

## HAMILTON ON COMPANY LAW.

*A Manual of Company Law for the Use of Directors and Promoters.* By WILLIAM FREDERICK HAMILTON, LL.D., of the Middle Temple, Barrister-at-Law, assisted by KENNARD GOLBORNE METCALFE, M.A., of Lincoln's Inn, Barrister-at-Law. London: Stevens & Sons (Lim.). 1891.

THE publication of this manual is opportune. Of the 12,500 directors who, the author informs us, now hold office, and whose ranks are being constantly added to, not a few must feel puzzled and uneasy as to the extent of their duties and liabilities. The Act of 1890 has certainly not tended to diminish this feeling, and a manual of company law on the lines of Mr. Hamilton's work will, we imagine, be welcomed by a large circle of readers, both lay and professional. The system adopted is that of dividing the subject into its natural heads, such as 'Capital,' 'Meetings,' 'Liabilities of Directors,' and so on, and then to state the law relating to these in concise and clearly expressed paragraphs, printed in bold type, and numbered. These axioms (as they may be termed) are illustrated by decided cases and ample notes in smaller type. The index is complete, and has evidently been very carefully revised, and the same remark applies to the table of cases. The author has naturally devoted special attention to the Directors' Liability Act, 1890, the sections being printed *in extenso*, and thoroughly examined and explained. A list of stamp duties affecting companies and a table of fees payable to the registrar of joint-stock companies are added as appendices. We must not omit to mention that the winding up of companies is not dealt with in this manual, directors, as the author reminds us, being only interested in companies while they are going concerns. Mr. Hamilton is to be congratulated on the successful performance of a task by no means easy, and we can safely recommend his work as a careful analysis of company law, and at the same time a thoroughly practical guide for directors, promoters, and shareholders. The price of the book is 12*s.* 6*d.*

## HUDSON ON BUILDING CONTRACTS.

*The Law of Building and Engineering Contracts and of the Duties and Liabilities of Engineers, Architects, Surveyors, and Valuers.* With an Appendix of Precedents and an Appendix of Unreported Cases. By ALFRED A. HUDSON, Barrister-at-Law. London: Waterlow & Sons (Lim.) and Stevens & Haynes. 1891.

THIS book is an attempt to treat exhaustively a highly complicated and technical subject, but, owing to the double training which the author has undergone, first as architect, and, secondly, in his present profession, he is perhaps the only writer who could have treated it so successfully. The method of treatment is to divide the subject into thirteen chapters, arranged as far as possible in accordance with the natural sequence of events, beginning with the respective duties and liabilities of the architect, engineer, and quantity surveyor, and ending with a consideration of the various modes in which liabilities arising under building contracts are usually ascertained and adjusted. In an introductory chapter the author points out ten sources giving rise to the peculiarity of building and engineering contracts, and then, after touching upon the position of builder and the construction of building contracts, he apologises, as we think unnecessarily, for having, in his citation of cases, drawn largely from American and English colonial authorities. There can be no doubt that on a subject of this kind the American decisions are especially valuable, and invariably receive, as they deserve, the utmost respect on the part of the English Courts. The Introduction concludes with a suggestion as to the formation of a new tribunal for the determination of the peculiarly technical questions which constantly arise upon building and engineering contracts—viz. a 'Building Court'—to be presided over by a judge with assessors. The suggestion is not without value. Chapter II. deals with Engineers and Architects, the extent of their authority, duties, and liabilities, and their system of charges; Chapter III. treats of Quantity Surveyors, and Bills of Quantities; Chapter IV. of

Tenders and Contracts generally; Chapter V. of Contracts with Public Bodies. The headings of the remaining chapters are as follows: VI., Performance and Payment; VII., Approval and Certificates; VIII., Extras; IX., Price and Damages; X., Vesting of Materials, Lien and Forfeiture; XI., Assignment of Contracts; XII., Guarantees and Sureties; and XIII., Arbitration and Award. There are two appendices, the first consisting of Precedents and Scales of Professional Charges, together with an enumeration of the Acts relating to building; and the second of a selection of unreported cases. These latter are principally jury cases taken from the *Times* newspaper and other sources; but no doubt it will be found useful to have them collected in this volume. A very full index completes the book. Mr. Hudson has struck out a new line for himself and produced a work of considerable merit, and one which will probably be found indispensable by practitioners, inasmuch as it contains a great deal that is not to be found elsewhere. The Table of Cases refers to all the reports, and, in respect of type, paper, and general get-up, the publishers could not have done better. The price is 36*s*.

# Correspondence.

## COURT ROLLS.

Sir,—Your correspondent, 'T. K.,' will find what he requires in the Selden Society's volume of 'Select Pleas in Manorial and other Seigniorial Courts' (published in 1889) and in the forthcoming volume (which will be ready in the course of a few weeks) of 'Precedents for the Business of Manorial Courts.' Each of these contains both the original text and a translation.

P. Edward Dove,
Honorary Secretary and Treasurer,
Selden Society.

Selden Society, 23 Old Buildings,
Lincoln's Inn, London, W.C.:
May 4.

# Unreported Cases.

## NISI PRIUS.

### ACTION FOR DETINUE OF A PICTURE.

The case of *Von Knoop* v. *Moss and Jameson* was heard before Mr. Justice Mathew, without a jury, on May 4. This was an action by Baron von Knoop against Messrs. Moss & Jameson, auctioneers, of Chancery Lane, for detinue of an oil painting by Mr. Caton Woodville, the well-known artist, entitled 'The Last Ride of the Emperor Frederick William.' The short facts of the case were as follows: At the end of the year 1888 the plaintiff commissioned Mr. Caton Woodville to paint him a picture of the Emperor Frederick William riding in the Jubilee procession. The price was to be 150 guineas. In March, 1889, the picture was completed and sent to the Royal Academy, where, however, it was not accepted. It was then sent to the studio of a Mr. Kerr and afterwards returned to Mr. Woodville's Fulham studio, as the plaintiff wished the background of the picture to be changed from a scene in Berlin to one in London. These alterations Mr. Woodville agreed to do, and the plaintiff heard nothing more of his picture until the beginning of January, 1890, when his solicitor heard from Mrs. Woodville that the picture had been seized under a distress for rent at Mr. Woodville's house, Tite Street, Chelsea, where there was another studio. He communicated with the defendants, who had made the distress and were to conduct the sale, claiming the picture, but the answer was that they could do nothing in the matter beyond letting him know when the sale was to be held and sending him a catalogue. The sale took place on January 10, and was announced to begin at 12 noon, but not until 3.30 P.M. did the plaintiff's solicitor, Mr. Parton, receive the catalogue by post. He at once drove off to the auction-rooms, where he, however, found that the picture had been sold to a Mr. Irving for 8*l*. He at once complained to Mr. Jameson, who replied that the catalogue had been posted on the morning of the 9th, and that he could do nothing in the matter, as Mr. Irving was entitled to remove the picture when he wished. Some suggestion was made as to repurchasing from Mr. Irving, but that came to nothing, as he stood out for a large price. Action was then brought and Irving was made a defendant and gave an undertaking not to part with the picture, but early this year he went to America, where he has since died, it not now being known what has become of the picture. Evidence having been given in support of plaintiff's case, for the defence witnesses were called who proved that at the time when the picture was seized it was hanging up in the drawing-room at Mr. Woodville's, there having been no studio at Tite Street since March, 1889, as what had been the studio had been turned into a drawing-room and was used as such by Mrs. Woodville while Mr. Caton Woodville was abroad. It was proved further that the catalogue was posted on the 9th, although from the post-mark it did not appear to have been 'cleared' until midday on the 10th, and evidence was also given that the sale was conducted in a perfectly *bonâ fide* and businesslike manner, all possible care being taken to obtain good prices. It appeared that there had been numerous complaints as to letters having been delayed through sticking in the box at the Chancery Lane post-office, and that was suggested as the cause of the delay.—Mr. Dunham, for the defendants, argued that the picture, being on demised premises, was liable to distress, as no privilege had been made out. An artist did not exercise a public trade within the meaning of the rule in *Clarke* v. *The Millwall Docks*, 55 Law J. Rep. Q. B. 378; L. R. 17 Q. B. Div. 494. Even if he did the privilege would only extend to his business premises (*Lyons* v. *Elliott*, 45 Law J. Rep. Q. B. 159; L. R. 1 Q. B. Div. 210), and would, therefore, only extend to the Fulham studio and not to the Tite Street premises. As to the sale not being *bonâ fide*, and that the best price was not obtained, there was no evidence whatever to support those suggestions.—Mr. Kemp, Q.C., submitted that it was immaterial that the privilege was not claimed at the time so long as the fact remains that it was an unfinished picture, inasmuch as it had to be touched up or altered. The plaintiff had not waived any of his rights by not explaining the nature of his claim to the defendants, or by intimating to them that he wished to buy in the picture at the sale rather than lose it. The picture was not sold for the best price, as no special means were taken to show the public that it was a valuable work.—Mr. Justice Mathew: Nor were the defendants told what it had cost. If the plaintiff wanted to buy it in cheap, I can quite understand that, however.—Mr. Kemp, Q.C.: An auctioneer is a valuer, and should have known that a picture by a well-known artist should not be lumped into a sale like a cheap oleograph. Lastly, as to the *bona fides* of the defendants, it was very remarkable that the catalogue should have remained twenty-four hours in the letter-box, and that a man like Irving, about whom nothing was known, should have

become the purchaser of a 150-guinea picture for 8*l.*—Mr. Justice Mathew, in giving judgment, said: Most of the facts in this case are admitted up to a certain point, so I need not again refer to them. I am satisfied, however, that after March, 1889, Mr. Caton Woodville did no work at either the Fulham or Tite Street studios. How the picture came to be removed to Tite Street is not quite clear, but it was done, no doubt, with a view to its safe custody. This was, however, rather unfortunate, as three quarters' rent being due at Tite Street a distress was put in and everything on the premises seized, including the picture, which was found hanging up in the drawing-room occupied by Mrs. Woodville. Under these circumstances, the plaintiff himself being abroad, his solicitor, who no doubt did not know much about the history of the picture, had to do the best he could. He therefore applied to the defendants to give up the picture, but they declined, adding, however, that if the other goods would satisfy the landlord's claim the picture would not be sold, and that in any event they would sell it last. They promised, further, to send a catalogue and let him know when the sale would take place. The catalogue did not, in fact, arrive until 3.30 P.M. on the day of the sale, and no doubt that fact at first created a suspicion in the mind of the plaintiff's solicitor. I am, however, satisfied that the catalogue was posted on the previous day, and that it did not arrive in due course through some irregularity on the part of the Post Office. The defendants are, therefore, in no way to blame in that matter. Mr. Parton, however, was still more suspicious when he found that Irving had bought the picture for 8*l.*, and that he at once wanted a large sum to induce him to resell the picture. The plaintiff's suggestion being that Irving was not a *bonâ-fide* purchaser, I do not find a tittle of evidence which would support such a charge. Further, it is said that the defendants would know the value of the picture, and should not have let it go for so small a sum as 8*l.* But it is well known that at such sales prices run very low, and it is not unimportant that another bidder only thought it worth his while to bid 7*l.* 10*s.* I am therefore clearly of opinion that there is no ground for saying that the sale was not properly conducted, and that the best price was not obtained. Lastly, as to the point of law, it is said that this picture was privileged, having been sent to be worked up, and that it came within the rule in the well-known case of *Simpson* v. *Hartopp*, 1 Sm. L. C 8th edit. 450, which has been followed in other cases. I am, however, not by any means clear that Tite Street was a privileged place, though Fulham might have been, for there is no evidence whatever of any work having been done at Tite Street. I am, however, clear that an artist is no more a 'public trader' within the meaning of the rule than 'barristers, poets, or dramatists.' No materials are supplied to him, as he supplies his own canvas, colours, and genius. I have come to the conclusion that the defendants cannot be treated as having sold a privileged article, and that they had no notice that any privilege was claimed—in fact, the plaintiff wanted to buy it in at the sale. My judgment must be for the defendants, with costs.—Mr. Kemp, Q.C., and Mr. Avory were for the plaintiff; Mr. Dunham (with him Mr. Jelf, Q.C.) for the defendants.

RENTS COLLECTED AND DISTRAINTS LEVIED TO RECOVER SAME, by Messrs. HENRY C. WOOD (Surveyor to the Parish of Tooting) and HENRY KIRBY (Wood & Kirby), Certificated Brokers, 1 Great James Street, Bedford Row, W.C. No charge made to Landlords if Rent over 20*l.* Troublesome tenants got rid of. Possession also taken under Bills of Sale, Mortgages, &c. Bailiffs to the Parish of St. Dunstan in the West and City of London (Farringdon Ward). Money paid over same day received. Bankers: City Bank, Holborn Viaduct. References, if desired, to clients of many years' standing. Prompt and personal attention given.—ADVT.

## THE GERMAN LAW OF INSURANCE.

MR. T. E. YOUNG, B.A., read a paper on April 27, before a meeting of the Institute of Actuaries, Staple Inn, Holborn, on "The German Law of Insurance against Invalidity and Old Age.' Mr. Benjamin Newbatt, the president, occupied the chair, and there was a large attendance.

The lecturer said that the subject they were met to discuss must demand careful attention as one of the most daring and economic experiments in modern history. The law was adopted by the German Reichstag on May 23, 1889, and its many varied aspects solicited and repaid sedulous thought as a contribution to one of the deepest problems in the evolution of man. After furnishing a brief history of fiscal legislation and State socialism in Germany, the lecturer said that with fluctuations, up to 1877, the economic policy of Germany was, as a rule, founded upon free trade. The classes of persons to be insured on completing the age of sixteen included those engaged as workmen, assistants, apprentices, and servants who received a payment or wage, German sailors, and masters under certain limited conditions. The law provided an absolute right to an allowance in invalidity and old age, and every person was entitled to an allowance for invaljdity, without regard to age, who had become confirmedly unfit for work. If this incapacity were due to accident, the individual only possesses a right to an allowance for invalidity when no allowance could be paid under the provisions of the imperial statute for insurance against accidents. Each insured member was entitled to an allowance for invalidity, without necessarily proving incapability of work, who had completed his seventieth year. The scheme was expected to include 12,000,000 persons. The chief machinery consisted of insurance institutes which were to be established by order of the State Governments for the large communal unions of their territory, or for the whole territory of the Federal State. In the essential difference between the present law and its legislative precursors, the Government might be said to have adopted for the first time a genuinely socialistic principle, since, under the preceding insurance laws, the burden of contributions fell solely on employers, as in the insurance against accidents, or upon employers and the insured, as in sickness insurance, while in this latest scheme a third part of the charge was contributed by the State. The cost of administration was assessed at one mark per head of the insured, or 600,000*l.* a year, and it was estimated that the employment of post-offices for the sale of insurance stamps avoided the necessity of establishing 83,000 additional centres for that purpose. The State contribution to the financial objects of the law amounted to one-third of the total sums which, in each year, were actually paid in annuities; but many persons withdrew from an employment liable to insurance, and in those cases no further State contribution was payable. The average annual charge entailed on the State for the combined insurance of old age and invalidity, exclusive of the estimated additional expenses of management, and the annuities in respect of loss of contributions during military service in mobilisation and war, amounted to 2,421,200*l.* The rate of interest of 3½ per cent. was excessive. The scheme failed to sustain Mr. Lecky's test of national excellence, or net moral result, for, far beyond all its predecessors, it formed a more coercive and a deeper interference with individual liberty, and a more serious restraint upon a free and original expansion of national character and life. It restrained the development of the individual, and consequently of the national character. A Government, by such needlessly detailed and elaborate supervision, holding itself implicitly as possessing the sole remedy for all social ills, still

more radically tended to demoralise and impede national life by confirming and widening the social habit of appealing to the State at every crisis, real or imagined. It had been pointed out that the intervention of the State subsidy was liable to attach a pauperising tendency to the bill, and that the additional indirect taxation requisite would be principally incident upon the poorer classes, so that the subsidy, designed as a blessing, might ultimately be regarded by the people as a curse. The payment of a portion of the contributions by the employer would undoubtedly involve a reduction in the nominal amount of wages, and consequently a further restriction of personal and social life. Reduced wages with higher prices would act in combined power against the workman's impoverished condition. Hence, with augmented taxation and a reduction of the means of life, prices of the labourers' essentials of life—to omit regard altogether of possible comforts—would gradually increase; so that we obtained the relation of advancing cost and diminishing means of purchase, involving by restriction of the necessaries of livelihood, defective and inefficient work, and the disastrous enfeeblement of individual enterprise. The scheme appeared to form an endeavour to attack a symptom merely of a national disquietude, instead of a wise and cautious investigation of the nature of the ailment and an attempted removal of the cause. It was clearly a valuable adjunct to the resources of autocracy, however beneficently disposed, for besides a military power searching into every grade of life, a social and civil power was now evoked into being, entering into every remaining channel and intensifying and extending the grip that already existed. The law would enfeeble the national habits and character, and the progress of the people in the scale of highest development.

## THE COMPANIES (WINDING-UP) ACT, 1890.

### GENERAL RULES MADE PURSUANT TO SECTION 26 OF THE COMPANIES (WINDING-UP) ACT, 1890.

*Statements by Liquidators to the Registrar of Joint-stock Companies under Section* 15 *of the Companies (Winding-up) Act*, 1890.

1. [127] The statements with respect to the proceedings in and position of a liquidation of a company, the winding-up of which is not concluded within a year after its commencement, shall be sent twice in every year as follows:—

(1) Where the winding-up commenced on or before April 1, 1890, and was not concluded before April 1, 1891, the first statement, brought down to March 31, 1891, shall be sent within thirty days from the first day of May, 1891, or within such extended period as the Board of Trade, or (where the winding-up is by or subject to the supervision of the Court) as the judge may in any particular case sanction, and the next statement, brought down to September 30, 1891, shall be sent within thirty days from that date.

(2) Where the winding-up did not commence on or before the first day of April, 1890, the first statement, commencing at the date when a liquidator was first appointed and brought down to the end of twelve months from the commencement of the winding-up, shall be sent within thirty days from the expiration of such twelve months, or within such extended period as the Board of Trade may sanction.

(3) The subsequent statements shall be sent at intervals of half a year, each statement being brought down to the end of the half-year for which it is sent.

2. [127A] (1) Subject to the next succeeding rule, Form No. 75, with such variations as circumstances may require, shall be used, and the directions specified in the form shall (unless the Board of Trade otherwise direct) be observed in reference to every statement.

(2) Every statement shall be sent in duplicate, and shall be verified by an affidavit in the Form No. 75A, with such variations as circumstances may require.

3. [127B] Where the winding-up commenced on or before April 1, 1890, and was not concluded before April 1, 1891:—

(1) The first statement shall, unless the Board of Trade, on the application of the liquidator, otherwise direct, commence at the date when a liquidator was first appointed.

(2) In any winding-up in which the accounts of the liquidator have been passed in the chambers of a judge of the Chancery Division of the High Court prior to January 1, 1891, and in any case in which it shall appear to the Board of Trade inexpedient to require a detailed statement of all the liquidator's receipts and payments on account of the company, the statement may be sent in the form of such a summary of the liquidator's accounts as the Board of Trade shall approve.

4. [127C] Where a liquidator has not during any period for which a statement has to be sent received or paid any money on account of the company, he shall at the period when he is required to transmit his statement send to the registrar of joint-stock companies an affidavit of no receipts or payments in the Form No. 75A.

*Unclaimed Funds and Undistributed Assets in the Hands of the Liquidator.*

5. [127D] (1) All money in the hands of or under the control of a liquidator of a company representing unclaimed dividends, which for six months from the date when the dividend became payable have remained in the hands or under the control of the liquidator, shall forthwith, on the expiration of the six months, be paid into the Companies Liquidation Account.

(2) All other money in the hands or under the control of a liquidator of a company, representing unclaimed or undistributed assets, which under subsection 3 of section 15 of the Companies (Winding-up) Act, 1890, the liquidator is to pay into the Companies Liquidation Account, shall be ascertained as on the date to which the statement of receipts and payments sent in to the registrar of joint-stock companies is brought down, and the amount to be paid to the Companies Liquidation Account shall be the minimum balance of such money which the liquidator has had in his hands or under his control during the six months immediately preceding the date to which the statement is brought down, less such part (if any) thereof as the Board of Trade may authorise him to retain for the immediate purposes of the liquidation. Such amount shall be paid into the Companies Liquidation Account within fourteen days from the date to which the statement of account is brought down.

6. [132A] Where the liquidator requires to make payments out of money paid into the Bank of England, in pursuance of section 15 of the Companies (Winding-up) Act, 1890, either by way of distribution or in respect of the costs and expenses of the proceedings, he shall apply in such form and manner as the Board of Trade may direct, and the Board of Trade may thereupon either make an order for the payment out to him of the sum required to make such payments, or may direct cheques to be issued to him for transmission to the persons to whom the payments are to be made.

7. [130A] Every application by the Board of Trade for the purpose of ascertaining and getting in money payable

into the Bank of England, pursuant to section 15 of the Companies (Winding-up) Act, 1890—

(*a*) Where the winding-up is by or subject to the supervision of the High Court, shall be made to and dealt with by the judge to whom the winding-up is assigned, upon motion in accordance with the practice of the Chancery Division of the High Court relating to motions;

(*b*) Where the winding-up is in the Stannaries Court, shall be made upon motion before the vice-warden;

(*c*) Where the winding-up is in a Palatine Court or a County Court, shall be made to that Court;

(*d*) In other cases, shall be made to the judge of the High Court who for the time being exercises the jurisdiction of the High Court in Bankruptcy, and in accordance with the practice which is observed in reference to applications by the Board of Trade under section 162 of the Bankruptcy Act, 1888.

8. Rules 127 and 130, and Form No. 75 of the Companies (Winding-up) Rules, 1890, are annulled as from the date on which these rules came into operation.

9. These rules shall come into operation on May 31, 1891. They shall be construed with and deemed to form part of the Companies (Winding-up) Rules, 1890, and each of these rules may be cited with reference to those rules by the number in square brackets set against the rule at the commencement thereof. The forms annexed to these rules shall be deemed to form part of the forms annexed to the Companies (Winding-up) Rules, 1890, and each of the forms annexed to these rules may be cited with reference to the forms annexed to the Companies (Winding-up) Rules, 1890, by the number placed at the head of the form. (Signed) HALSBURY, *C.*

I concur.
M. E. HICKS-BEACH,
President of the Board of Trade.

Dated April 30, 1891.

## LAW STUDENTS SOCIETIES.

DEBATING.—The ordinary weekly meeting of this society was held at the Law Institution, Chancery Lane, on Tuesday, May 5, Mr. Douglas in the chair. The subject for discussion: 'That, in view of the recent decision of the Court of Appeal in *In re Jackson*, legislation is urgently needed to amend the laws relating to husband and wife,' was opened by Mr. Kinipple.—Mr. Woodhouse opposed.—The debate having been declared open, the following gentlemen spoke: in the affirmative—Messrs. Joseph, Nimmo, Aston, Willson, and Thirlby; in the negative—Messrs. Mawdsley, Crawford, and Harcourt.—Mr. Kinipple replied.—On the motion being put to the meeting, it was lost by the casting vote of the chairman.—The annual meeting of the society will be held at the Law Institution on Tuesday, May 12, when the attendance of members is particularly requested.—The next ordinary meeting of the society will be held on Tuesday, October 6.

BUSINESS OF THE COURTS.—SITTINGS AT GUILDHALL.—The Lord Chief Justice took occasion, on May 4, to announce that the contemplated sittings at Guildhall for the trial of London causes would not take place until the commencement of Michaelmas Sittings in November. His lordship added that he had been there himself to see the progress of the Courts, and they were not yet ready. To commence the sittings there earlier would put all parties to inconvenience, while, on the other hand, no object would be answered by it, as there was no hurry.

## HONOURS AND APPOINTMENTS.

MR. R. D. CRIPPS has been appointed Clerk to the Presteign Local Board of Health.

Mr. Richard Preston, of Tunbridge, Kent, has been appointed a Commissioner for Oaths. Mr. Preston was admitted in 1882.

Mr. Archibald Earle Collins (of the firm of Collins & Collins), of 37 King William Street, City, has been appointed a Commissioner for Oaths. Mr. Collins was admitted in 1884.

Mr. Julian Tregenna Biddulph Arnold (of the firm of Keighley, Arnold & Higgs), of 8 Old Jewry, E.C., has been appointed a Commissioner for Oaths. Mr. Arnold was admitted in 1882.

Mr. Ernest Sydney Coulson, of 26 Leadenhall Street, City, has been appointed a Commissioner for Oaths. Mr. Coulson was admitted in 1880.

Mr. Ernest William Gover (of the firm of Henry Gover & Son), of 3 Adelaide Place, E.C., has been appointed a Commissioner for Oaths. Mr. Gover was admitted in 1880.

Mr. Charles Edward Bonner, B.A., solicitor (of the firm of Bonner, Calthrop & Bonner), of Spalding, has been appointed a commissioner for Oaths. Mr. Bonner was admitted in 1885.

Mr. Walter Trevelyan Clark, solicitor (of the firm of Clark & Smith), of Malmesbury, has been appointed a Commissioner for Oaths. Mr. Clark was admitted in 1879.

Mr. George Bidlake, of Wellington, Salop, has been appointed a Commissioner for Oaths. Mr. Bidlake was admitted in 1884.

## NOTICES FOR THE WEEK.

### ROTA OF REGISTRARS.

MONDAY, May 11.—Court of Appeal No. 2: Mr. Pugh. Mr. Justice Chitty: Mr. Leach. Mr. Justice North: Mr. Clowes. Mr. Justice Stirling: Mr. Lavie. Mr. Justice Kekewich: Mr. Farmer. Mr. Justice Romer: Mr. Pemberton.

Tuesday, May 12.—Court of Appeal No. 2: Mr. Beal. Mr. Justice Chitty: Mr. Godfrey. Mr. Justice North: Mr. Jackson. Mr. Justice Stirling: Mr. Carrington. Mr. Justice Kekewich: Mr. Rolt. Mr. Justice Romer: Mr. Ward.

Wednesday, May 13.—Court of Appeal No. 2: Mr. Pugh. Mr. Justice Chitty: Mr. Leach. Mr. Justice North: Mr. Clowes. Mr. Justice Stirling: Mr. Lavie. Mr. Justice Kekewich: Mr. Farmer. Mr. Justice Romer: Mr. Pemberton.

Thursday, May 14.—Court of Appeal No. 2: Mr. Beal. Mr. Justice Chitty: Mr. Godfrey. Mr. Justice North: Mr. Jackson. Mr. Justice Stirling: Mr. Carrington. Mr. Justice Kekewich: Mr. Rolt. Mr. Justice Romer: Mr. Ward.

Friday, May 15.—Court of Appeal No. 2: Mr. Pugh. Mr. Justice Chitty: Mr. Leach. Mr. Justice North: Mr. Clowes. Mr. Justice Stirling: Mr. Lavie. Mr. Justice Kekewich: Mr. Farmer. Mr. Justice Romer: Mr. Pemberton.

The Whitsun Vacation will commence on Saturday, May 16, and terminate on Tuesday, May 19, 1891, both days inclusive.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## CALENDAR OF THE COUNTY COURTS.

FROM MAY 11 TO MAY 16.

| No. of Circuit | His Honour | May 11 | May 12 | May 13 | May 14 | May 15 | May 16 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Altrincham | Northwich | Warrington | Birkenhead | — |
| 8 | Judge Heywood | Salford | Salford | Salford | Salford | — | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | Middlesbrough | York | Tadcaster | Easingwold | Knaresborough | Ripon |
| 19 | Judge Barber | — | Alfreton | Belper | Bakewell | Buxton | — |
| 28 | Judge Jordan | Longton | Hanley | Hanley | Burslem | Tamworth | Rugeley |
| 47 | Judge Powell | — | Lambeth | Greenwich | Lambeth | Lambeth | — |
| 54 | Judge Metcalfe | Bristol | Bristol | Bristol | Bristol | Bristol | — |
| 55 | Judge Machonochie | Ringwood | Dorchester | Bridport | Weymouth | Blandford | — |
| 58 | Judge Edge | East Stonehouse | East Stonehouse | East Stonehouse | East Stonehouse | East Stonehouse | Tavistock |

# House of Lords Register.

THURSDAY, APRIL 30.

*The Derwent* (ship — collision — damage — negligence — liability).—Dismissed.

*Allcroft* v. *Bishop of London. Lighton* v. *Bishop of London* (Public Worship Regulation Act, 1874—episcopal discretion—*mandamus* to bishop to act upon representation—alleged unlawful images in cathedral. The first case is reported *sub nom. Regina* v. *Bishop of London*, 58 Law J. Rep. Q. B. 385; L. R. 23 Q. B. Div. 414; on appeal, L. R. 24 Q. B. Div. 213, respondent not called upon).—*Cur. adv. vult.*

FRIDAY, MAY 1.

*Allcroft* v. *Bishop of London. Lighton* v. *Bishop of London.*—*Cur. adv. vult.*

MONDAY, MAY 4.

*Allcroft* v. *Bishop of London. Lighton* v. *Bishop of London.*—*Cur. adv. vult.*

*Lane* v. *Esdaile* (special leave to appeal—expiration of time—refusal of Court of Appeal to grant leave—jurisdiction of House of Lords to entertain appeal from such refusal. Case reported 58 Law J. Rep. Chanc. 265; L. R. 40 Chanc. Div. 520).

TUESDAY, MAY 5.

*Lane* v. *Esdaile.*—Dismissed.

*Smith and others* v. *Cooke and others. Storey* v. *Cooke and others* (creditors' deed—construction—absolute assignment or resulting trust—two appeals raising same question. Reported L. R. 45 Chanc. Div. 38. Court of Appeal reversed; judgment of Kekewich, J., restored, one set of costs only allowed).—Allowed.

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, FRY, L.J., and LOPES, L.J.

THURSDAY, APRIL 30.

*Newman* v. *London and South-Western Railway Company* (appeal of plaintiff from judgment of nonsuit, dated December 6, after trial before Stephen, J., with a jury in Middlesex).—Dismissed.

*Kinnell & Co.* v. *Clements & Co.* (appeal of defendants from judgment of the Lord Chief Justice, dated October 30, at trial without a jury in Middlesex).—Dismissed.

FRIDAY, MAY 1.

*In re Cameron and others, ex parte Debtors and others* (appeal of debtors and others from order of Mr. Registrar Giffard, dated February 21, refusing to rescind receiving order; part heard, March 6—present, Master of Rolls and Bowen, L.J., and Fry, L.J.).—Order by consent.

*Richards and others* v. *Butcher. In re Walbaum's Registered Trade-marks, Nos.* 28,593, 28,594, *and Trade-Marks Acts* (appeal of plaintiffs Walbaum & Co. from order of Kay, J., dated November 12, expunging trade-marks from register; entered into Q.B. List by order).—Dismissed.

*Hunt* v. *Great Northern Railway Company* (appeal of plaintiff from judgment of Stephen, J., dated November 26, at trial with a special jury in Middlesex).—Dismissed.

SATURDAY, MAY 2.

*Unwin* v. *Hanson* (appeal of plaintiff from judgment of Pollock, B., dated July 29, at trial without a jury in Middlesex).—Plaintiff to have costs of cause up to trial, one-tenth of costs of trial and costs of appeal, defendant to have nine-tenths of costs of trial.

*Hick* v. *Tweedy* (appeal of defendant from judgment of Charles, J., dated December 9, at trial without a jury at Newcastle, and cross-notice of appeal by plaintiff).—Dismissed; cross-appeal abandoned.

Before the MASTER OF THE ROLLS, and FRY, L.J.

MONDAY, MAY 4.

*Heinemann & Co.* v. *S. B. Hale & Co.* (appeal of C. H. Sanford (an alleged partner) from refusal of Cave, J., and Charles, J., dated May 1, to set aside writ and service for irregularity).—Allowed.

*Millissich* v. *Spottiswoode & Co.* (appeal of plaintiff from order of Smith, J., and Grantham, J., dated April 13, dismissing application as to taxed costs of action).—Dismissed.

TUESDAY, MAY 5.

*Joyner* v. *Weeks* (appeal of defendant from order of Wills, J., and Wright, J., dated April 17, directing new trial before official referee, and cross-notice for variation of order).—Dismissed and judgment entered for plaintiff for 70*l.*

*Bennett* v. *Daventry Board of Guardians* (appeal of plaintiff in person from order of Mathew, J., and Vaughan Williams, J., dated April 13, staying action as frivolous and vexatious).—Dismissed.

*Green* v. *Briggs* (appeal of defendant from order of Cave, J., at trial, dated April 7, referring questions to official referee).—Dismissed.

Before the MASTER OF THE ROLLS, FRY, L.J., and LOPES, L.J.

WEDNESDAY, MAY 6.

*Plevy* v. *Harvey & Co.* (application of plaintiff for judgment or new trial on appeal from verdict and judgment, dated March 17, at trial before Wills, J., with a jury, at Birmingham).—Dismissed.

*Hardy* v. *Kursheedt Manufacturing Company* (application of defendants for judgment or new trial on appeal from verdict and judgment, dated March 2, at trial before Grantham, J., with a jury, at Nottingham).—Dismissed.

*Fernandes* v. *Castleford Local Board of Health* (application of plaintiff for judgment or new trial on appeal from verdict and judgment, dated May 1, after trial before Smith, J., with a special jury, at Leeds).—Dismissed.

## APPEAL COURT II.

Before LINDLEY, L.J., BOWEN, L.J., and KAY, L.J.

THURSDAY, APRIL 30.

*Hurlbatt (trustee, &c.)* v. *Bath. Hurlbatt (trustee, &c.)* v. *Sanz* (appeal of plaintiff from refusal of Stirling, J., dated April 24, to continue injunction against dealing with shares belonging to A. Hermanos and from refusal to appoint receiver).—Dismissed.

*In re Courts of Justice Concentration Site Act*, 1864, *and Lands Clauses Consolidation Act*, 1855. *Gedye* v. *Commissioners of Her Majesty's Works and Public Building* (appeal of C. J. Jolland from order of North, J., dated February 21).—Dismissed.

FRIDAY, MAY 1.

*In re Tredwell, dec. Jaffray* v. *Tredwell* (appeal of plaintiffs from judgment of North, J., dated February 17; heard April 30).—Allowed.

*Boulton* v. *Carter, Paterson & Co. (Lim.)* (appeal of defendants from judgment of Kekewich, J., dated December 2).—Allowed.

SATURDAY, MAY 2.

*Low* v. *Bouverie* (appeal of defendant from judgment of North, J., dated February 11).—*Cur. adv. vult.*

MONDAY, MAY 4.

*In re Manchester District Registry; In re Shaw Hall Cotton Spinning Company (Lim.) and Companies Acts* (appeal of the official liquidator from the decision of Kekewich, J., dated February 14).—Dismissed.

*Odhams* v. *Biggar* (appeal of the plaintiff from the judgment of Kekewich, J., dated March 7).—Dismissed.

*Barrow* v. *Barrow* (appeal of the defendant J. J. Barrow from the order of Stirling, J., dated January 14, varying the chief clerk's certificate).—Dismissed.

Before LINDLEY, L.J., LOPES, L.J., and KAY, L.J.

TUESDAY, MAY 5.

*Stuart* v. *Bell (N. T.)* (appeal of defendant for judgment or new trial on appeal from verdict and judgment at trial before Wills, J., with a special jury at Leeds; heard February 2).—Judgment for defendant, Lopes, L.J., *dissentiente.*

*S. A. Hampson* v. *W. Guy and others* (application of defendants for new trial on appeal from verdict and judgment dated Jan. 15, at trial before Butt, J., and a special jury).—*Cur. adv. vult.*

*Proffitt* v. *Wye Valley Railway Company* (appeal of defendants from judgment of Kekewich, J., dated March 6, 1891).—Dismissed.

Before LINDLEY, L.J., and KAY, L.J.

WEDNESDAY, MAY 6.

*Cassella & Co.* v. *J. Levinstein & Co.* (appeal of plaintiffs from order of Kekewich, J., dated April 13, for further and better particulars relating to a patent, 9214*, A.D. 1885).—Order varied.

*In re J. Grover's Trusts; Ackworth* v. *Grover* (appeal of plaintiffs from order of Kekewich, J., dated April 17, refusing appointment of receiver of real and personal estate).—Dismissed.

## OBITUARY.

WE regret to record the death at Carrington, on April 16, of Mr. MICHAEL BROWNE, the oldest coroner in England, and who had during a period of fifty-five years held the office of coroner for the borough of Nottingham. Mr. Browne had for several months past been confined to his house, and for the last ten weeks he had been seriously ill. The late coroner for the borough of Nottingham was a remarkable man in every way—remarkable for his ability in the profession he had adopted, for his thoroughness, perseverance, and the high standard of duty which he established and maintained throughout a life which began in the last century. His death severs a link between the present and the past, which was, perhaps, with one exception, absolutely without parallel, the exception being in the case of Mr. Brooksbank, the ex-mayor's serjeant, who was for half-a-century upon terms of friendship with the coroner, who survives him, and, like Mr. Browne, is a nonogenarian. The late Mr. Michael Browne was a Yorkshireman, having been born at Pontefract on November 27, 1800. He was educated at Pontefract, and when thirteen years old entered the office of Mr. Mitton, a solicitor. Subsequently he removed to the office of Mr. Raynor, of Leeds, where he served his articles. He was admitted a solicitor in the year 1828, and established himself in practice three years later at Worksop, Nottinghamshire, where he married, and subsequently betook himself to Nottingham. He entered into partnership with Mr. Christopher Swann, who was then county coroner, but the partnership was not of long duration, and in 1836 Mr. Browne was made borough coroner by the reformed corporation—an office which he held until the day of his death, the work, however, having for several years past been carried on by his son as deputy-coroner. The deceased, who was much respected in the locality, was buried on the 20th ult. at the General Cemetery, Nottingham.

We regret to announce the death of Mr. LINDSEY MIDDLETON ASPLAND, Q.C., LL.D., of the Northern Circuit, which took place at his residence, Linden Gardens, early on May 6, after a short illness from influenza and pneumonia. Mr. Aspland, who was the second son of the Rev. Robert Brook Aspland, of Hackney, was born on April 9, 1843, and had therefore only just completed his forty-eighth year. He was called to the bar at the Middle Temple in 1868, when he joined the Northern Circuit, and was made a Queen's Counsel in 1886. He was a member of Convocation, a member of the Council of University College, London, and had been a member of the Bar Committee since 1883. The learned gentleman was a regular attendant on the Northern Circuit, and his sudden death will cause a widespread feeling of regret among his numerous friends in the legal profession. The deceased gentleman was as late as Friday, May 1, arguing a case before the Court of Appeal.

MR. THOMAS HARE died of pneumonia and pleurisy at 6 Carlyle Mansions, Cheyne Walk, on May 6, having attained a ripe old age. He was a man whose name is familiar to all thoughtful students of the theory of politics; he was also a lawyer who, without attaining

forensic eminence, left his mark upon English law. Mr. Hare was born in 1806, and was called to the bar in 1833, electing to follow his profession on the equity side. The distinguishing characteristics of Mr. Hare as a lawyer were untiring industry and clearness of intellectual vision, and he has left behind him a monument of both these qualities in the shape of 'Hare's Reports in Chancery,' a series extending from 1841 to 1853, which still forms an essential part of every barrister's library. He was also the author of a work upon the 'Discovery of Evidence by Bill and Answer in Equity.' In 1853 Mr. Hare was appointed an inspector of charities, and to this office was added, later, that of assistant charity commissioner. Soon after the General Election of 1857 he published a pamphlet entitled 'The Machinery of Representation,' which attracted so much notice that, after a second and enlarged edition of it had been issued, the author was emboldened to devote himself to the great work of his life, a treatise upon 'The Election of Representatives, Parliamentary and Municipal,' which became known later as 'Hare on Representation.' The subject of the treatise was in all men's minds at that time. The Act of 1832 had given an entirely new complexion to the questions connected with political representation, and many persons will be disposed to say that the true theory of representative government was better understood and more seriously discussed a generation ago than it is now. Foremost among the exponents of the representative principle, not inferior to Mill, Bagehot, Guizot, Lewes, Andriæ, Marshall, Earl Russell, or Earl Grey, was Mr. Hare, whose great work attracted much attention at home and abroad for many years after its publication in 1859. It is impossible within the limits of this brief space to do justice to the original and at the same time elaborate work in which is contained Mr. Hare's attempt to find 'a remedy for the defects in representative institutions which have made them the creatures of a number of dispersed majorities.' It must suffice to say that a great number of thoughtful men, not only in this country, but also on the Continent and in the colonies, have been, and are, of opinion that Mr. Hare's system of preferential and proportional representation would have been, and would be if it were practicable, of great value in preserving the rights of minorities, in securing the due representation of various interests, and in impressing upon the franchise-holder the greatness of his privileges and his responsibilities. Mr. Mill said in a private letter that Mr. Hare had 'lifted the cloud which hung over the future of civilisation.' Mr. Hare retired from the active performance of his duties at the Charity Commission three or four years ago, but up to the last days of his life he retained the keen interest in public affairs, and the charm of manner and modest demeanour which had been characteristic of him through life. Mr. Hare was twice married, his first wife being Mary Samson, and his second, who also died before him, Eleanor Bowes Benson, a sister of the Archbishop of Canterbury. His venerable and striking face will be missed at the bench of the Inner Temple, where he frequently attended to the last, and at the Athenæum Club.

THE WHITSUN VACATION JUDGE.—Mr. Justice Lawrance will be the Whitsun Vacation judge. There will be no sittings in Court during the vacation, but his lordship will be in attendance at Queen's Bench Judges' Chambers on certain days to be fixed in order to hear urgent applications and summonses.

INCOME-TAX.—An important case has just been decided by the Commissioners of Income-tax for the City of London, affecting the interests of underwriters. The Rate and Taxpayers' Protection Association, of Serjeants' Inn, appealed on behalf of an underwriter against the assessment upon him for income-tax for the year 1890, and produced accounts made up for the three years 1886, 1887, and 1888, and claimed to have the assessment reduced to the average shown by such accounts, contending that it was impossible from the nature of the business to render any of a later date. The surveyor objected to the admission of these accounts, alleging that the assessment could not be reduced, except upon accounts made up to the year preceding the year of assessment, but the commissioners adopted the view taken by the association, and reduced the assessment, whereupon the surveyor, on behalf of the Crown, gave notice of an appeal against the commissioners' decision to the higher Courts, but, upon consideration, the Board of Inland Revenue have decided not to proceed with the appeal, but to accept the decision of the commissioners in the matter.

THE LOCAL TAXATION COMMITTEE.—In a report which has just been issued the Local Taxation Committee express much satisfaction at the transfer to the local taxation account of the proceeds of the new duties on beer and spirits. Of the estimated produce of these new duties for England and Wales, 300,000*l.* was allocated to police superannuation, and the 'residue,' 743,000*l.*, was granted to county councils, many of which are devoting to the promotion of technical education the amount thus received by them. The committee also congratulates their supporters on the statement made by the Chancellor of the Exchequer on April 23, that the continuance of the new duties may be counted upon in the same way as the continuance of the probate duty grant. The committee further view with much gratification that not only does the grant of the share of the probate duty—as laid down in the Local Government Act—give direct effect to the principle of contribution from personal property to local taxation, but that the principle of aid from indirect taxation also received emphatic affirmation from the Chancellor of the Exchequer in his Budget speech. In conclusion, they call attention 'to the important expression of opinion by the Chancellor of the Exchequer in his Budget speech to the effect that any reconstruction of the death duties involving an increase in the taxes on real property could not rightly be undertaken without some change in the incidence of the income-tax, which at present—in regard to real property alone—is most unjustly levied on gross rental and not on ratable value.'

## BIRTHS.

On May 2, at 31 Addison Mansions, Kensington, W., the wife of Arthur Quicke, M.A., Barrister-at-Law, of a daughter.

On May 3, at 13 Archibald Road, Tufnell Park, the wife of Henry Edward Edmunds, Solicitor, of a son.

## MARRIAGES.

On April 18, at Grace Church, Chicago, Edgar Felloes, son of A. Felloes, of Portland, Oregon, to Lilian d'Almeida, second daughter of W. Barrington d'Almeida, Barrister-at-Law, of The Grange, West Molesey, Surrey.

On April 25, at St. Stephen's, Lewisham, C. Sleap, jun., of 17 Thornford Road, Lewisham, to Marianne Louisa, elder daughter of the late C. J. Allen, Solicitor, of Walton-on-Thames.

On April 29, at the Chapel Royal, Savoy, William John Hill, M.B. (Cantab.), D.P.H., &c., of 58 New Broad Street, E.C., and Croydon, younger son of the late Henry Hill, Esq., Solicitor, London, to Mary Anne, younger daughter of the late William Brass, Esq., of Streatham Surrey.

## DEATHS.

On April 26, in Fitzwilliam Square, Dublin, Mary, Lady Brady, daughter of the late Right Hon. John Hatchell, of Fortfield House, co. Dublin, and widow of the late Right Hon. Sir Maziere Brady, Bart., many years Lord Chancellor of Ireland.

On April 27, at No. 30 Fulbrook Road, Tufnell Park, N., Thomas Hives, for thirty-five years and upwards the faithful and devoted managing and confidential clerk of the late William Henry Lammin Solicitor, of 18 Buckingham Street, Adelphi.

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# The Law Journal.

*SATURDAY, MAY* 16, 1891.

## 'OBITER DICTA.'

MR. JUSTICE KEKEWICH, on Tuesday last, stated that he should take no more witness actions till the non-witness list was dealt with, but he warned solicitors to have their witness causes ready for trial, since he understood that during the next sittings assistance would be given to the Chancery Division by a judge of the Queen's Bench Division, to whom some of his causes might be transferred for trial. His lordship added that, so far as it lay with him, he would see that the cases highest in his list should be transferred the first.

MR. GOSCHEN'S Stamp Duties Bill, 'to consolidate the several enactments relating to the stamp duties payable upon instruments,' which will probably have been read a second time in the House of Commons before these lines meet the eye, contains 125 clauses and three schedules, schedule 3 containing twenty-six enactments which it is proposed to repeal, from 57 Geo. III. c. 41, s. 8, to sections 18–21 of the Customs and Inland Revenue Act, 1890. 'It is desired,' so we learn from the memorandum to the bill, 'merely to consolidate and repeal the Acts and parts of Acts included in schedule 3, but an opportunity has been taken of giving legal sanction to existing official practice adopted in the interests of the taxpayer, and of removing anomalies in the like interests.' For instance, section 19 of the Act of 1870 has been modified so as to give a judicial discretion as to costs, a distinction between legal and equitable mortgages for unlimited amounts has been abolished, and, in reference to articles of clerkship, whereas at present the duty upon supplementary articles is 10*s.* in every case, the bill provides for the duty being 2*s.* 6*d.* in any case in which original articles are only liable to 2*s.* 6*d.* A companion Stamp Duty Management Bill contains thirty clauses and repeals thirteen Acts or parts of Acts, from 39 & 40 Geo. III. c. 72 to section 15 of the Revenue, Friendly Societies, and National Debt Act, 1882.

MR. JOEL'S article in the current number of the *National Review* on 'the law relating to marriage' will well repay perusal. All the authorities and statutes bearing on the Jackson case are carefully passed in review, with the result that it is finally laid down, as the 6th and 7th of seven carefully formulated propositions, that a husband has no right to capture, take, keep, restrain, confine or imprison his wife, even though she may leave him the day after marriage for no fault of his and without reason assigned, *but* that the husband may restrain, or confine his wife under special circumstances—*e.g.* for threatened misconduct, resorting to bad company, or to prevent injury to herself or others. 'Nevertheless,' winds up Mr. Joel after his long and patient examination of the law, 'there is much obscurity, difficulty, and doubt as to the relation of husband and wife which the Legislature should speedily resolve into certainty, either by some codifying statute or by independent legislation, bringing the law into something like reasonable certainty.' Mr. Joel, we fear, will have to wait till the Greek Kalends for 'some codifying statute.' Some independent legislation, however, in the way of allowing a divorce to a man for continued refusal of marital rights, will, beyond all reasonable doubt, be the outcome of the Clitheroe case—before the end of the present century.

*Joyner* v. *Weeks* (see *ante*, p. 313, and Notes of Cases, p. 79) has been affirmed by the Court of Appeal with the variation that judgment is to be entered forthwith for the plaintiff for the exact amount (70*l.*) found to be the cost of the dilapidations by the referee, so that the new trial which the High Court had ordered will not now be had. Of the correctness of this variation by the Court of Appeal we have very grave doubts, but the circumstances upon which it has been made are so peculiar that they are not likely to happen again. On the main and very important point that substantial damages may be given for a breach of covenant to leave a house in repair at the end of a term, although, from peculiar outside circumstances, it may happen that the

landlord has sustained no damage by the breach, we fully agree with the judgment of the Court of Appeal, for the reasons we gave last week.

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The British Medico-Psychological Association has, for now more than twenty years, endeavoured to ameliorate the position of medical experts in our Courts of law. In 1869 a committee of the association proposed the appointment of medical 'assessors,' after the analogue in Admiralty practice, and urged the Government of the day to nominate a royal commission 'with a view to a revision of the existing system of criminal jurisprudence in its relation to insanity.' Neither of these recommendations was adopted. But the society, though cast down, did not despair. Another abortive effort to arouse the public and official opinion was made in 1880. Then came 1883—the *annus mirabilis* in the history of this question. Dr. Orange, C.B., then president of the association, brought forward and secured the adoption of a resolution to the effect that, as soon as possible after the commission of an offence by any person alleged to be, or suspected of being, insane, the medical officer of the prison, the medical officer of the county asylum in the neighbourhood, and a physician of standing in the town where the prison is situate, should examine into his mental state, and prepare a joint report thereon, which should be laid before prosecuting counsel. In spite of its 'un-English' character, and its positive resemblance to certain continental methods, this suggestion seems to have arrested official attention, and Sir Henry James (then Attorney-General) directed that in those *capital* cases in which insanity was alleged, 'full inquiry'—words which have been held in practice to extend to medical inquiries—should be made, and, in the absence of ability on the part of the accused or his friends to produce witnesses, the Treasury solicitor should secure their attendance. The appointment of Dr. Bastian as 'Crown referee in cases of supposed insanity' was also among the first fruits of Dr. Orange's proposal. The Medico-Psychological Association is now demanding that Sir Henry James's order should be extended so as to include all forms of crime. The demand is clearly reasonable and ought to be granted.

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The Copyright Bill (see *ante*, p. 312) passed a second reading in the House of Lords on Monday last, after a short but instructive debate. Lord Monkswell and Lord Herschell made out an unanswerable case for the bill, and it is difficult to gather from the speeches of the Lord Chancellor and Lord Balfour on what grounds the Government, in consenting to a second reading, invited Lord Monkswell, 'for his own sake and for the sake of the subject,' not to insist on going forward with the bill through the standing committee. All that could be said in favour of this very great caution in approving the measure was that the whole question was most complicated and involved questions of policy; that the matter was highly contentious and difficult to arrange; that it could not yet be known what the effect of the American Act would be; and that the discussions in the standing committee would be certain to arise afterwards in the House. Lord Balfour, indeed, asserted that certain draftsmen took serious objection to fifty out of the ninety-six clauses, but, with the exception of the clauses dealing with registration, 'which, if carried,' said he, 'would cast a serious charge upon the funds of this country,' the objectionable parts of the bill were in no case specifically named, and Lord Herschell stated his belief 'that the real difficulties would be found to be not more than three or four.' All this being so, why should not the Government have either cordially supported the bill or brought in a bill of their own? Surely, as Lord Herschell put it, 'the Legislature exists for the purpose of remedying imperfect and mischievous legislation;' and it certainly is not gratifying to our national pride to find that, when a royal commission thirteen years ago pointed out that the law was mischievous and required amendment, and when, thirteen years afterwards, the Legislature was invited to deal with the matter, the representative of the Government should advise Parliament to sit with folded hands and not attempt to make the law better than it is.

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On the 4th inst., in the case of *Newland* v. *M'Donagh*, the Irish Queen's Bench Division, following the recent example of the Scottish Court of Justiciary (noted *ante*, p. 191), gave judgment in favour of the legality of the practice of dishorning cattle. The judges present, the Lord Chief Justice, and Justices O'Brien, Johnson, Holmes, and Gibson, none of whom had previously pronounced a judicial opinion on the subject, were unanimously of opinion that the practice was not cruelty within the meaning of the statute; the very great, though temporary, pain caused by the operation being justified by the existence, or an honest and reasonable belief in the existence, of a reasonable and adequate object, and by the use of reasonable skill and proper care in performing the operation. Mr. Justice Gibson, however, took occasion to express his sympathy 'with the humane feeling that underlay the judgment' of Lord Chief Justice Coleridge and Mr. Justice Hawkins in *Ford* v. *Wiley*, 58 Law J. Rep. M. C. 145; and Mr. Justice O'Brien 'could not personally deliver his mind from an uneasy consciousness that it was a brutal business with which some persons would have no concern for the world.' This is the nearest approach to a dissenting judgment that occurs in any of the cases. On the other hand, the Lord Chief Justice alluded to the prosecution as an attempt 'to suppress a method of carrying on their business which had been sanctioned by the great body of the representatives of the principal industry of this pastoral country.' This is very like the *dictum* of Lord Young that the statute does not interfere with the judgment of farmers who are pursuing their own affairs to the best of their judgment.

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Questions were asked on the subject in the House of Commons on the 11th inst., and the President of the Board of Agriculture said he was not prepared to introduce a measure to legalise the operation in England. He, however, made the tentative suggestion that perhaps the difficulty might be solved by making dishorning permissible up to the age of six months, when the horns could be removed without pain, and illegal afterwards. An excellent suggestion, it may be, but somewhat shirking the actual legal position. It is not now a question simply of legalising an operation which is at present illegal. The operation may be illegal in England, though the authority of *Ford* v. *Wiley* has now

suffered severe and repeated shocks. But in Scotland the practice is legal, and prevails in five or six counties. In Ireland it is legal, and prevails in seventeen counties. Surely, if Mr. Chaplin is not prepared to press his suggestion, or to appoint a commission of practical and humane men to consider the whole question, he ought logically to introduce a measure giving legislative sanction to the decision of the English Court, and making the operation equally illegal in Scotland and in Ireland.

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*Cominada* v. *Hulton* (Notes of Cases, p. 84), a case stated by justices, is a very interesting case of the law of betting and lotteries. Mr. Justice Day and Mr. Justice Lawrance have held that the publication of a handicap book with a weekly coupon 'in which six races were selected and pecuniary prizes were promised' to any purchaser of a newspaper in connection with which the newspaper was issued 'who filled up the coupons with the names of six winners,' was not a publication of a lottery within the Lottery Act (4 Geo. IV. c. 60) or an advertisement to procure betting within the Betting Act, 1874 (37 Vict. c. 15). That there was no offence against the Lottery Act we are quite clear; there would be far too much skill in the eye of the law required on the part of the competitors for that. But at first sight the Betting Act, 1874, seems to apply. By this Act, 'where any letter, circular, telegram, placard, handbill or *advertisement* is sent, exhibited or published (1) that any person will give information as the subject-matter of a bet or will lay a bet for another person, (2) to induce any person to apply to a betting-office for information or advice,' or (3) 'inviting any person to make or take any share in or in connection with any such bet or wager,' as is mentioned in the principal Act (of 1853), every person so publishing the same is liable to the penalties of the principal Act. There is some ground for saying that the competitors who filled up the coupons (which they could only buy with the newspaper) were invited by the proprietor to bet on the six horses the names of which they should write down on the coupon, the money laid on those horses by them being the sum paid on buying the newspaper and handicap book together, and the money laid against those horses being the prize promised to be paid to the person or persons who should select six winners. On the whole, however, we think that the Act of 1874 will not bear this construction. The rule is that penal Acts must be strictly construed in favour of an accused person, and this construction will not satisfy that rule.

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IN the case of *Walter* v. *Everard* (Notes of Cases, p. 70) the Court of Appeal No. 1 had to determine an interesting question as to the liability of an infant upon a covenant in articles of apprenticeship. The defendant, a minor, had, with the consent of his mother, become bound to the plaintiff for a term of four years, to be instructed in his business of auctioneer, valuer, and farmer. The consideration was a sum of 500*l.* to be paid by the defendant to the plaintiff—viz. 200*l.* immediately upon the execution of the deed and 300*l.* at a subsequent date. There was also a covenant by the defendant to pay the plaintiff the latter sum on the day named. At the trial the jury found that the deed was a necessary arrangement for the defendant if he wished to learn the plaintiff's business, that the premium was fair and reasonable, that the board, lodging, and instruction were necessaries for the defendant, and that the amount charged, irrespective of the deed, was reasonable. Upon these findings, the Court of Appeal held that the judge was right in directing a verdict for the plaintiff. They were of opinion that the authorities, commencing with Coke Litt. 172 (*a*), showed that, although an infant cannot be liable upon a bond in a penalty, yet that he may be sued upon a single bond, and that the instruction in the business being, under the circumstances, necessary for the defendant, and the premium being a reasonable one, the defendant was liable upon the covenant.

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THE same case was also noteworthy as disclosing a difference of opinion between Lord Justice Lindley and Lord Justice Bowen on the point which has been so much discussed, whether *Derry* v. *Peek*, as decided by the House of Lords, has altered the law. Lord Justice Lindley takes the view that it has. 'Before the decision,' he said in his judgment, 'of the House of Lords in *Derry* v. *Peek* I should have thought it clear that this action could have been maintained.' Lord Justice Bowen, on the other hand, thinks that the principle affirmed by the House of Lords always prevailed at common law in this class of actions, which before the Judicature Acts could only be brought on the common law side. He even went so far as to assert that there was not a common lawyer living who doubted that the grounds on which an action of deceit would lie were correctly laid down in *Derry* v. *Peek*. This assertion is, perhaps, not strictly true; but the emphatic approval it conveys of so able and learned a lawyer will be welcome to those who have always maintained the soundness of the decision commented on.

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AN interesting point was raised in the case of *Angus* v. *Clifford*, lately decided by the Court of Appeal, though, owing to the view which the Court took of the main question, it became unnecessary to determine it. The plaintiff took shares in a mining company on the faith that certain reports of experts as to the value of the company's property were, as alleged in the prospectus, made for the directors. The reports themselves were not proved to have been untrue or exaggerated, the company never having had sufficient capital to test the mines properly. Mr. Justice Romer held in favour of the plaintiff, on the ground that the reports were not made for the directors but for the vendors, and that it was enough for the plaintiff by way of damage to show, as the fact was, that he had lost money through the depreciation of shares which he would not have taken but for the untrue statement. In the Court of Appeal that decision was reversed, on the ground that the statement, though false, was not fraudulently made. Lord Justice Lindley and Lord Justice Kay in their judgments expressed doubts whether, had the statements been fraudulently made, the plaintiff could have recovered in the absence of proof that the reports themselves were untrue. It may be observed that the illustration put by Lord Justice Kay of the vendor and purchaser of a seam of coal is not quite on all-fours with the case before him.

'Could,' he asked, 'the purchaser say, "I admit the mine is there, and the estate is as valuable as it is represented to be, but I claim relief on the ground that no such information was given by A. B. to the vendor?"' Mr. Angus did not admit that the reports were correct, he merely contended that he was not bound to prove them incorrect. Besides, it is impossible to see what damage the purchaser in the illustration has suffered, whereas that suffered by Mr. Angus is clear enough. To put upon a shareholder in such a case the burden of testing a mine in order to disprove statements as to its value would, by reason of the expense involved, practically prevent him from suing at all. The doubts expressed by the Lords Justices would apparently extend to actions brought under the Directors' Liability Act.

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'R. E.,' referring to our remarks on the Tithe Act (*ante*, p. 248) and the rules under the Act since issued (see *ante*, p. 296), asks whether it will be sufficient to give the 'occupier's liability notice'—(*a*) in case of payment without order, before payment, or (*b*) in case of order *obtained* (surely 'R. E.' means 'in case of order applied for'), before order. We have referred to the last paragraph of subsection 6 of section 2 of the Tithe Act, 1891, and to rules 2–7 and 36–38, and cannot but think that the result of them is to leave it to the County Court judges to determine within what time it is 'sufficient' to serve the occupier's liability notice. We will, however, hazard two prophecies on the mode in which County Court judges are likely to exercise the wide discretion given to them by the Act and rules. In the first place, we do not think they are likely to lay down the hard-and-fast rule that 'any time' before payment or order will be sufficient. In the second place, we think that, short of laying down such hard-and-fast rule, they will be very lenient with landowners, their solicitors, and their agents, who may have allowed ever so long a time to lapse before finding their way to serving an 'occupier's liability notice.'

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COMMENTING recently on the Evidence Bill, we regretted the non-repeal of 5 Eliz. c. 9, by which the ears of pauper perjurers (convict) are directed (so we read in the statute as printed in the second edition of the Statutes Revised) to be 'nayled' to the pillory. The effect of this old statute as construed in *Castro* v. *Reginam*, 50 Law J. Rep. Q. B. 497, on the residue of the law of perjury, will be found discussed at length in the LAW JOURNAL for April 26, 1890, where it is pointed out that it is still discretionary with a judge to fine a convicted perjurer. It is, however, unhappily the law that, as perjury is a *misdemeanour* only, a person who had suffered injury by conviction upon the oath of a perjurer cannot, upon the conviction of such perjurer, obtain any compensation from him, unless, indeed, the 10*l.* which he may recover from the perjurer, if the judge should fine him, can be called compensation. The law is different in the case of *felony*, as will be seen by reference to 33 & 34 Vict. c. 23, s. 4. Surely it would be a useful amendment of the law to increase the discretionary power of the judge to fine up to, say, 1,000*l.*, and award as much of the fine as he may think fit to the person injured by the perjury.

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'EVERY person upon objecting to being sworn, and stating as the ground of his objection, either that he has no religious belief, *or* that the taking of an oath is contrary to his religious belief, shall be permitted to make his solemn affirmation instead of taking an oath, *in all places and for all purposes* where an oath is or shall be required by law.' So says the Legislature in the Oaths Act, 1888 (51 & 52 Vict. c. 46). Yet it has been stated on good authority that one of the coroners in the district of the administrative county of London has refused an atheist to 'mix among jurors.' We suppose that the comprehensive generality of the enabling words has made them less intelligible than they would otherwise have been. That they apply to jurors, whether summoned on a coroner's jury or any other jury, there is no shadow of a doubt. The admitting of atheists as jurymen and members of Parliament were the two main reforms effected by the Oaths Act. The Evidence Act, 1869, which admitted atheists as witnesses in a Court of law, did not apply to jurors, who before the Act of 1888 were, by 30 & 31 Vict. c. 35, s. 8, allowed to substitute an affirmation for an oath only in cases where they could declare that the taking of an oath was by their religious belief unlawful—*i.e.* that they were possessed by an abundance of religious feeling—which is a very different thing from suffering from a complete want of it.

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## THE STAMP DUTIES BILL.

THE object of this bill is stated in the memorandum prefixed to it to be 'to consolidate the several enactments relating to the stamp duties payable upon instruments.' These enactments are at present contained in the Stamp Act, 1870 (33 & 34 Vict. c. 97) and the multifarious amendments of particular parts of it by successive Acts. The Act of 1870, which was itself a consolidating measure of great general importance, is, with the exception of the comparatively insignificant 34 & 35 Vict. c. 4 (relating to foreign securities, stock, mortgages, and proxy papers), 37 & 38 Vict. c. 19 (relating to duty payable by Scotch advocates and Irish barristers), 37 & 38 Vict. c. 26 (relating to Canadian Stock), and 39 & 40 Vict. c. 6 (relating to sea policies), the only existing Act which deals with stamp duties alone. The numerous other statutory provisions as to stamps are contained in various Customs and Inland Revenue Acts, Inland Revenue Acts, and a certain 'Revenue, Friendly Societies, and National Debt Act,' 1882 (45 & 46 Vict. c. 72). These Acts, of which one at least has been passed annually since 1870, sometimes do and sometimes do not contain amendments of stamp law. When they do, the stamp amendments are placed in a separate 'part' by themselves. But in order to be sure of the stamp law on any particular point, it is absolutely necessary to at least glance at every one of these annual Acts. Considering that a solicitor getting his client into a difficulty by not stamping a document or by stamping it insufficiently would, beyond doubt, be liable to an action for negligence, we have no hesitation in saying that the present bill will effect a most beneficial improvement in the law, and we have no doubt that it will receive the cordial support of all the law societies in the kingdom.

Let us now call attention to such points of detail as seem to require further consideration. First and foremost, we observe that the Act of 1870 is not to be entirely repealed. In the third column, headed 'Extent of repeal of the third schedule'—which schedule contains

'enactments repealed'—we read, in relation to the Act of 1870: '*Except section* 25 *so far as it relates to provision* (3) *and sections* 27 *and* 28.' Turning to the enactments thus saved, we find that section 25, subsection 3, provides a penalty for practising 'any fraudulent act, contrivance, or device not specially provided for with intent to defraud Her Majesty of any duty,' that section 27 prescribes the mode of making declarations for the purpose of the Act, and that section 28 provides that any person who receives any sum of money on account of duty, and does not 'appropriate such money to the due payment of such duty,' is to be accountable for such duty, and made to pay the same by means of proceedings to be instituted in the long-since abolished 'Court of Exchequer.' The astute persons who preside at the Board of Inland Revenue must, we imagine, have had some reason for these peculiar savings. For ourselves we have failed to discover any. If, however, the exact language of the enactments saved is so sacred that the Board cannot find it in their hearts to repeal and re-enact it in phraseology adapted to the bill and to the merger of the Court of Exchequer in the High Court of Justice, we would suggest that the enactments should be tacked on to the bill by means of a fourth schedule. Precedents for such a course may be found in the schedule to the County Electors Act, 1888, and the second and third schedules to the Housing of the Working Classes Act, 1890.

The second paragraph of clause 2, which contains the substantive enactment taken from section 23 of the Act of 1870, that, 'except where express provision is made to the contrary, all stamp duties are to be denoted by impressed stamps only,' ought surely to form, as in the Act of 1870, a section by itself in point of form. In point of substance, we doubt whether the exceptions ought not to be increased. For instance, in clause 78, adhesive stamps are to be allowed as duties on leases of houses for a definite term not exceeding a year at a rent not exceeding the rate of 10*l.* a year. Why should not this exception be very widely extended, to include at any rate all tenancies from year to year?

Clause 14, which deals with the all-important subject of the terms on which instruments not duly stamped may be received in evidence, contains a curious piece of obscurity. By section 16 of the Act of 1870, as amended by section 44 of the Customs and Inland Revenue Act, 1881, for which this clause is proposed to be substituted, it is the duty of the officer whose duty it is to read any instrument produced in Court to call the attention of the judge 'to any omission or insufficiency of the stamp thereon,' and it is provided (this was the amendment effected by the Act of 1881) that in case of an arbitration it is the duty of the arbitrator to act as if he were the officer of a Court. Clause 14 merely provides that, on the production of an instrument in any Court or before any arbitrator or referee, the officer whose duty it is to read the instrument shall call the attention of the judge, arbitrator, or referee to any omission or insufficiency of the stamp, &c. These words appear at first sight to relieve arbitrators in many cases of a tiresome duty. They presuppose an officer in attendance upon him, and throw upon that officer the duty of looking to stamp questions. But, as a matter of fact, there is no such officer. Who, then, is to discharge the duty thrown upon an arbitrator by the Act of 1881? Is the arbitrator to be 'two gentlemen rolled into one, and as such to call his own attention to these questions? If this be intended, it ought to be more clearly expressed.

Another point deserving of attention is whether an instrument should still be required, as by subsection 4 of clause 14, re-enacting part of section 17 of the Act of 1870, to be stamped in accordance *with the law in force at the time when it was first executed.* This was not the law before the Act of 1870 (see *Buckworth* v. *Simpson*, 1 C. M. & R. 834; *Deakin* v. *Pennell*, 2 Ex. 320). In order to comply with it, much tedious hunting through repealed Acts is necessary. We think it an unnecessarily harsh provision, and hope that it may be modified so as to bring the law more in accordance with convenience, though we confess ourselves unable to suggest an amendment which may absolutely secure the Revenue from loss.

In connection with clause 33, which defines 'promissory note,' we observe that the definition is different from that contained in section 83 of the Bills of Exchange Act, 1882, and would suggest that the latter definition should be incorporated in the bill and form an exhaustive definition for stamp purposes. Clause 44, which imposes a penalty on unqualified persons 'preparing any instrument relating to real and personal property, or any proceeding in law or equity,' contains, as might have been expected, the same exceptions as those contained in section 60 of the Act of 1870, from which it is taken. Thus, it is to be still provided, that the word 'instrument' shall not include a will, or 'an agreement under hand only.' To the first of these exceptions no objection could be taken. But what of 'an agreement under hand only?' This is a very wide exception, including, for instance, all agreements for sale and all agreements for leases. It is suggested that, in fairness to the qualified persons who have to pay for admissions and certificates, this exception ought to be considerably restricted. Clause 102, which deals with receipt stamps, and provides for stamping after execution within fourteen days only, 'with an impressed stamp,' might perhaps be altered so as to run more in favour of the public; to allow, for instance, an adhesive stamp after execution, or to extend the time within which the impressed stamp may be affixed.

Whether these or any other alterations are likely to be made in the bill we cannot say. In the case of a consolidating bill it is not usual for a Government introducing it to accept many amendments. The best course for those interested in the bill to pursue is to agree on a few proposals of real importance, and to combine in urging them upon the Government, but to leave minor points alone; otherwise there may be danger, looking to the period of the session we have now arrived at, of losing altogether a very valuable and useful measure.

## FOREIGN MORTGAGE SYSTEMS.

WITHIN the last week there has been issued by the Foreign Office a series of reports from Her Majesty's representatives abroad on 'Institutions for making advances on real property,' which are of the highest interest for the lawyer as well as for the politician. Last August a circular was addressed by Lord Salisbury to the Queen's representatives at Paris, Berlin, Vienna, Buda Pesth, Rome, Brussels, Lisbon, and Berne, inclosing questions with regard to these institutions. The answers to these questions have now been published in

a pamphlet of seventy-four pages, which are full of instructive matter. It does not appear why Spain was omitted, and as the local authorities in Portugal, and not the Government, are the depositaries of the information required, there has not been time enough to furnish a report. Thus no part of the Peninsula is covered by the present reports. We gave some account last year of the land banks of Italy, and the account then given, to some extent, went over the same ground as the present report, which, however, contains some interesting details of banks established for granting loans on land in the republic of Siena in the sixteenth century.

What strikes one at once in the reports is the great similarity of system existing between countries otherwise so different from each other as Hungary, France, Belgium, and Switzerland, and their great dissimilarity to anything in this country. The only analogy which can be found in these kingdoms to the operations described in these reports is in the system of land purchase in Ireland. But abroad the institutions established are exclusively devoted to mortgages and not to purchase, and the State does not directly intervene, though in some cases it provides a guarantee, and in all exercises supervision. It is also noticeable that the mortgage system in all the countries concerned is of quite recent origin, so that it indicates a widespread tendency, and is part of the movement in the direction of centralisation and co-operation against the formerly prevalent individualism, the effect of which has been felt in this country as well as abroad. Another effect everywhere discernible is a substantial reduction in the rate of interest charged for mortgage loans. It may be, therefore, that in our own country also a solution of the great land question may be sought in the establishment of land banks or credit corporations embodying the same principles and working on similar lines to those of our Continental neighbours.

In Hungary we are informed the whole landed system has been revolutionised, to suit altered circumstances, during the last thirty or forty years. To meet the new order of things the Hungarian 'Boden Credit Institut' was founded with a nominal capital of about 140,000*l.* It is not a joint-stock company, but a patriotic undertaking, to enable landed proprietors to obtain loans on safe and easy terms. The 'Institut' consisted originally of 219 members or 'founders,' and the lowest founders' subscription was 5,000 florins—417*l.* The directors get no fees, and the founders only receive 5 per cent., much less than the ordinary rate of interest used to be. Borrowers must give proof of title (supplied by the Land Register) and lists of existing charges, and, of course, there is a valuation. No loan is granted for more than half the value of the property, or of less amount than 1,000 florins, or nearly 84*l.* These bonds are amortised or extinguished in periods not exceeding forty-one years. The interest payable was in 1863—the date of foundation of the 'Institut'—5½ per cent., and the total annual payments 6¾ per cent., including a reserve of ·06 per cent. and administration expenses ·25 per cent. In 1886 the interest had sunk to 4 per cent., the administration expenses had disappeared altogether, and the total payment was only 5 per cent. In 1889 the total amount of loans was no less than 8,000,000*l.*, and the arrears were only 25,000*l.* The bonds, bearing 4 per cent., are of 100, 1,000 and 10,000 florins, repayable at par by drawings by lot, and must be withdrawn within forty years and six months of their issue. The 5½ per cent. bonds were issued in 1863 at 89; the 4 per cent. bonds are now very nearly at par. The Commercial Bank of Buda Pesth has also a special department for these loan operations, which are conducted on much the same principles. In 1889 it had nearly two millions sterling of bonds in circulation, and the outstanding arrears were only 3,848*l.* Other banks also carry on this business, and the total value of this kind of mortgage loans for the empire of Austria-Hungary was between nine and ten millions sterling.

In Belgium a somewhat similar system has prevailed since 1885, and is carried on by limited joint-stock companies which act in the common interest of borrowers and lenders. The interest, as in Austria-Hungary, is 4 per cent., and large capitals, amounting to two or three millions, are embarked by the banks, which make considerable profits. Here also the term for repayment is about forty years.

The information from France is not quite so full and detailed as that which is supplied with respect to Austria and Hungary. The system is there centralised, and, in fact, the Crédit Foncier of France since 1852 has been 'the sole national bank of real property.' Its capital was then sixty million francs, half paid up, and in 1888 was 170 millions. The great central institution does not appear to lend the money directly, but advances it to departments, communes, and agricultural associations, which become the immediate creditors of the mortgagor. The Crédit Foncier is actually administered under the supervision of the Minister of Finance. The total amount of mortgage and communal loans is about twelve millions sterling.

Sir Edward Malet, from Berlin, refers to a number of books for detailed information, but also gives particulars, from which it appears that there is no State guarantee in Germany, and that a like system of land banks and amortisation is established. The report from Italy gives very full particulars of the different banks established, the principles of working, and the degree of supervision exercised by the Government. As in Austria-Hungary, the amount advanced is limited to half the value of the property, and the period of repayment varies from ten to fifty years. In Switzerland a like method seems to have achieved great success, and the loans effected by the Mortgage Bank of the Canton of Berne amounts to no less than 3,391,208*l.* Similar institutions exist in the other cantons. It will be interesting to see whether joint-stock or co-operative enterprise will in this country undertake transactions of like character and proportionate magnitude.

## ON SUING JOINT CONTRACTORS.

THE case of *Hammond* v. *Schofield*, recently decided by a Divisional Court, is the latest illustration of the effect of a judgment against one of two joint contractors in barring a subsequent action against the other. The old rule as to suing joint contractors, which was laid down in *King* v. *Hoare*, 14 Law J. Rep. Exch. 29; 13 M. & W. 494, may be thus stated: If two persons are jointly liable on a contract, and either is sued alone and pleads in abatement, both must be joined; and hence, a judgment recovered against one alone is, even without satisfaction, a merger of the original cause of action, and may be pleaded in bar to a subsequent action against the other. The first branch of this rule once appeared to have been destroyed by the abolition of pleas in

abatement under the Judicature Acts. But the cases of *Pilley* v. *Robinson*, 57 Law J. Rep. Q. B. 54; L. R. 20 Q. B. Div. 155, and *Byrne* v. *Brown*, 58 Law J. Rep. Q. B. 410; L. R. 22 Q. B. Div. 657, show that in substance it still exists. The defendant who is sued alone is still entitled as of right to have his co-contractor joined as co-defendant; for, though the words of Order XVI., rule 11, seem to leave the matter to the discretion of the Court, it is settled that the Court must decide the defendant's application to join his co-contractor on the same principles on which judgment would formerly have been given on a similar plea in abatement. The second branch of the rule also remains in force, and was fully considered by the House of Lords in *Kendall* v. *Hamilton*, 48 Law J. Rep. C. P. 705; L. R. 4 App. Cas. 504. It was applied to a peculiar state of circumstances in *Cambefort* v. *Chapman*, 56 Law J. Rep. Q. B. 639; L. R. 19 Q. B. Div. 229, a decision which seems to be regarded with great doubt by Lord Justice Lindley (see 'Lindley on Partnership,' Addenda, p. lix.), who remarks that the rule in *Kendall* v. *Hamilton*, 'if not carefully limited in its application, will lead to unexpected and unjust results.' The decision of Mr. Justice Wills and Mr. Justice Williams in *Hammond* v. *Schofield* does not seem to be open to adverse criticism. The case laid down that where one joint contractor has been sued to judgment, the parties to the action cannot get the judgment set aside by consent so as to enable the plaintiff to take proceedings against the other. So long as the rule in *Kendall* v. *Hamilton* exists at all this point could hardly have been decided otherwise.

## LEGISLATIVE PROGRESS.

In the House of Lords the royal assent was given by commission to the following bills:—

Registration of Writs (Scotland) Bill.
Electoral Disabilities Removal Bill.
Army Schools Bill.
London (City) Trial of Civil Causes Bill.

Bills read a third time and passed:—
Newfoundland Fisheries Bill.
Marriage Acts Amendment Bill.
Evidence Bill.
Statute Law Revision Bill.

Bills through Committee:—
Presumption of Life Limitation (Scotland) Bill.
Herring Branding (Northumberland) Bill.
Law Agents (Scotland) Bill.
Trusts Amendment (Scotland) Bill.

Bill read a second time:—
Copyright Bill.

The House adjourned on the 12th inst. until the 26th inst.

In the House of Commons.

Third reading:—
Mail Ships Bill.
Commissioners for Oaths Act, 1889, Amendment Bill.
Reformatory and Industrial Schools Children Bill.
Brine Pumping (Compensation for Disturbance) Bill.

New bill:—
To Exempt the Funds of Trade Unions paying Provident Benefit to their Members from the Payment of Income-tax on their Investments.

# Reviews.

## MARSDEN'S COLLISIONS AT SEA.

*A Treatise on the Law of Collisions at Sea.* By REGINALD G. MARSDEN, assisted by the Hon. JOHN MANSFIELD, of the Inner Temple, Barristers-at-Law. Third Edition. London: Stevens & Sons. 1891.

THIS useful book has not grown much in size, the present edition adding only eighty-four to the 560 pages of its predecessor. The chief feature of the treatise has been a mass of information given in a handy form concerning the international regulations. There have been no substantial changes, however, since the date of the last edition (1885) in these regulations or the provisions relating thereto. The complications in the rules as to the lights of fishing vessels still exists, and in the case of several of the leading nations such vessels are still subject to article 10 of the old regulations of 1880, which has been somewhat needlessly omitted in the present volume. The regulations approved at the International Marine Conference held at Washington in 1889–1890, in substitution for those at present in force, have been inserted in the appendix. But they are of no legal importance whatever, and could well have been spared, as they are not likely to become law at present, or indeed, at any time, without considerable modification. The most important new matter is the consideration of the cases during the last five years; the notices of these are very numerous, and have been carefully compiled, and are in themselves sufficient to justify the appearance of this edition. Among other changes a new chapter (12) has been devoted to Practice, but it will not be found of much importance, as the account given is short, elementary, and contains little that is new. The following chapter, also new, is devoted to Costs, a subject which has been removed from its previous connection with Damages in an earlier chapter. The history of the rule of division of loss, which is a matter of rather antiquarian interest, has been taken from the text and relegated again, as in the first edition, to its proper place in a note. The index has been extended, and is satisfactory. Altogether the volume is to be commended as decidedly improved. The price of this edition is 25*s*.

## ANSON ON CONTRACTS.

*Principles of the English Law of Contract and of Agency in its Relation to Contract.* By Sir WILLIAM R. ANSON, Bart., D.C.L., of the Middle Temple, Barrister-at-Law. Sixth Edition. Oxford: Clarendon Press. 1891.

THE author of this work, in the preface to the present edition, contrasts the modes of treatment which have been adopted by two well-known text-writers. One regards contract as 'a subject of litigation from the point of view of the pleader's chambers.' He seems to ask, 'What are the kinds of contracts of which this may be one?' Then, 'What have I got to prove?' 'By what defences may I be met?' The other writer chiefly considers the nature of contracts and how the contract may be brought about. He, as it were, watches the parties coming to terms. He tells us how the contract may be made, and by what plans its structure may be invalidated. The latter work, in fact,

treats almost exclusively of the formation of the contract. The former regards the subject from the standpoint of the litigant. The present treatise differs from both the works we have alluded to, and seems to some extent to combine the advantages of both these modes of treatment. The author considers the contract from its beginning to its end, 'how it is made, what is needed to make it binding, whom it may affect, how it is interpreted, and how it may be discharged.' He himself tells us that he has referred to but few authorities, and this materially diminishes the value of the work as a practical treatise. As a general view of the law the work has a high and deserved reputation. The present edition is certainly defective in not being brought down to date on several material points. Thus under the heading, Non-disclosure of Material Fact, we find some observations on the point that suretyship is not *uberrimæ fidei*. Here a reference to *Davies* v. *The London and Provincial Marine Insurance Company*, 47 Law J. Rep. Chanc. 511; L. R. 8 Chanc. Div. 469, would have been very useful. On p. 104, the case of *Kennedy* v. *Broun* is cited as an authority that a barrister cannot sue for his fees, but no mention is made of the subsequent cases in which this much-discussed portion of the law has been considered and elaborated. Under the head of Stoppage *in transitu* (incorrectly indexed by the way) we looked in vain for a reference to the Factors Act of 1889. At p. 324 the effect of a discharge in bankruptcy is considered, but no allusion whatever is made to the important change in the law which was introduced by the Bankruptcy Act, 1890.

## STRAITS SETTLEMENTS REPORTS.

*Kyshe's Reports of Cases Heard and Determined in the Straits Settlements Supreme Court*, 1808 *to* 1890. Volume IV., 1885–90. By JAMES WILLIAM NORTON KYSHE, Esq., of Lincoln's Inn, Barrister-at-Law, Acting Registrar of the said Court, and Commissioner of the Court of Requests at Malacca.

THE colony of the Straits Settlements, which has developed so remarkably during the last twenty years, now possesses a legal literature of its own. It has had a monthly law journal for about two years, and Mr. Kyshe has published a set of reports containing all the cases of importance from the foundation of the settlement until the present time. These Reports are in their arrangement modelled on the system of our 'Law Reports,' and the last volume brings the decisions down to date. These Reports, apart from their use to practitioners in the colony, are interesting in a jurisprudential point of view as showing the history of the law of the colony and the nature of its legal system. Mr. H. A. D. Phillips, in his 'Comparative Criminal Jurisprudence,' alludes on several occasions to the cases in these Reports. The criminal law of the Straits is the English common law supplemented by the Indian Penal Code, which is stricter than the common law. As for the rest of the system, the civil law embraces the English common law and equity, also English statutes till 1826, when the colony became a dependency of India; then Indian Acts till 1867, at which period it became a Crown colony; and from 1867 down to date it has its own ordinances, which are to a certain extent modelled upon the home statutory charges. For instance, there is a Bankruptcy Ordinance, a Bills of Sale Ordinance, a Conveyancing Ordinance, and Company's Ordinance. The Supreme Court sits at Singapore, the capital, and also at Penang. There are four judges, two for each settlement. The amount of business at each is nearly equal. The judges have jurisdiction in all the branches of English law, except that they cannot grant a decree for dissolution of marriage, the former ecclesiastical law prevailing in the colony. Hitherto in the Straits, and no doubt in other colonies, there has been no available record of the judges' decisions. Sometimes there would be a short report in the daily papers, but looking through the back files for them is a Titanic task, and, as often as not, unrewarded, for there are no regular reporters for the law Courts, and the chance of any case being taken down depends upon a reporter happening to be there, and if there is, as he is not a lawyer, the accuracy of what he takes down may be questioned. Hence it frequently occurs that the local lawyers know there has been a precedent on some particular head, but they cannot lay their fingers upon it; and as the principle prevailing in the English Courts—namely, that decisions of one judge are binding upon his successors, applies in the colony, which follows the law of the mother country, this has been a great inconvenience, particularly in questions affecting matters peculiar to the colony, where no English precedent can be found; for instance, recently one of the judges here, Mr. Pelleceau, stated that some time ago, after consultation with the then Chief Justice, Sir Theodore Ford, he gave a decision that, as regards property, a Chinese woman stood on an entirely separate footing to her husband—introducing, in fact, the benefit of the Married Women's Property Acts (which do not apply here) as far as Chinese women are concerned. Now this decision was probably not reported in any newspaper at the time, and there is no record of it. As Mr. Kyshe means to continue his Reports there will be no fear of a repetition of this. At the beginning of the first volume of the work there is an interesting historical sketch of the judicial institutions of the colony from the time when Prince of Wales's Island (Penang) was taken over by Captain Light in 1786. The decisions themselves commence later, beginning with one given by the first recorder of the colony, Sir Edward Stanley, in 1808, and continuing in regular order to date. The last volume contains as many as 400 decisions.

## A HANDY BOOK ON COMPANY LAW.

*A Handy Book on the Formation, Management, and Winding-up of Joint-stock Companies.* By WILLIAM JORDAN, Registration and Parliamentary Agent, and F. GORE-BROWNE, of the Inner Temple, Barrister-at-Law. Fourteenth Edition. London: Jordan & Sons. 1891.

THE principle of limited liability, under which any number of persons—not less than seven—may associate themselves together for the purpose of carrying on any trade or business, whether as a gigantic banking, insurance, or mercantile institution with operations reaching to the farthest extremities of the globe, or as the modest village coffee tavern or social club, to borrow the language employed in this book, in its connection with the law of joint-stock companies and matters thereto appertaining, is assuredly not suffering from lack of notice in the legal press at the present time. The cry as to text-books is, 'Still they come.' A considerable class of readers will, we think, find the present work useful

and sufficient. It does not, the present editor tells us, pretend to take the place of the large text-books upon company law, but to be a reliable guide to shareholders, directors, secretaries, officers, and creditors of companies as to their rights and duties in the matters which ordinarily come before them and the methods of enforcing those rights and performing those duties. It is also designed to be useful to lawyers by its references to authorities. In both respects the work is worthy of commendation.

## PITT-LEWIS ON WINDING-UP.

*A Manual of the Practice as to Winding-up in the High Court and in the County Court; being the Companies (Winding-up) Act, 1890, and the Winding-up of Companies and Associations (Part of the Companies Act, 1862) as now Amended.* With Notes and the Companies Winding-up Rules, 1890, forming a Supplement to 'A Complete Practice of the County Courts.' By G. Pitt-Lewis, Q.C., M.P. London: Stevens & Sons (Lim.). 1891.

This book is intended to serve as a supplement to Mr. Pitt-Lewis's well-known and standard work, 'The Complete Practice of the County Courts.' The author was, he tells us, encouraged to undertake the task by the recollection that the practice in the High Court and the County Courts is (except where a distinction is pointed out) now the same. A further inducement to the work was found in the fact that the chapter on 'Winding-up' in the 'Complete Practice of the County Courts' is now rendered practically obsolete. The present work is also intended to be 'complete in itself and to serve as a manual of the practice in winding-up cases.' It may be useful to some extent in this latter respect, but the practitioner will often, in our opinion, find it necessary to have recourse to the other treatises in which the subject is treated more in detail. The work, however, is useful and accurate so far as it goes.

## HARRISON ON PROBATE AND DIVORCE.

*An Epitome of the Laws of Probate and Divorce.* By J. Carter Harrison, Solicitor. Fourth Edition. London: Stevens & Haynes. 1891.

The aim of this book is to present as concisely as possible a general view of the laws of probate and divorce, and the author expressly tells us that no attempt is made 'to enter upon unusual or outside points.' The first part of the book deals with the law of probate. As a general view of the subject the work will be found in the main accurate and trustworthy. The value of the book, however, would have been much enhanced by a reference to more recent authorities. In the page on costs we were surprised to find in a book appearing in April, 1891, a reference to 'Supreme Court of Judicature Act, 1875, Order LV. This order is now superseded by the rules of 1883 and the Judicature Act of 1890, and a reference to the old order is certainly a somewhat serious blunder. The second part of the book is devoted to the law of divorce and matrimonial causes. Here, again, the student will find valuable assistance; but here, again, recent cases might have been advantageously added. All we are told about costs is summed up in a single short sentence, telling us that they are to be on the lower scale unless they are allowed on the higher scale on special grounds. There is no allusion to the rules of 1883, nor to the Judicature Act, 1890, nor to the peculiar practice as to costs in divorce matters. These points ought to have been amended in this edition.

## SALAMAN ON TRADE-MARKS.

*Trade-marks; their Registration and Protection in the United Kingdom and Abroad; also the Merchandise Marks Act, 1887.* By Joseph Seymour Salaman, Solicitor of the Supreme Court and Patent Agent. London: Kegan Paul, Trench, Trübner & Co. (Lim.). 1891.

The aim of the author of this pleasantly written manual has been not to write a law book for lawyers, but to make a very difficult subject, and one which grows in importance every year, interesting to the commercial community. He also aims at helping his readers to obtain valid and proper registration of their trade-marks, and to understand the principles upon which the Courts will give them effective protection. Mr. Salaman has, we think, certainly succeeded well in his object, as his work is at once readable and accurate. The lawyers, too, may occasionally get help from his pages, and we think he might have looked to them a little more, and added, for their benefit, references to the authorities that he cites. Most of them, however, are very well known, so that the legal reader who may take up the book will have no difficulty in supplying this deficiency, if such it be, for himself. At p. 62 we find some well-founded observations on the subject of costs, and the author points out that very considerable injustice and injury appears to have been done by the omission of provisions on this subject in the Act or the rules to the party who has been put to expense by an invalid opposition or an improper application. The question, 'What is a trade-mark?' is discussed in Chapter I. in an interesting style, and it will be quite refreshing to the eyes of a classical scholar to see the allusion to the dolphin wound round the anchor—the symbol by which the early editions of the Aldine Classics are distinguished.

## THE LAW OF AUCTIONEERS.

*Auctioneers, their Duties and Liabilities.* A Manual of Instruction and Counsel for the Young Auctioneer. By Robert Squibbs, Auctioneer. Second Edition. Revised and partly rewritten. London: Crosby Lockwood & Son. 1891.

This work may be recommended as giving a great deal of information on the law relating to auctioneers in a very readable form. In the introductory chapters we have a sketch of the history of the subject. The testimony of Herodotus is quoted as to the custom of the Babylonians with regard to their wife auctions, which is pronounced by the historian to be the wisest he ever heard of. The price gained by the auction of the beautiful was made a fund to supply portions for the plain maidens, 'the damsel who was equidistant between beauty and plainness being given away *gratis*.' 'By transferring to the scale of the ill-favoured the prices paid for the fair, beauty was made to endow ugliness, and the rich man's taste was the poor man's gain.' The author alludes to the agreement between Abraham and

Ephron for the purchase of the cave of Machpelah, and ingeniously submits that here we may assume that something like the business of auctioneering had an existence. We must admit, however, that the transaction in question appears to us to be as unlike as possible to anything where such an intermediary as the auctioneer of modern days intervenes. Chapter II. is devoted to 'Licenses and Excise Duties,' and Chapter III. to 'The Auctioneer and the Law.' The book concludes with 'The Ethics of Auctioneering' and an appendix of statutes, &c. The work bears marks of ability and knowledge of the subject throughout. Having said this much in its praise, we must point out that on a good many points this book cannot be regarded as a trustworthy exposition of the law. On p. 189 we are told that a life policy is an instrument by which a contract of indemnity is effected between the insurer and insured. This definition, which, by the way, is wholly unnecessary for any practical purpose, is completely opposed to the great case of *Dalby* v. *India-London Life Assurance Company*, decided in 1854, which has been recognised as an authority and followed ever since. On the next page but one the provisions of section 25 of the Judicature Act, 1873, as to assignment of *choses in action* is cited, with the addition, 'and see subsequent Judicature Acts.' What the meaning of the allusion is we fail to perceive. Numerous points of law which ought to have been mentioned are conspicuous by their absence.

# Correspondence.

## COURT ROLLS.

Sir,—Kindly allow me to express my thanks to your correspondents 'A. K. C.,' 'F. F.,' and Mr. Dove, who have obligingly answered my query inserted in your issue of April 25 last. I have already adopted some of the suggestions, and I can see they will benefit me materially.

T. K.

May 13.

## TITHE ACT, 1891.

Sir,—Referring to your remarks at p. 248 and to the Rules under the Act now issued, may I ask you kindly to say whether you think that it will be sufficient if the landowner gives to the tithe-owner the notice of occupier's liability (*a*) in case of payment by landowner without order, before such payment; (*b*) in case of an order for recovery obtained by the tithe-owner, before such order is made.

R. E.

May 11.

[For answer, see 'Obiter Dicta.'—Ed.]

## THE SEPARATION OF HUSBAND AND WIFE.

Sir,—It was declared by the Court of Appeal (Cotton, L.J., Bowen, L.J., and Fry, L.J.) in *In re Moore, Trafford* v. *Mackonochie* (1888), 57 Law J. Rep. Chanc. 936, that a gift promoting the separation of husband and wife was against the policy of the law of England, and was therefore bad. The same Court, constituted of the Lord Chancellor, the Master of the Rolls, and Fry, L.J., declared in *Jackson's Case* that a married woman was entitled to unrestricted liberty in choosing whether she would live separate from her husband. In the former case one reads of the Court having stated that the law of England does not allow provisions made in contemplation of a future separation between husband and wife; while in the latter case it was the unanimous opinion of the Court that the wife must be set at liberty with the avowed intention of separating herself from her husband against his wish, thus, of course, facilitating the completion of her intention.

Such a separation is said to be *contrà bonos mores* in the first case, though not so in the second case. But the separation in both cases cannot, it is submitted, be differentiated.

If, without unduly canvassing the celebrated judgment, the Court of Appeal in *Jackson's Case* can be properly said to have virtually effected the separation of husband and wife, on what principle, it may be inquired, can these two decisions be reconciled? In each the intention to separate was a prominent feature and the crux of the decision; the intent and object of the gift in the one case were held to be with a view to promote the separation, in the other the wife's declared intention to the judges was not to live with her husband. But in the first case the gift was held invalid, while the Court in the second case assisted the wife's intention to divorce herself.

To examine and consider the appellate decisions referred to side by side is perplexing, and the judgments are contradictory apparently. Perhaps it may be correct to say that the respective judgments are of authority only with regard to the particular facts of each case. Be it so; but most important principles were discussed by the judges in each case, and consequently the judgments remain of more than ephemeral value and interest.

However that may be, the two judgments show clearly that the Court of Appeal, on the consideration of *In re Moore*, from the Chancery Division, decided against the validity of a gift promoting the separation of husband and wife, because such an object is *contrà bonos mores*; and the Court of Appeal, sitting subsequently on *In re Jackson*, from the Queen's Bench Division, practically effected that prohibited object. Is it, therefore, to be taken that the separation of husband and wife by mere act of one of the spouses is not against public policy? To ponder the decisions referred to on the common ground of the legality or illegality of such separation—and that point is involved in both cases—a conflict results. If this is a correct conclusion, then the question remains to be considered whether the legality of a gift to a wife to take effect on her separation from her husband is now open to argument, the decision in *In re Moore* notwithstanding, involving a point of conveyancing law of some interest, if it is not covered by the authorities referred to in the first-mentioned case.

George E. Solomon.

May 11.

Rents Collected and Distraints Levied to Recover Same, by Messrs. Henry C. Wood (Surveyor to the Parish of Tooting) and Henry Kirby (Wood & Kirby), Certificated Brokers, 1 Great James Street, Bedford Row, W.C. No charge made to Landlords if Rent over 20*l*. Troublesome tenants got rid of. Possession also taken under Bills of Sale, Mortgages, &c. Bailiffs to the Parish of St. Dunstan in the West and City of London (Farringdon Ward). Money paid over same day received. Bankers: City Bank, Holborn Viaduct. References, if desired, to clients of many years' standing. Prompt and personal attention given.—Advt.

# Unreported Cases.

## COUNTY COURTS.

TRADE CUSTOM—WARRANTY—EGG TRADE.

AT the Birmingham County Court, on Tuesday, April 21, the case of *Pool* v. *Benning & Co.* was heard before His Honour Judge Chalmers. This case raised two points of great importance to the large class of merchants who are concerned with the egg industry of the country. The first point was whether there was a universal custom or usage in the egg trade providing that all claims in respect of bad or injured eggs should be made within three days of delivery of the consignment to the purchaser. The second point was whether there was or was not a warranty in the egg trade. The action was brought by the plaintiffs to recover 19*l.* 18*s.*, being the balance of the price of a consignment of 'pickled eggs' imported from Hamburg and placed to the defendants' order at Grimsby on the day of arrival at that port. The plaintiffs were large importers of eggs, dealing with collectors on the Continent. Before the consignments reached England the plaintiffs usually succeeded in disposing of the eggs to purchasers in this country. In the autumn of last year the plaintiffs agreed to purchase from collectors a thousand cases of eggs, each case containing 1,440 eggs, to be delivered as required. On January 26 of the present year the plaintiffs were expecting a consignment to be delivered at Grimsby from Hamburg, and on the same day they wrote to that effect to the defendants, who were egg merchants and importers carrying on business at West Hartlepool. The eggs were described as 'H. P. pickled eggs, about 14lb. average, very fine quality, good colour, well got up; should not make less than 6*s.* 6*d.* in port.' On the 27th the defendants telegraphed a reply offering to take forty-four cases of eggs at 6*s.* 5*d.* in port, subject to good quality. The eggs arrived at Grimsby on the 27th, and they were delivered to the defendants' agents to their order on the same day, and invoiced at the sum of 169*l.* 8*s.* The invoice was forwarded to West Hartlepool on the 27th, and it bore the words clearly printed on it, 'No claim entertained unless made within three days,' which one of the plaintiffs explained as meaning that, as between two egg merchants in this country, the claim must be made within three days of delivery to the purchaser, and, as between the importers and collectors on the Continent, within three days of delivery at the port of arrival. The plaintiffs had no complaint about the eggs until Feb. 12, when they received a letter from the defendants saying that the eggs were badly frosted, and that they should have to make a claim. The plaintiffs replied on the following day saying that the notice of claim was too late, as they had already settled with the shippers. After a lengthy correspondence the defendants paid the account less the sum of 19*l.* 18*s.* A large number of gentlemen concerned in the egg trade were called on behalf of the plaintiffs, and they all deposed that it was a universal custom in the egg trade, both wholesale and retail, that no claims should be entertained in respect of bad or injured eggs, unless they were made within three days of delivery to the purchaser. The defendant and two of his agents and a gentleman in the wholesale confectionery business denied that there was any such custom, and said that the only limit of time within which such claims had to be made was a reasonable limit varying, according to circumstances, from seven to fourteen days after delivery.—Parfitt (instructed by Beal & Co., Birmingham) contended that there was no such thing as a warranty in the egg trade, and that the letter of the plaintiffs, dated January 26, did not in law amount to such. It was a mere expression of opinion by the plaintiffs, based upon their experience of 700 cases, part of the order given in the autumn of last year, which had arrived previous to that date, or at most an inducement. It was equally within the knowledge of the plaintiffs and defendants that there was no opportunity of inspecting such eggs as and when they were collected abroad, and it was common ground that it was a prevailing practice for importers to sell the eggs to merchants and retailers before their arrival in this country. It was, therefore, clear that the plaintiffs never intended the statements in the letter to amount to a warranty, and it would be unreasonable on the part of the defendants, in the light of the knowledge which they possessed, to accept such statements as a warranty.—Atkins (Snow & Atkins, Birmingham) *contrà*. —His Honour held that the custom as to the three days' limit was clearly established, and that his finding upon this point rendered it unnecessary for him to decide whether the letter of January 26 amounted to a warranty, although he was strongly of opinion that it was. He gave judgment for the plaintiffs for 19*l.* 18*s.*, with costs.

## COMMISSIONERS FOR OATHS ACT (1889) AMENDMENT BILL.

THE following is the text of the above-named bill:—

Whereas doubts have been entertained whether the powers to administer oaths and take affidavits conferred on a commissioner for oaths by the Commissioners for Oaths Act, 1889, extend to oaths and affidavits required by special provisions to be made before a justice of the peace, or any particular person or officer, and it is expedient to remove such doubts:

Be it, therefore, enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Where, by, or under the Merchant Shipping Acts, 1854 to 1889, or the Customs Consolidation Act, 1876, or the Patents, Designs, and Trade-marks Acts, 1883 to 1888, or the Pawnbrokers Act, 1872, or Acts amending the same respectively, any oath or affidavit is required to be taken or made before any particular person or officer, whether having special authority or otherwise, and whether at any particular place, or within any specified limits or otherwise, such oath or affidavit may be taken or made before a commissioner for oaths, at any place, and shall be as effectual to all intents and purposes as if taken or made before such person or officer, and at any particular place or within specified limits.

2. In section 6 of the Commissioners for Oaths Act, 1889, after the words 'consular agent' shall be inserted the words 'and acting consular agent.'

3. This Act shall be read with the Commissioners for Oaths Act, 1889, and may be cited as the Commissioners for Oaths Act, 1891, and the Commissioners for Oaths Act, 1889, and this Act may be cited together as the Commissioners for Oaths Acts, 1889 and 1891.

## WHITSUN VACATION NOTICE.

CHANCERY DIVISION.

*There will be no sitting in Court during the Whitsun Vacation.*

DURING the Whitsun vacation all applications which may require to be immediately or promptly heard are to be made to the Honourable Mr. Justice Lawrance.

Mr. Justice Lawrance will act as vacation judge from Saturday, May 16, to Monday, May 25, both days in-

clusive. His lordship will sit in Queen's Bench Judges' Chambers on Wednesday, May 20, and Friday, May 22. On other days, within the above period, applications in urgent Chancery matters may be made to his lordship at 7 Onslow Square, South Kensington.

In any case of great urgency the brief of counsel may be sent to the judge by book-post, or parcel prepaid, accompanied by office copies of the affidavits in support of the application, and also by a minute, on a separate sheet of paper, signed by counsel, of the order he may consider the applicant entitled to, and an envelope capable of receiving the papers, and addressed as follows: 'Chancery Official Letter: To the Registrar in Vacation, Chancery Registrars' Chambers, Royal Courts of Justice, London, W.C.'

On applications for injunctions, in addition to the above, a copy of the writ, and a certificate of writ issued, must also be sent.

The papers sent to the judge will be returned to the registrar.

Chancery Registrars' Chambers,
Royal Courts of Justice: May 6, 1891.

## LIVERPOOL BOARD OF LEGAL STUDIES.

THE annual meeting of the above board was held on Wednesday, the 13th inst., at the Law Library, when the following annual report was submitted:—

The board have much pleasure in submitting the report of their proceedings during the past year.

Following the practice adopted by the board in previous years, a course of lectures has been provided on a branch of each of the three main divisions of law: (*a*) Conveyancing (the law of personal property); (*b*) Equity (relating to mortgages and other securities, fraud, mistake, and performance); and (*c*) Common law (the law of contract).

The conveyancing formed the first course, common law the second course, and equity the third course.

The lecturers were the same as in the previous session—viz.:—

First Course.—W. A. Copinger, Esq. (barrister-at-law), reader in the law of real property and conveyancing to the Owens College, Manchester, author of 'The Law of Copyright in Works of Literature and Art,' 'Index to Precedents in Conveyancing,' 'Custody and Production of Title Deeds,' and 'The Law of Rents.'

Second Course.—A. T. Carter, Esq., M.A., B.C.L. (barrister-at-law), late scholar Queen's College, Oxford, Vinerian law Scholar and Eldon scholar, Oxford, one of the authors of the 'Factors Act, 1889.'

Third Course.—J. S. Seaton, Esq., M.A., B.C.L. (barrister-at-law), Vinerian law scholar, 1886, studentship and three scholarships Inns of Court, 1885 and 1886, law lecturer at the Owens College, Manchester.

The three courses were, as before, delivered consecutively, extending from the last week in September to the last week in April. Each course consisted of ten lectures supplemented by classes.

Papers of questions bearing upon the lectures were set by the lecturers as on former occasions, and the answers to these questions were corrected and handed back to the students, and were afterwards either gone through in class or discussed individually with the students.

At the conclusion of each course an examination was held and two prizes of 3*l.* 3*s.* and 2*l.* 2*s.* respectively were offered for competition amongst articled clerks and bar students at each examination.

Sir Henry Fox-Bristowe, Q.C., Vice-Chancellor of Lancaster, again very kindly provided the prizes offered at the examination held at the conclusion of the course on 'Equity.'

It is to be regretted, however, that the requisite number of nine candidates did not present themselves at the examination on any of the three courses, and consequently, according to the usual practice of the board, only one prize of 3*l.* 3*s.* could be awarded. Having regard, however, to the examiner's report, the board have determined to present to Mr. Glasgow, who was second in the common law course, a special prize of 2*l.* 2*s.* for the excellent work done by him.

The fees charged for the lectures have been the same as in previous years—viz.: 7*s.* 6*d.* a course, or 1*l.* for the three courses, to students who were members of the Liverpool Law Students' Association, and a fee of 10*s.* 6*d.* a course, or 1*l.* 10*s.* for the three courses, to others not members of that body.

The amount received from this source has been 31*l.* 7*s.* 6*d.*, as compared with 42*l.* 3*s.* 6*d.* last year.

The following is a table of the attendance at each course:—

| — | No. of Students Entered | Average attendance | | Number Present at Examination |
|---|---|---|---|---|
| | | Lectures | Classes | |
| First Course . . | 21 | 17 | 13 | 7 |
| Second Course . | 27 | 19 | 13 | 8 |
| Third Course. . | 32 | 20 | 18 | 6 |

The board feel that these figures are not as satisfactory as they should be, and that the attendance should be largely increased. They desire again to appeal to solicitors to see that their articled clerks take due advantage of the lectures provided for them.

Prizes have been awarded as follows: First course, G. M. Magee, first prize; second course, G. M. Magee, first prize; third course, J. W. Badger, first prize; special prize, W. Glasgow.

Following the course adopted in previous years, it has been arranged that the prizes shall be presented to the successful students at the annual meeting of the board.

Each of the lecturers has submitted a report to the board in regard to the lectures and classes, copies of which reports will be found in the appendix.

Following the course also adopted last session, the board made arrangements for two courses of evening lectures. The first course was delivered before Christmas and the second after Christmas.

The courses were as follows:—

| Subject. | Lecturer. |
|---|---|
| 1. Company law . . . | P. O. Lawrence, Esq. (Barrister-at-law.) |
| 2. Charterparties and bills of lading . . . | W. J. Stewart, Esq. (Barrister-at-law.) |

Each course consisted of six lectures (instead of five as in previous years), and were delivered weekly at the University College, the fee charged for each course being 5*s.*

The lectures were intended to meet the requirements of mercantile clerks and non-professional students, as well as of students proposing to enter the legal profession.

The attendance at these lectures was as follows:—

| — | Attendance at First Lecture (free) | Number of Students entered | Average attendance, excluding First Lecture |
|---|---|---|---|
| First Course . . . ('Company law') | 37 | 22 | 19 |
| Second Course . . . ('Bills of lading and charterparties') | 26 | 21 | 19 |

The financial condition of the board continues satisfactory, there being a credit balance of 87*l.* 2*s.* 3*d.*, of which 6*l.* 16*s.* 6*d.* belongs to the prize fund. A copy of the balance-sheet is annexed.

The board wish to express their thanks to the Incorporated Law Society of the United Kingdom, the University College, Liverpool, and the Liverpool Law Students' Association for the grants made by those bodies to the funds of the board, and also to those members of the profession who have so generously augmented the funds by subscriptions and donations.

The thanks of the board are due to the Liverpool Incorporated Law Society, and to the University College, for permitting them to have the free use of their rooms.

In conclusion, the board venture to hope that the manner in which they have discharged their duties during the past year may meet with approval, and invite the cordial co-operation of all members of the profession in their efforts to further advance legal education in Liverpool.

## LAW AND PROFESSIONAL NOTES.

By T. F. UTTLEY, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### CORPORATIONS AND THE STATUTES OF LIMITATION.

AT the recent Manchester Assizes a claim against the corporation of the town for damages excited some notice. The plaintiff, it appeared, sought the damages for the loss of the services of his wife owing to her having been injured through the alleged negligence of the corporation. It was stated that endeavours had been made to arrange an amicable settlement, and a sum was offered for that purpose, but refused by plaintiff. These negotiations were without prejudice to either side, and but for them proceedings would have been instituted earlier. For the defence, it was submitted that the action had not been brought within three months, as required by the Highways Act, and there had not been twenty-one days' notice of the action. The judge thereupon remarked that this was a very shabby defence for a wealthy city like Manchester, and decided both points in favour of plaintiff, but ultimately terms were agreed to between the parties. When this case was reported in the local dailies a ratepayer and citizen took umbrage at the aspersion apparently cast upon the municipal body by the judge. He contended that the corporation were empowered and entitled by statute to put in a technical defence, and there was no meanness in a wealthy corporation doing what a wealthy private litigant might do with impunity. Surely a corporation, whether wealthy or not, being in the position of a trustee, ought rather to be more careful than a private individual. At all events, it is often laid down by the judges that persons holding the office of trustee must exercise all the care they possibly can in the interests of their trust. These contentions educed a reply from another person, who pointed out that the municipal champion seemed to have forgotten that the world generally considers a plea of the Statute of Limitations, though lawful against an honest debt, as a shabby, if not a dishonest, plea. The corporation sought to obtain the same effect by pleading the statute 5 & 6 Wm. IV. c. 50, s. 109, and the officials of the corporation further aggravated their position by inducing the plaintiff to stay proceedings, in the hope of a peaceful settlement, until three months, the statutory period, had expired, and then it was sought to escape liability by taking advantage of this time.

### THE PLEA OF INSANITY AND HEREON AS TO 'PETIT MAL.'

One of the most frequent pleas urged in favour of prisoners being tried for murder or manslaughter is that of insanity. The varieties of insanity are numerous, and one was disclosed at the assizes lately which, perhaps, has not been much noticed outside medical circles—that is, the complaint of *petit mal*. This, it appears, is really a short attack of epileptic insanity, and a person might have only one or two attacks in his lifetime, and no traces of this might be left on his system; further, a person might be having his dinner and suffer under such an attack without being aware of it. As to the effect of this complaint of *petit mal* as regards criminal actions, a man might in a moment of seizure do anything without knowing what he was doing, and it was quite possible for him to seize another person by the throat and cut it without being aware of what he was doing. It was impossible in one medical examination to say whether a man suffered from *petit mal*. These views were expressed during the trial of a man for the murder of his sweetheart, to which reference was made in these Notes of April 18. The counsel for the defence further referred to the malady. The medical evidence with regard to *petit mal* was that a man could attack those who were nearest to him, those he loved best—in fact, that the attack might be made under any kind of excitement—and the person committing it might know nothing of what he had done. He put it to them that the prisoner suffered from this complaint, and that being so, what greater excitement could be given to a young man than a refusal on the part of her he loved? In fact, in his letter to his father and mother, he said: 'I should not have been where I now am if it had not been for my nasty temper,' and, further, when the girl said, 'Save me,' he answered, 'I will save you. Keep still where you are while I fetch help.' The explanation of the reason why he told a lie as to an assault on them was also reasonable. He wrote: 'I knew if I told the truth they would not let me look at her, and I wanted to see her face again.' All this was fully indicative of the condition of mind similar to that under which a patient would be who suffered from *petit mal*. One of the medical men had said that if this disease showed itself it would most likely become apparent when the patient reached the age of puberty, and that was exactly the time at which the hereditary taints of insanity showed itself in the prisoner. The learned judge, in his summing up, pointed out that a certain care was needed not to weaken the criminal law by acquitting persons of criminal acts merely because they were of weak mind. If that were done half the criminal population in the country would be committing crime with a probability of going unpunished. It was not sufficient to prove a man to be of weak mind. Of course, with regard to a man like the prisoner, in whom there was no doubt of the hereditary taint, the consideration of the Crown, if necessary, would be properly exercised. The usual death sentence was passed. This case is one which those who are interested in medical jurisprudence might well make a note of.

### WOMEN AND BOYS IN CRIMINAL COURTS.

'When doctors disagree, who shall decide?' That is a well-known conundrum, and remains yet to be answered. At the Liverpool Assizes the learned judges respectively in the Crown Court and Nisi Prius Court appeared to have acted in contradistinction to each other with regard to the admission of women and boys into the Courts when cases of criminal assault are being tried. In a case in the Nisi Prius Court Mr. Justice Wright intimated that women should not be kept out of the Court; they have a right to attend trials in these cases as well as in others (a man was being tried for assaulting two young girls). Grown-up women were not to be excluded; it is necessary that they should hear these cases. Boys, however, it is assumed, would be excluded; there is no necessity to corrupt their morals by letting them listen to criminal trials of this kind. The judge threatened to make a

representation in another quarter if his orders were disregarded. On the other hand, Mr. Justice Grantham, in the Crown Court, where a number of cases of assaults on females were down for trial, announced that no women or boys were to be allowed to enter the Court that day, and if any were present they were to leave at once. So far as regards boys and girls, this order seems reasonable enough, but in the case of women more liberal views ought to prevail. In this decade of the nineteenth century women are pervading every profession, and the science of medicine has no more secrets hid from them than from men. It would be as well if unanimity of opinion were shown by the judges on this point, for it is hardly dignified for members of the judicial bench to act in opposition to each other.

### OFFICERS AS COMPANY DIRECTORS.

The Secretary of State for War was recently asked what rules, if any, existed regulating the rights of officers on the active list to act as directors of public companies, and whether he was aware that the name of the commandant of the School of Musketry at Hythe was being advertised as already a director of a mining and exploring company, and in that capacity vendor of a silver mine to a second company, the board of which he further proposed to join as a director after allotment. The Secretary of State replied that there was no regulation which prevented an officer upon full pay from becoming a director in a public company provided that it in no way interfered with his being able to devote all the time necessary for the efficient discharge of his duties. Nothing was known at the War Office as to the connection of the commandant at Hythe with any mining or exploring company. In connection with company affairs, it is often a matter of wonder that legislation has not made it a *sine quâ non* with directors of companies that they should have a thorough and competent knowledge of the business they are supposed to direct. When a private partnership is formed, the partners are, as a rule, thoroughly cognisant of all the ins and outs of their business, but in the case of companies, the knowledge of some directors of the company's business is, to say the least, very scanty. There is, it is true, often a managing director, but that cannot be considered as amply sufficient, for in such a case he will be too prone to lead the other directors as he likes, and they must, to a certain extent, accept his statements which, if he is not fair and square, may not always be exactly satisfactory from a shareholder's point of view. Every company practitioner knows that, according to the present law, the regulations generally require that a director shall hold a certain number of shares in the company as a qualification for office, the object being to protect the interests of the shareholders by requiring that those who are entrusted with the management of the concern shall have a personal stake in it. Of course, the larger the stake the more careful are the directors likely to be of the company's interests. 'Nevertheless,' says Mr. Palmer in his 'Shareholders and Directors' Legal Companion,' 'it is but rarely that the holding of a *large* number of shares is required as a qualification.' Such a provision in most cases inconveniently limits the number of eligible candidates, for a man most competent to fill the post may not be in a position to invest more than a small sum.

### AN ACCOUNTANT ON RECENT LEGISLATION.

Under the title 'Official Duties of an Accountant,' a lecture recently delivered in Manchester by Mr. F. Pixley, F.C.A., contains some remarks of as equal interest to the law as to accountants. The report of the lecture in the local papers, so far as regards the official duties of an accountant, is disappointing, as the lecturer's views upon recent legislation are given the greater prominence. However, a full report may appear in the accountants' weekly organ, which will give fuller particulars. With reference to an appointment as receiver and manager, it was stated that this appointment is as a rule only necessary when a concern is hard pressed for means, and the receiver and manager must be careful only to incur liabilities in respect of absolute necessities. He must also be very careful not to be made personally liable, and in all cases to sign any orders with his official position clearly marked after his signature. It was the assisting of debtors in the preparation of their statements of affairs, under the Bankrupt Law Consolidation Act, 1849, that brought professional accountants into prominence before the commercial world, and some of the most eminent members of the profession, both past and present, built up their reputation solely in connection with the statements they prepared under this Act. In those days the passing of the bankrupt's examination was contingent upon a favourable report being made by the official assignee as to the accuracy of the final accounts; and a bankrupt was liable to be opposed by any individual creditor on the ground that the accounts were incorrect or insufficient, and if the fact was established the bankrupt was not allowed to pass his examination. The Bankruptcy Act, 1883, is, to a certain extent, a return to the practice prevailing under the Act of 1849. The lecturer considered the Bankruptcy Act, 1883, was a direct attack upon his profession, and many thought the same of the Companies (Winding-up) Act, 1890, for they contended there was no necessity whatever for the creation of the Administrative Department of the Board of Trade under that Act. The lecturer wound up with an expression of regret that accountants had lost a large amount of business, especially in bankruptcy matters, but congratulated the profession on the prospect of getting back some of it in connection with the liquidation of companies. It would be a great deal more satisfactory in connection with these companies, however, if accountants would make it more worth their business to see that all new companies were soundly established, and straightforward certificates given to show that they are *bonâ fide* and reliable concerns.

### SOME RECENT DECISIONS IN VERSE.

Our contemporary, the *Law Students' Journal*, seems to have added the attractive feature of a poet's corner to its columns. Not long since there appeared the following lines under the initials 'L. E. L.':—

*Bankruptcy Act*, 1890.

If the sheriff should levy, and stay
In your house till the twenty-first day,
  You've done, 'tis a fact
  A bankruptcy act,
So I strongly advise you to pay.

*Re The Clitheroe Abduction Case.*

If you are a married man now,
And your wife says, 'I won't live with you!'
  You get an order of course,
  But you must not use force,
So, what the deuce are you to do?

*Sharp* v. *Wakefield.*

Since *Sharp* versus *Wakefield* you'll see
It might very easily be,
  That your public-house trade,
  For which dearly you've paid,
Is ruined by a local J.P.

By the way, the enterprising editors of this magazine are offering their usual prize essay competitions for the best papers on: (1) The law of husband and wife; (2) The devolution of property on an intestacy; (3) An original legal tale. The prizes are sums of three guineas, two guineas, and two guineas. Competition No. 1 is open to all the world, and if anyone sends in a tale which does not win the prize he may yet have a chance of earning a guinea, as the editors reserve to themselves the right

to retain any likely tale competition and publish it afterwards, in their journal, on the terms stated. Anyone, therefore, who desires to make an effort in this direction, should write for a copy of the May number of the magazine, giving the fullest particulars.

## THE LATE SIR MONTAGUE SMITH.

MEN'S memories as to judges, even much better known and more recently in active service than Sir Montague Smith, are short. For about ten years he has ceased to exercise judicial functions, and some twenty have passed since he quitted his seat in the Court of Common Pleas. But his death, which we noted on Monday, May 4, merits more than a passing word. An interesting figure, representative of much that is best in the English bench, has passed away. He came to the front on the Western Circuit, then the nursery of judges, possessed of a brilliant bar, and able to give employment to some half-dozen 'silks'—a circuit very unlike its present starved and attenuated self. In the group of singularly gifted men who went that circuit were several much better advocates than Montague Smith, but none inspired more respect—none were more guileless of rhetorical devices, and few more effective in that persuasiveness which comes from moral character.

It is significant that he, a consistent and active Conservative, was made a judge by a Liberal Lord Chancellor, Lord Westbury. He was appointed a member of the Court of Common Pleas at a time when that Court, not always strong, was unusually so. Sir William Erle was Chief Justice; and the present generation has forgotten that many of his contemporaries regarded him as the very first of forensic speakers and the best of judges. Willes, Keating, and Byles, then puisnes, were lawyers of learning and ability, and among them Montague Smith showed to no disadvantage. It was a time when there was a rivalry—in many ways useful—between the three Courts of common law. Business chiefly set, as it always had, at least since Mansfield's time, to the Queen's Bench. But the Court of Common Pleas was also in favour, especially among mercantile men, and Montague Smith did much to sustain its reputation. In 1881 it became necessary to strengthen the Judicial Committee, then overweighted with business and suffering from the loss of several of its best members, especially Lord Kingsdown. Loud raged the storm of indignation at the circumstances of the appointment of Sir Robert Collier, who was transferred, after being some forty-eight hours a member of the Court of Common Pleas, to the Judicial Committee, in direct violation of the spirit of the Act of Parliament. Not a question was raised as to the fitness of Sir Montague Smith's appointment. Result justified the choice. Of the four paid members then nominated none gave more satisfaction than he. That tribunal has often been charged with excessive timidity—as too prone to decide large questions upon small grounds, and not to give colonial Courts all the light and leading which they desire and fairly expect. The late judge was not the man to deprive that criticism of all its point. He excelled in clear analysis of facts and authorities. He fell, perhaps, too readily into the habit, fostered by the system of delivering judgment peculiar to that tribunal—a judgment which may exactly express the view of no one who is a party to it—of deciding nothing more than was absolutely necessary. But he did good work, as none would more freely admit than the Canadian and other colonial lawyers who appeared before him; and one or two of the judgments prepared by him—for example, that in *The Bank of New South Wales* v. *Owston*—are in their way classical. It has been said that a marked difference, one of kind and temper, exists between lawyers trained before and those trained after the Common Law Procedure Acts. Sir Montague Smith belonged to the former; he had their accuracy and firm hold of principles. But he had nothing of their pertinacious love of 'singleness of issue' and other technical beauties, and he was altogether modern in his desire to do justice, even at the expense of forms. We might have had abler and more learned men to sit in that greatest of all Courts of Appeal, the Judicial Committee. But he, with his disciplined sagacity, high sense of honour, and long experience, gave satisfaction where more brilliant men might have failed.—*Times*.

## SEARCHES FOR HEIRS-AT-LAW, NEXT-OF-KIN, &c.

MR. SIDNEY H. PRESTON, of 1 Great College Street, Westminster, writes as follows:—

In the 'agony' columns of the leading newspapers many lucky individuals are continually promised 'something to their advantage,' with but the trouble of proving their identity. In many cases these acceptable announcements fail to catch the eyes of the heirs, next-of-kin and others for whom they are intended. Consequently, large estates yearly go to the Crown, while the amount of unclaimed money arising from other sources is annually increasing. It may, therefore, interest your readers to know that among the names of persons recently advertised for are the following:—

Charles C. Aldis, Isabella Atkinson, David Axtill, Elizabeth Baker (or descendants), Georges Becquart, Eliza Benningfield, Richard P. Bentley (2,000*l*.), Charles H. Bere (died 1857—children of), William Bird, Dorothy Boswood (representatives of; funds unclaimed since 1796), Eliza Boyton, William K. Brophy (Australia), James T. Caird, William Calder (Manchester), James Claridge, John Clisby, William Cole, Henry Clark (Nottingham), Copely Family, Louisa M. Collingwood (emigrated twenty years ago), Edward Cowham (Brisbane), Sarah E. Craig (South Shields), Elizabeth Cronk, Thomas Davis (emigrated 1854), James Duncan (Liverpool, 1860; supposed to be dead), William Elston, James M. Essex (last heard of 1874), Emma L. Floyd; William, Jane, Elizabeth and Rebecca Garrett; Charlotte E. Garrod (children of), Robert C. H. Good (America), Thomas Harding (last heard of 1872), Alexander Hoar, Herbert Family, William Holmes (Liverpool), Frederick W. Holligan (Manchester), Henry and Maria Howard, Samuel James (emigrated 1849), Henry Knight or children (Naples, 1851), William Lakeman (formerly of Devonshire), David S. Lash, Kate Lawrence (Chelsea), David T. and Henry Manton, Elizabeth Mason (or children), William Mellis, Thomas Miller (merchant, 1692—representatives of), Thomas Morris (London, 1692—representatives of), Arthur Mumyard, R. J. W. and Mary A. Neal, David Osborn (believed to have been accidentally killed), Ann Owen (or descendants), Joseph and Geo. Parkinson, Louisa Poole, John Paterson (left Scotland for New York, 1863), Edward Price (or children), Emily Jane Pring, Robert R. Pursell, Ada Maud Richards, John and Thomas Robinson, James Rodway (Manchester), Mary Sandall (children of), William Leary (daughters of), Alfred Sheen (schoolmaster), Richard Sheppard (Liverpool), William Snooks (coachman), Alfred Spice, George Tressy (known as 'No. 1'), Caroline Ver Huell, Mary Harwick (born 1823), Gerald Webster (Manchester), Emily Wharram, Luke White, Edward West (London, 1692—representatives of), Mary Wilkes (Warwickshire), John Wragg (emigrated 1869), George Williams (California), and Eliza Wright (Middlesex—next of kin of).

In addition to the foregoing, the following extraordinary 'windfalls' have recently been chronicled:—

4,000,000*l.* to four persons named Schuberth, by the death of Joseph Schuberth, pianoforte manufacturer, of Philadelphia.

12,000 marks to a widow, in gratitude for her having refused to marry a Hamburg bachelor thirty years ago.

50,000*l.* to General Booth; and

Ten shillings to a lady 'to buy a pocket-handkerchief to dry her tears' after testator's decease.

## SOUTH-EASTERN CIRCUIT.

On May 8 the members of the South-Eastern Circuit entertained Lord Hannen and Mr. Justice Jeune at dinner at the Hôtel Métropole in celebration of the appointment of the former as a Lord of Appeal in Ordinary and the elevation of the latter to the bench. Mr. Justice Romer was to have been a similarly-honoured guest, but in consequence of an attack of influenza his lordship was unavoidably absent, as also were Sir A. K. Stephenson, Mr. Cock, Q.C., and Mr. Sidney Woolf, Q.C., from the same cause. Mr. Murphy, Q.C., occupied the chair, and among the past and present members of the circuit present were Lord Bramwell, Mr. Justice Denman, Mr. Baron Pollock, Mr. Justice Hawkins, Mr. Justice Mathew, Mr. Justice A. L. Smith, Mr. Justice Vaughan Williams, the Attorney-General (Sir Richard Webster, Q.C., M.P.), the Solicitor-General (Sir E. Clarke, Q.C., M.P.), Master Kaye, Mr. Registrar Giffard, Mr. Registrar Lord, Mr. Biron, Q.C., Mr. Cohen, Q.C., Mr. Inderwick, Q.C., Mr. Meadows White, Q.C., Mr. M. Griffith, Q.C., Mr. Kemp, Q.C., Mr L. Smith, Q.C., Sir C. Hall, Q.C., M.P., Mr. Finlay, Q.C., M.P., Mr. S. Will, Q.C., M.P., Mr. Channell, Q.C., Mr. Bayford, Q.C., Mr. Moorsom, Q.C., Mr. Crump, Q.C., Mr. H. Payne, Q.C., Mr. Underdown, Q.C., Mr. Candy, Q.C., Mr. Nasmith, Q.C., Mr. Winch, Q.C., Mr. Poland, Q.C., and Messrs. W. B. Rosher, Athawes, G. Foster, J. Woollett, G. Taylor, J. Levy, E. H. Pollard, H. Williams, C. E. Jemmett, E. Beasley, J. G. Witt, S. Hastings, M. Powell, K. Digby, G. Dering, C. D. Powles, H. W. Bradford, E. Harrison, R. M. Bray, A. Bremner, F. Lee, R. Brown, F. Gore, B. Deane, H. H. Croft, W. W. Wood, H. de Colyar, M. Smith, E. Pollock, F. Hollams, M. Mackenzie, W. Boxall, L. Wilson, J. Davis, H. F. Dickens, H. Poyser, C. F. Gill, W. J. Grubbe, A. C. Nicoll, C. C. Scott, J. G. Laing, H. Avory, A. Macmorran, H. Cunynghame, C. K. Francis, B. Little, J. Fox, B. Morice, M. Guiry, A. R. Cluer, Rose-Innes, G. B. Rosher, C. M. Chapman, W. Danckwerts, L. Lipscomb, L. Levy, E. W. Hansell, H. A. Forman, H. C. Richards, W. H. Williams, C. Gurdon, G. Elliott, R. Mercer, H. Loehnis, M. Hall, Guy Lushington (junior of the circuit), F. G. Brown, H. C. Munroe, W. H. Payne, E. M. Pollock, H. Holdenstein, J. H. Murphy, R. Kemp, E. Boyle, G. Hohler, H. C. Bingley, F. Barchard, H. Winch, H. D. Grazebrook, S. A. Mavrojani, F. Low, A. Tassell, T. Mathew, and F. Carpenter.

Solicitors' Benevolent Association.—The usual monthly meeting of the board of directors of this association was held at the Law Institution, Chancery Lane, London, on Wednesday, the 13th inst., Mr. Thomas H. Stephens (Cardiff) in the chair. The other directors present were Messrs. H. Morten Cotton, Robert Ellett (Cirencester), Geo. Burrow Gregory, Edwin Hedger, John Hunter, R. Pennington, Henry Roscoe, Sidney Smith, R. W. Tweedie, W. Melmoth Walters, Frederic T. Woolbert, and J. T. Scott (secretary). A sum of 200*l.* was distributed in grants of relief, thirty new members were admitted to the association, and other general business was transacted.

## HONOURS AND APPOINTMENTS.

Mr. Robert Hallett Holt, of Lincoln's Inn, barrister-at-law, has been appointed the Vice-Registrar of the Office of Land Registry, to be the Registrar of that office in the place of the late Mr. Brent Spencer Follett, Q.C. By virtue of this appointment Mr. Holt becomes, under the Middlesex Registry Act, 1891, the Registrar also of the Middlesex Registry in succession to the Queen's Remembrancer, who was temporarily appointed Registrar on the death of Lord Truro.

Mr. Reginald More Bray has been appointed Recorder of Guildford in the room of Mr. Morgan Howard, Q.C., deceased. Mr. Bray is a member of the South-Eastern Circuit, and was called to the bar in 1868. He is an alderman of the Surrey County Council.

Mr. John Ingleby Jefferson, of Northallerton, has been appointed Registrar of the County Court and Bankruptcy Court at Northallerton; also, Deputy-Steward and Clerk of the Halmote Courts of the Manor of Northallerton, in place of his late father, Mr. W. T. Jefferson. Mr. Jefferson was admitted in 1876.

## NOTICES FOR THE WEEK.

### Rota of Registrars.

Wednesday, May 20.—Court of Appeal No. 2: Mr. Leach. Mr. Justice Chitty: Mr. Rolt. Mr. Justice North: Mr. Carrington. Mr. Justice Stirling: Mr. Beal. Mr. Justice Kekewich: Mr. Ward. Mr. Justice Romer: Mr. Jackson.

Thursday, May 21. — Court of Appeal No. 2: Mr. Godfrey. Mr. Justice Chitty: Mr. Farmer. Mr. Justice North: Mr. Lavie. Mr. Justice Stirling: Mr. Pugh. Mr. Justice Kekewich: Mr. Pemberton. Mr. Justice Romer: Mr. Clowes.

Friday, May 22.—Court of Appeal No. 2: Mr. Leach. Mr. Justice Chitty: Mr. Rolt. Mr. Justice North: Mr. Carrington. Mr. Justice Stirling: Mr. Beal. Mr. Justice Kekewich: Mr. Ward. Mr. Justice Romer: Mr. Jackson.

Saturday, May 23.—Court of Appeal No. 2: Mr. Godfrey. Mr. Justice Chitty: Mr. Farmer. Mr. Justice North: Mr. Lavie. Mr. Justice Stirling: Mr. Pugh. Mr. Justice Kekewich: Mr. Pemberton. Mr. Justice Romer: Mr. Clowes.

Commercial Failures.—According to *Kemp's Mercantile Gazette* the number of failures in England and Wales gazetted during the week ending May 9 was sixty-six. The number in the corresponding week of last year was 102, showing a decrease of thirty-six, being a net decrease in 1891, to date, of 180.

United Law Society.—The usual weekly meeting was held on May 11, at the Inner Temple Lecture Hall, Mr. Common in the chair. Mr. C. W. Williams moved: 'That the decision in the Clitheroe abduction case is (1) bad in point of law; (2) against public interest.'—Mr. W. S. Sherrington opposed, and the debate was continued by Messrs. G. D. Ellman, G. Mallam, A. K. Common, Arthur Gilbert, J. R. Yates, J. L. V. S. Williams, M. S. Nathan, and Lewis. The opener having replied, the motions were put separately, and lost by majorities of two and four respectively.

Home Cure for Deafness.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d.* De Vere & Co., Publishers, 22 Warwick Lane, London, E.C.—Advt.

## CALENDAR OF THE COUNTY COURTS.

FROM MAY 18 TO MAY 23.

| No. of Circuit | His Honour | May 18 | May 19 | May 20 | May 21 | May 22 | May 23 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Birkenhead | — | — | Leigh | — |
| 14 | Judge Greenhow | — | — | — | Leeds | — | — |
| 15 | Judge Turner | — | Stockton-on-Tees | Darlington | Leyburn | Stokesley | Northallerton |
| 19 | Judge Barber | — | — | — | Derby | Mortlock | — |
| 55 | Judge Machonochie | — | Lymington | Bournemouth | Wimborne | Wareham | — |
| 58 | Judge Edge | — | Kingsbridge | Crediton | Totnes | — | — |

# House of Lords Register.

THURSDAY, MAY 7.

No sitting (Ascension Day).

FRIDAY, MAY 8.

*Seale-Hayne* v. *Jodrell* (construction of will—'relatives hereinafter named'—vested interest. Reported 59 Law J. Rep. Chanc. 538; L. R. 44 Chanc. Div. 590).—Dismissed.

*Great Western Railway Company* v. *Cole* (construction of railway and works under powers of special Act involving implied extinction by statute of public right of way and user—Railway Clauses Consolidation Act, 1845).

MONDAY, MAY 11.

*Mogul Steamship Company* v. *M'Gregor, Gow & Co.* (conspiracy—combination to keep up rate of freight—engrossing particular trade—exclusion of rival traders from combination. Reported 58 Law J. Rep. Q. B. 465; L. R. 23 Q. B. Div. 598).—*Cur. adv. vult.*

*Great Western Railway Company* v. *Cole.*—Further hearing.

TUESDAY, MAY 12.

*Dewse* v. *Gorton* (administration—executor carrying on business—claim of executors to indemnity out of after-acquired assets—priorities of creditors. Reported 58 Law J. Rep. Chanc. 403; L. R. 40 Chanc. Div. 536).—Dismissed.

*Montgomery* v. *Thompson* (trade-mark—infringement—use of the name of a town—'Stone ale.' Reported 58 Law J. Rep. Chanc. 374; L. R. 41 Chanc. Div. 35).—Dismissed.

*Attorney-General* v. *Emerson* (foreshore—Rights of Crown—several fishery—ownership of soil over which fishery extends).—Dismissed.

*Great Western Railway Company* v. *Cole.*—Stand over.

# Court of Appeal Register.

## APPEAL COURT I.

Before the LORD CHANCELLOR, the MASTER OF THE ROLLS, and FRY, L.J.

THURSDAY, MAY 7.

*Satchwell* v. *Perks* (application of plaintiff for judgment or new trial on appeal from verdict and judgment of Pollock, B., dated April 7, at trial with a special jury in Middlesex).—Refused.

FRIDAY, MAY 8.

*Sanders* v. *New Westminster Brewery Company (Lim.)* (application of defendant company for judgment or new trial on appeal from verdict and judgment, dated April 13, at trial before Cave, J., and a special jury in London).—Order for new trial.

*Bridout* v. *Duncan* (appeal of plaintiff from order of the Lord Chief Justice and Mathew, J., dated April 20, reversing order for trial in London and restoring order for trial in Wales).—Dismissed.

*Rockett* v. *Clippingdale and another* (appeal of defendants from order of Mathew, J., and Williams, J., dated April 18, varying order of official referee as to costs of action).—Dismissed.

SATURDAY, MAY 9.

*Neilans* v. *Cuthbertson and another* (application of defendants for judgment or new trial on appeal from verdict and judgment, dated April 13, at trial before Wills, J., and a special jury in London).—Refused.

*Bute Shipbuilding Dry Dock Company (Lim.)* v. *Gladstone and another* (application of plaintiffs for judgment or new trial on appeal from verdict and judgment, dated March 21, at trial before Williams, J., and a special jury at Cardiff).—Refused.

MONDAY, MAY 11.

No sitting.

TUESDAY, MAY 12.

*In re An Action pending in Scotland. Burchard* v. *Macfarlane* (appeal of W. H. Tindall and another from order of the Lord Chief Justice and Mathew, J., dated May 5, for examination before commissioner as to documents in custody of Lloyd's Register).—Allowed.

*Lewis* v. *The Pontypridd, Caerphilly, and Newport Railway Company* (appeal of defendants from judgment of Denman, J., dated November 22, at trial without a jury in Middlesex).—Part heard.

WEDNESDAY, MAY 13.

*Coles* v. *Fisher* (appeal of defendants from order of Kay, J., dated August 4, partly varying chief clerk's certificate).—Dismissed.

*Vernon and others (Trustees of Loyal Mundy Lodge of Independent Order of Oddfellows, Manchester Unity)* v. *Watson* (Q.B. *Crown Side*) (appeal of plaintiffs from judgment of Baron Pollock and Charles, J., dated January 13, on appeal from County Court).—Dismissed.

*Skinners' Company* v. *Knight and others* (appeal of plaintiffs from refusal of Charles, J., to give judgment at trial on finding of jury, dated December 19).—*Cur. adv. vult.*

*Cox and another* v. *Welch and another* (appeal of defendant from judgment of Lawrance, J., dated January 15, at trial without a jury in Middlesex).—Part heard.

## APPEAL COURT II.

Before LINDLEY, L.J., LOPES, L.J., and KAY, L.J.

THURSDAY, MAY 7.

*In re J. Bald, dec. Bald* v. *Bald* (appeal of E. W. Bald from judgment of Chitty, J., dated March 13, 1890—set down by order).—Dismissed.

FRIDAY, MAY 8.

*S. A. Hampson* v. *W. Guy and others* (application of defendants for new trial on appeal from verdict and judgment dated January 15, at trial before Butt, J., and a special jury; heard May 5).—Refused.

SATURDAY, MAY 9.

*Lougher* v. *Hern* (appeal of plaintiff from judgment of Kekewich, J., dated November 17, 1890; restored after security given).—Part heard.

MONDAY, MAY 11.

*Lougher* v. *Hern*.—Dismissed.

TUESDAY, MAY 12.

*Scholes* v. *Brook* (appeal of defendants Brook and another from judgment of Romer, J., dated January 21).—Part heard.

WEDNESDAY, MAY 13.

Original applications only heard.

SIR JAMES FITZJAMES STEPHEN.—The *Gazette* of May 8 contains the following: 'The Queen has been pleased by letters patent, dated April 20, 1891, to grant to Sir James Fitzjames Stephen, K.C.S.I., late one of the Justices of the High Court of Justice, an annuity of 3,500*l.*

THE ELECTION OF THE BAR COMMITTEE.—Saturday, May 9, was the last day for the nomination of gentlemen to serve on the Bar Committee, when the following were duly proposed: Mr. Bompas, Q.C., Mr. Finlay, Q.C., M.P., Mr. Pitt-Lewis, Q.C., M.P., Mr. E. Cutler, Q.C., Mr. Renshaw, Q.C., Mr. Byrne, Q.C., Mr. S. Hall, Q.C., Mr. Farwell, Q.C., and Messrs. H. F. Boyd, K. Digby, F. Evans, M. Ingle Joyce, W. W. Knox, O. L. Clare, D. Sturges, E. P. Wolstenholme, F. B. Palmer, B. F. Lock, and E. F. Bigg. As more than sixteen candidates have been proposed a contest will take place, and the election will commence on the 17th inst., and end on Saturday, the 30th inst. Every member of the bar is eligible to vote, and voting papers can be obtained of the hon. sec., Mr. S. H. Lofthouse, at his chambers, Farrar's Buildings, Temple, after the 16th inst., which papers, when filled up and signed, must be sent to him within the week ending the 30th inst.

CONSULAR FEES.—The very high consular fees levied by some countries, and more especially by the Consulates of Transatlantic States, which have gradually become a very serious burden for persons engaged in trade with those countries, have recently, at the instance of a Bordeaux representative of a large British steamship company, induced the Chamber of Commerce at Bordeaux to urge upon the French Government the desirability of concluding an international convention amongst all civilised States, by which a maximum limit should be fixed, beyond which no Government should in future be allowed to charge fees for consular services rendered by its representatives residing in other countries. 'There can be no doubt,' says the British consul at Bordeaux, 'that a convention of this nature would be beneficial to trade in general, and that a reduction of the consular fees charged at present by many countries would be highly desirable. Many States at present levy such high fees for consular attestations on invoices and other documents connected with the importation of goods from foreign countries that these fees have become merely another form of import duties, though they do not appear in the Customs tariff of the States in question.'

MISUSE OF METHYLATED SPIRITS.—At Shrewsbury Police Court, on May 7, Harry Johnson, chemist, Shrewsbury, was charged by the Board of Inland Revenue with using methylated spirits in the manufacture of friar's balsam. The offence having been clearly proved, defendant was fined 50*l.*

THE SEA FISHERIES ACT.—An important case under the Sea Fisheries Act was heard before the Ramsgate magistrates on May 13. The information laid against the defendant, Henry G. Howard, was to the effect that, when acting as master of the Ramsgate smack Frederick, which was engaged trawling in the North Sea on October 28 last, he did, in contravention of the Sea Fisheries Act, 1883, wilfully cut the nets of the Dutch fishing vessel Jonge Dirk, of Nordwyk-on-Zee. The prosecution was conducted by Mr. Howard Smith, counsel for the Board of Trade, while Mr. B. Burrows defended on behalf of the Ramsgate Trawl Smacks Protection Association. The bench found the defendant guilty of contravention of Article 19 of schedule 1 of the Sea Fisheries Act, by not taking proper precautions, and that a sufficient look-out had not been kept. Owing to this the Ramsgate vessel was brought into such a dangerous position that the Dutchman's nets had to be cut to prevent a collision. The defendant was fined 1*l.* and ordinary costs of the Court, and also mulcted in 23*l.* 15*s.* damages. Execution was stayed for a week in view of an appeal.

## BIRTHS.

On May 8, at Singapore, the wife of Walter J. Napier, Barrister-at-law, of a son.

On May 9, at Forncett, Sutton, Surrey, the wife of George Brooke, of the Middle Temple, Barrister-at-law, of a son.

On May 11, at Holms Hill House, Ridge, Herts, the wife of Frederick W. Stone, B.C.L., Barrister-at-law, of a daughter.

On May 12, at 15 Westbourne Road, Sheffield, the wife of Reginald Benson, Solicitor, of a son.

On May 12, at 34 Elm Park Gardens, S.W., the wife of Arthur F. Leach, Barrister-at-law, of a son.

## MARRIAGES.

On April 6, at St. Mary's Church, Bathurst, Gambia, Joseph Renner Maxwell, M.A., B.C.L., of Merton College, Oxford, Barrister-at-law, of Lincoln's inn, London, Chief Magistrate and Judge of the Vice-Admiralty Court of the Colony of the Gambia, to Ada Maud Beale, of Batoum Gardens, London, eldest daughter of Thomas Myles Beale, Esq., M.R.C.S.

On April 10, at St. Philip's Church, Southport, Samuel Meacock, J.P., to Eliza, widow of the late Robert Ellis, Solicitor, both of Doncaster.

On April 30, at the Theistic Church, Piccadilly, Mirza Kazim Hosain, Barrister-at-Law, to Maude, fourth daughter of the Rev. Dr. Hughes.

On April 30, at St. John Baptist's, Bath, Charles Thomas Griffiths, L.R.C.P. Lond., M.R.C.S. Eng., of Handsworth, Birmingham, youngest son of the late Thomas Griffiths, Solicitor, Bishop's Castle, to Eliza Kate, eldest daughter of the late Richard Axford, M.R.C.S., J.P., Bridgwater, Somerset.

On May 12, at Holy Trinity, Beckenham, Halliday Harcourt, Solicitor, second son of the late Clarence William Harcourt, of Anerley, to Grace Lilian, elder surviving daughter of Octavius Jepson, M.D., of Elmfield, Sydenham.

## DEATHS.

On April 30, at 106 Comeragh Road, West Kensington, Thomas Dunkin Francis, of 22 Fish Street Hill, Solicitor, second son of the late Henry Dunkin Francis, of Monument Yard, aged 46.

On April 30, at Malvern, Elizabeth, widow of the late Wm. Chartres, of Newcastle-upon-Tyne, Solicitor.

On May 1, at 1 Russell Chambers, Bury Street, Bloomsbury, Charlotte Elizabeth, third daughter of the late Charles Vernon Young, Solicitor, aged 26.

On May 6, Godden Styles Hare, Solicitor, of London, and Waddon Old Road, Croydon, aged 46.

On May 6, at Holm Lea, The Park, Nottingham, George Sydney Milton Johnson, M.A. (Oxon.), Solicitor, eldest son of the Town Clerk of Nottingham, aged 33 years.

May 10, at Clifton, Lucy Caroline, wife of E. C. K. Ollivant, C.I.E., Bombay Civil Service, and second daughter of A. S. Eddis, Esq., Q.C. aged 43.

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# The Law Journal.

*SATURDAY, MAY 23, 1891.*


## 'OBITER DICTA.'

MR. JUSTICE ROMER'S sudden collapse during the hearing of the somewhat sensational case, *In re Park*, was only one out of many inconveniences experienced in the Law Courts owing to the mysterious and dangerous influenza. Unfortunately, however, the illness of a judge has a much wider effect than that of any counsel, however distinguished. The long-suffering litigants in the witness causes recently transferred for trial to Mr. Justice Romer from Mr. Justice Chitty and Mr. Justice Stirling will, to quote a homely simile, 'have jumped out of the frying-pan into the fire' if the learned judge is unable to reanme work on the 26th inst. There are causes now waiting for trial before his lordship which were set down fully nine months ago, and some of which were apparently on the eve of trial some weeks since, when the solicitors were warned to be in readiness by the end of April. This meant, of course, the delivery of briefs and payment of fees and other incidental expenses, only to enter on another period of delay and uncertainty. The evil is a very real and crying one, but it would appear from the Lord Chancellor's recent utterances in Parliament that he is not prepared to suggest a remedy or even to admit the urgent necessity for one.

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No one who has watched the fluctuations of *nisi prius* for the last decade can fail to have been struck by the inequality of the materials out of which juries are constituted. One may see in the box to-day a common jury, consisting of twelve intelligent, educated men who follow closely every point in the evidence, and who put questions evincing a thorough knowledge of the issues. One may see next day a (so-called) special jury constituted of men who present the appearance of being neither *benè vestiti* nor *moderatè docti*, and from whom even the most vigorous advocate fails to elicit a spark of sympathy or interest. Of course, this is only what one has to expect in a lottery. As the names are called, the owners of the names go into the box; and sometimes it happens that a dozen sensible men find themselves side by side for a few hours or a few days (as the case may be); while, at other times, it looks as if all the wooden-headed jurors had conspired to sit together. When we consider the scale of their remuneration we are startled by the relative inferiority of the average special jury. Possibly it may be partly accounted for by the notorious fact that among business men, who begrudge the waste of time and money involved in personal attendance at the Courts, it is—or was—the practice for some person on the staff of the firm (generally a foreman of gentlemanly appearance) to be told off for the duty of representing—*i.e.* personating—his principals in the law Courts. The practice being for the officer of the Court to call out the names of the jurors in alphabetical order, and for each person to file into the jury box as he answers to a name, there is really no guarantee that the persons who are subsequently sworn as jurors are the persons whose names have been called. To what extent this fraud on the litigants, out of whose pockets the fees payable to special jurors are taken, is practised, it is impossible to say; but that it is a fraud is beyond question. We think that the attention of the Lord Chief Justice, as president of the Queen's Bench Division, might usefully be directed to this blot on the jury system.

---

IT is pretty clear that, in the opinion of those whose experience gives them special authority, the law of husband and wife, notwithstanding the legislation of recent years, is still in a state far from satisfactory. The *Jackson Case*, Lord Penzance's letter to the *Times*, the bill now before the Legislature to assimilate the law of divorce to that which prevails in Scotland, where adultery alone on the part of the husband entitles the wife to divorce, and, lastly, Mr. Inderwick's humorous letter in Wednesday's *Times*, suggest that wide changes are necessary in this branch of the law.

No doubt the case of 'the husband mated to an evasive wife,' as Mr. Inderwick suggestively puts it, is a hard one, but it is hard only on the husband. Mr. Inderwick, however, raises a question involving in many instances serious wrongs to others. He attacks that *enfant gâté* of the Court of Chancery, the restraint on anticipation; and proposes that the judges of the Divorce Division should be empowered to disregard the restraint in cases in which it may seem to them just and reasonable to do so. Thus, he says, will the intention of the Act called by Lord Hannen's name, and passed in 1884, be effectually carried out, and an end put to such unseemly squabbles as occurred in the *Jackson Case*. But why should not a more sweeping change be made? The restraint on anticipation was a check imposed on undue marital influence. But in recent days the restraint on anticipation has been much more frequently employed for the purpose of avoiding the legitimate claims of creditors than for protection against the undue exercise of the rights of husbands. The power with which Mr. Inderwick proposes to invest the Divorce Division might reasonably be extended to all the Courts, so as to put it out of the power of dishonest women to avoid satisfaction of debts and liabilities for which they are morally responsible.

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Mr. Storey, M.P., has been advising his constituents at Sunderland to get rid of the jurisdiction of county magistrates over borough affairs as far as possible by establishing a borough Court of quarter sessions, and further advocates, as a general reform, the appointment of stipendiary magistrates throughout the country in the place of the present magistracy, 'who are generally,' says Mr. Storey, 'chosen from one class.' In connection with this subject attention may be drawn to the bill of Mr. Lloyd Morgan, Mr. Dillwyn, Mr. Labouchere, Mr. Lockwood, Mr. Phillips, and Mr. Abel Thomas, 'to enable county councils to provide for the appointment of stipendiary magistrates. The preamble recites that 'there is reason to believe that certain counties in England and Wales desire to secure the services of stipendiary magistrates for the more effectual execution of the office of justice of the peace, the better protection of the persons and properties of the inhabitants, and the advantage of the public;' and by the bill it is proposed that, if any county council by a majority think it expedient that a stipendiary magistrate or magistrates shall be appointed to execute the office of a justice or justices of the peace within such county, such county council may make a bye-law fixing the amount of the magisterial salary, which is to be transmitted to the Home Secretary, '*who shall* thereupon appoint a person or persons qualified in accordance with section 1 of the Stipendiary Magistrates Act, 1863,' to act as stipendiary magistrate or magistrates. The qualification under the Act of 1863 (the preamble of which may be studied with advantage) is to be a fit person and a barrister of not less than five years' standing.

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In quashing the committal of Mr. Storey, M.P., the High Court made the rule absolute for a *certiorari*, with costs against the committing justices personally. This is, we believe, a very unusual course, it being generally considered that justices of the peace who serve gratuitously should not be made to pay for their mistakes. Even the paid judges of inferior Courts are, as a rule, ordered to pay costs only in very special cases, as in *Blades* v. *Lawrence*, 43 Law J. Rep. Q. B. 133, in which a rule was made absolute against the Judge of the City of London Court, with costs, he having been, as it is put by Mr. Justice Blackburn, 'contumaciously wrong.' There appears, however, to be no doubt of the power of the Court to give costs against justices of the peace, if not under the law before 1890, at any rate under the Judicature Act of that year (53 & 54 Vict. c. 44), by section 5 of which costs are in the discretion of the Court, and the Court or judge has 'full power to determine by whom and to what extent such costs are to be paid.'

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We printed last week (*ante*, p. 342) the names of the nineteen candidates for the sixteen vacancies on the Bar Committee, which are to be filled up by an election commenced on Saturday last, the 16th, and to terminate on Saturday, the 30th inst. We may remind our readers that the subscription is half-a-guinea a year, but that every member of the bar, whether a subscriber or not, is entitled to vote, though the frequent and elaborate reports of the many sub-committees (of which as many as eighteen sat in 1890) are sent to subscribers only. We hope that the interest which has hitherto been shown by the active voting at these elections will be continued on these occasions; but we cannot help thinking that it would be desirable to bring the committee more in touch with their constituents than is done by merely holding an annual election and an annual meeting. Could not a very small charge be made in future for each voting paper, in return for which each elector, besides being provided with a voting paper, should be entitled to receive the reports of the sub-committees? Voting papers can be obtained of the hon. secretary, Mr. S. H. Lofthouse, at his chambers, Farrar's Buildings, Temple. The candidates have issued no addresses, nor, of course, is there any reason they should do so. But the essence of the Bar Committee is that it is a representative body, which the Inns of Court cannot be; and any member of the bar who has any reform at heart will do good service to the bar if he will take the trouble to communicate his views to the candidate for whom he intends to vote *before he votes for him.*

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Is influenza an 'infectious disease'? This is a question for doctors to decide; but we believe we are right in saying that it is not generally considered amongst doctors to be so. However this may be, it may be useful to point out that neither in the Infectious Diseases Notification Act, 1889, nor the Infectious Diseases Prevention Act, 1890, is influenza, *as yet*, an infectious disease in point of law. By section 6 of the Act of 1889 (which is applied to the Act of 1890 by section 2 of the latter Act) the term 'infectious disease' means smallpox, cholera, diphtheria, membranous croup, erysipelas, scarlatina, scarlet fever, typhus, typhoid, enteric, relapsing, continued or puerperal fever, and also includes, as respects any particular district, *any infectious disease* to which the Act is applied by resolution of the local authority. By section 7, the local authority of any district to which the Act extends may by resolution order that the Act shall apply *to any infectious disease* other than a disease specifically mentioned in the Act. Is influenza a disease of so infectious a character that it

can be added to the statutory list by such a resolution? We very greatly doubt it. But the determination of so difficult a question is not left entirely to the local authorities, inasmuch as by subsection 3 of section 7, an order thereunder 'shall not be of any validity until it is approved by the Local Government Board,' which very wise central authority will no doubt be supplied with sufficient information to guide them in granting or refusing the approval of the order of the local authority.

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WE called attention some little time ago to the long interval which in recent years has elapsed between the hearing of cases by the Court of Appeal and their final decision by the House of Lords. Their lordships delivered judgment in three cases a few days ago, and it is interesting to note the dates. In *Dowse* v. *Gorton* the judgment of the Court of Appeal was given on February 7, 1889; in *Montgomery* v. *Thompson* on February 21, 1889; so that more than two years passed in both these instances. In *Attorney-General* v. *Emerson* the period was only from November 28, 1889; and in the important case of *The Mogul Steam Ship Company* v. *M'Gregor, Gow & Co.*, on which judgment is reserved, from July 13, 1889. The only case in which lately there seems to have been real expedition is that of *Seale-Hayne* v. *Jodrell* (see Notes of Cases, p. 85), which the Court of Appeal heard on April 24, 1890. On the other hand, in the case of *Smith* (*pauper*) v. *Baker & Sons*, heard last December, on which their lordships are still in leisurely consideration, the intermediate Court pronounced judgment as far back as March 31, 1889. An income-tax appeal, *The Commissioners of Income-Tax* v. *Pemsell*, has been waiting for judgment for about a year. The Lord Chancellor seems to be of Lord Eldon's mind —*sat cito si sat bene*. But this will hardly suit modern ideas of the duty of Courts of Justice.

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IN connection with the Leasehold Enfranchisement Bill, which failed to pass a second reading in the House of Commons by the narrow majority of 13, attention should be directed to the Settled Land Act, 1889 (52 & 53 Vict. c. 36). By this enactment any building lease may contain an option, to be exercised at any time within an agreed number of years not exceeding ten, for the lessee to purchase the land leased at a price fixed at the time of the making of the lease. Long before the passing of this Act the 'Eastbourne Building Agreement' had been in force. By this agreement the Eastbourne tenants of the Duke of Devonshire have an option, to be exercised within ten years after the commencement of a ninety years' lease, to purchase their houses from the landlord. (See Woodfall, 14th ed. App. B. sect. 14, for a copy of this agreement in full.)

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IN the absence of fraud, claims by creditors of a company against its directors are barred after the dissolution of the company by an order made under section 111 of the Companies Act, 1862. This is the effect of Mr. Justice Chitty's decision in the recent case of *Coxon* v. *Gorst* (Notes of Cases, p. 63). Section 111 empowers the Court, when the affairs of a company have been completely wound up, to make an order that the company be dissolved from the date of such order. Rule 66 of the General Order of November, 1862, directs that such order shall be applied for by the official liquidator, after the chief clerk has made a certificate that the affairs of the company have been completely wound up. His lordship considered that the decisions in *In re The Pinto Silver Mining Company*, L. R. 8 Chanc. Div. 273; and *In re The London and Caledonian Marine Insurance Company*, L. R. 11 Chanc. Div. 140, which related to a dissolution after a voluntary winding-up, applied to a dissolution by order of the Court in a winding-up by the Court. The Court of Appeal in those cases held that where, in a voluntary winding-up, a company had been dissolved pursuant to section 142 of the Companies Act, 1862, the Court had no jurisdiction to make an order on petition for winding up by the Court unless the dissolution could be impeached on the ground of fraud.

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THE object of the action in *Coxon* v. *Gorst* was to recover assets of a company that had been dissolved, which assets the plaintiff, a creditor, alleged had not been got in pending the winding-up. The assets sought to be recovered were sums alleged to have been wrongfully paid by the directors out of capital by way of dividend. But no charge whatever of fraud was made. The plaintiff claimed to have those assets distributed among himself and the other creditors on whose behalf he was suing. The action was practically, therefore, for a further and complete winding up of the affairs of the company. Mr. Justice Chitty was of opinion that the action could not be maintained, a conclusion which seems, both on principle and authority, to be incontestible. As his lordship pointed out, the creditors of a company are bound by the proceedings in the winding-up and the orders made therein. It would be highly inconvenient if it was competent for creditors and others to rip up winding-up proceedings which had been completely closed. In fact, to allow such a claim to prevail as that of the plaintiff in *Coxon* v. *Gorst* would be to open the door to endless litigation by dissatisfied creditors and contributories.

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QUITE a little controversy not long ago sprung up as to when and where the late Archbishop of York made his celebrated declaration in connection with the compulsory suppression of the sale of intoxicating liquors by retail, that he would rather see England free than England sober, and more than one attempt has been made to reproduce the exact words used. The declaration was no doubt made in a speech in the House on the second reading of the bill which is now law as the Licensing Act, 1872. The exact words are reported in Hansard as follows: 'I believe the tendency of all modern legislation ought to be towards protection of the rights and privileges of minorities. Therefore I entertain the strongest dislike to the Permissive Bill. I cannot, perhaps, express it in a stronger form than by saying that if I must take my choice—and such it seems to me is really the alternative offered by the Permissive Bill—whether England should be free or sober, I declare—strange as such a declaration may sound coming from one of my profession—that I should say it would be better that England should be free than that England should be compulsorily sober. I would

distinctly prefer freedom to sobriety, because with freedom we might in the end attain sobriety, but, in the other alternative, we should eventually lose both freedom and sobriety.' The speaker then went on to advocate a certain combination of official and elective elements in the licensing board 'so as to give the ratepayers the assuring conviction that their interests were fairly represented, while, by retaining the magistracy, you would have the Conservative element, duly to resist popular influences and give consistency to their decisions.' Such a combination would seem now to be impossible. The county councils are the only bodies who could take over licensing business from the licensing justices, and on the county councils the magistracy has no official representation. Looking to the plenitude of the powers of the licensing justices as now at last fully made known to them by *Sharp* v. *Wakefield*, we think it is not likely that those powers will be transferred to such wholly elective bodies as the county councils.

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A POINT of company law of much importance, upon which at first sight there seems to have been some conflict of judicial opinion—namely, as to the effect of a certificate of incorporation of a company—may now be regarded as finally set at rest by the decision on the 28th ult. of the Court of Appeal in *In re The National Debenture and Assets Corporation* (*Lim.*). It was there decided, affirming the decision of Mr. Justice Kekewich (Notes of Cases, p. 34), that the certificate of incorporation could not be treated as conclusive of the fact that seven persons had signed the memorandum of association of a company.

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THE point turns upon section 18 of the Companies Act, 1862, which enacts that the certificate of incorporation shall be conclusive evidence that all the requisitions of the Act in respect of registration have been complied with. That section refers back to section 6, which enacts that seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of the Act in respect of registration, form an incorporated company with or without limited liability. Whether subscribing the memorandum by seven or more persons is one of the requisitions compliance with which is to be conclusively shown by the certificate of registration is by no means evident on the language of the section. But the Court of Appeal, adopting the view taken by Mr. Justice Kekewich, have now held that it is not so; and that, therefore, the certificate is not conclusive that the memorandum was properly signed.

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THE effect of *Oakes* v. *Turquand* and other cases is that a certificate of incorporation is not merely a *primâ facie* answer, but a conclusive answer to any objection in respect of the registration, and that it prevents all recurrence to prior matters essential to registration, and is conclusive that all previous requisites have been complied with. *Peel's Case* also went to show that an examination of the circumstances attending the original registration was not permissible, and that nothing could be inquired into as to the regularity of the prior proceedings. In neither of those cases, however, was it definitely laid down that the certificate was conclusive that the memorandum of association had been signed by seven persons. On the other hand, in *In re The Northumberland, &c. Banking Company*, 2 De G. & J. 357—which did not arise on the Companies Act, 1862, but on the previous Winding-up Act—Lord Justice Turner declined to be bound by a certificate if, in fact, the company could not be registered. That case was cited in *Baroness Wenlock* v. *The River Dee Company*, 57 Law J. Rep. Chanc. 946; L. R. 38 Chanc. Div. 534, where it was held that a clause in one of the Lands Improvement Companies Acts, making the certificate of the Inclosure Commissioners conclusive evidence of the validity of a charge under the Act, did not render the charge valid in such a case.

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THE rule as to the release of a surety by giving time to the principal debtor is too well settled now for it to be seriously questioned. Still, not unfrequently cases come before the Courts in which the question of fact arises as to whether time has been given to the debtor in such a way as to bring the rule into play. In *Bolton* v. *Salmon*, 60 Law J. Rep. Chanc. 289, J. & S. and other parties in 1857 mortgaged their several undivided shares in the property as security for 450*l.* advanced to J., the mortgagors covenanting jointly and severally for payment thereof, but S. only joined as a surety for J. In December, 1884, this mortgage with others, amounting in all to 3,200*l.*, was consolidated by a deed to which S. was not a party, the plaintiff advancing the 3,200*l.* to J., and the latter covenanting to repay the same on January 19, 1885. The plaintiff brought an action against the surety to make her liable on her covenant, as a consolidating deed, if properly drawn, always preserves to the mortgagee his rights under the mortgages which are being consolidated. The effect of the new covenant for payment was held to be that the mortgagee could not sue the principal debtor until a later period than he could have done under the mortgage of 1857, and, therefore, the surety was released from her liability. The plaintiff was not daunted by this reverse, but contended that, though the covenant by the surety had been released, still the security given by her remained. Mr. Justice Chitty, however, refused to accede to this contention, and held that the alteration of the contract without a surety's consent, or without the reservation of rights against him, affected his position equally in regard to every part of his contract of suretyship, and therefore the surety was wholly relieved from the security which she had given in 1857. One cannot but feel that such a defence is rather more technical than otherwise, as she was not in reality at all prejudiced by the change in the nominal day for payment. Still, from her point of view, the decision was evidently satisfactory, as she had done J. a good turn by becoming his surety, and then, when the time for payment came, she was able to back out of it. For the future, draftsmen of consolidating deeds must be careful to see that no sureties are inadvertently released, but that either they are parties or the mortgagees' rights against them are reserved. Probably, however, many, if not most, conveyancers insert a clause in mortgages to which a surety is a party to the effect that, though as between the principal debtor and the surety the latter is only a surety, yet as between the creditor and the surety the latter shall be considered a principal debtor,

and shall not be released by time being given to the real debtor or otherwise by any dealings between the creditor and debtor.

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ILLEGIBLE or badly written depositions are, it seems, a source of much irritation to Her Majesty's judges on circuit. A circular on this subject has recently been addressed by the Home Department to all clerks to justices, and will, no doubt, have some effect. At the same time, many of the offending scribes are too old to learn a 'Civil Service' style of writing, and will continue to be more or less illegible till the end of the chapter. The important qualification of clear as well as rapid writing is likely, however, to have more weight than formerly in the selection of clerks to justices.

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PUBLIC interest in the *cause célèbre*, *Evelyn* v. *Hurlbert*, has been fully sustained by the questions put to the Attorney-General in the House of Commons. That the Public Prosecutor has been referred to the Solicitor-General was a complete answer to the suggested difficulty in this case. But has it ever occurred to the law officers of the Crown or the Treasury what the position would have been if the Solicitor-General had led for the plaintiff instead of Mr. Candy, Q.C.?

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PROBABLY the legal presumption that a gift by a father to one of his children of any large sum of money in his lifetime is intended as an ademption *pro tanto* of what he has left to that one by his will frequently frustrates the father's intention; and the decision of the Court of Appeal in *Lacon* v. *Lacon* (Notes of Cases, *ante*, p. 62), reversing that of the Court below, will be hailed with general satisfaction. It may be remembered that Sir E. Lacon was the owner of twenty-one twenty-fourth shares in a brewery business. By his will he bequeathed those shares to three of his sons, of whom E. was one, providing that, except E., they should not be allowed to take any part in the management of the business. After the date of the will, E., who had been employed in the business for some time at a salary, asked for an increase of it. His father would not grant him this, but gave him, on a reconstitution of the partnership, two shares therein. E. resisted the theory of ademption on the ground that he had purchased the shares, giving his services in exchange and as the consideration for them; and, further, that the presumption of ademption did not even *primâ facie* arise in the case of property of this kind. Mr. Justice Romer disagreed with him on both grounds; but he has been successful in the Court of Appeal. The leading case on this subject is *Ex parte Pye*, 18 Ves. 140, and in the notes on that case in White and Tudor's 'Leading Cases' (6th edit. vol. ii. p. 364) will be found many cases showing the strong presumption there is in the eyes of the law, that a gift of a large sum of money to a child is intended by a person in *loco parentis* as an ademption *pro tanto* of any money bequeathed to that child in a will previously made. But we do not generally regard as a gift anything which we have paid for, and what difference can it make that we have not used the medium of exchange, but have given our services instead of a money payment? E.'s two shares were really bought by him, and, therefore, were put out of the power of his father's will. The Court of Appeal seem further to have left open, for the decision of some future leading case, the question whether the presumption of ademption can be applied to shares of this kind.

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IN the preface to the new edition of 'Chitty on Contracts' attention was called to eight 'points of contract law as seeming to require remedial legislation.' Of these only one, that appearing from *Peek* v. *Derry*, 58 Law J. Rep. Q. B. 516, which Mr. Warmington's Act dealt with, has received the attention of the Legislature. For the nature of the others reference should be had to *Pott* v. *Clegg*, 16 M. & W. 321; to *Tremeere* v. *Morrison*, 1 B. N. C. 89; to *Neilson* v. *James*, 51 Law J. Rep. Q. B. 369; to *Foakes* v. *Beer*, 54 Law J. Rep. Q. B. 130; to *Read* v. *Anderson*, 53 Law J. Rep. Q. B. 532; to *Smith* v. *Woodfine*, 1 C. B. (N.S.) 660; and to section 38 of the Companies Act, 1867. The most important from the practical point of view is the strange rule of *Pott* v. *Clegg*, in which it was held that money left with a banker, if not drawn upon for six years, becomes the absolute property of the banker.

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MR. F. S. POWELL, the well-known reformer of the law of public health, has carried his Museum and Gymnasium Bill through the House of Commons, and it now awaits a second reading in the House of Lords. The bill is a permissive one only, and repeats almost word for word the procedure for 'adoption' which is to be found in section 3 of the adoptive Infectious Diseases Prevention Act, 1890. As is very properly explained in a memorandum prefixed to the bill, the Public Libraries Acts (see Public Libraries Act, 1855 (18 & 19 Vict. c. 70), s. 18), if and where adopted, authorised the establishment of museums and schools for science and art, as well as libraries, at the expense of the localities adopting those Acts, but these Acts give no power to use the rooms for lectures or to charge for admission. Mr. Forsyth's Swimming Baths Act of 1878 also allows the swimming-baths provided under that Act to be used as a gymnasium during the winter, but 'there is no power to use any building as a gymnasium unless it is a swimming-bath' provided under that Act. Mr. Powell proposes by clause 4 of his bill that 'an urban authority may provide and maintain museums for the reception of local antiquities or other objects of interest, and gymnasiums with all the apparatus ordinarily used therewith, and may erect any buildings and generally do all things necessary for the provision and maintenance of such museums and gymnasiums.' The regulation of charges for admission and other matters is to be left to the discretion of the local authorities. The bill is not a long one, containing only fourteen clauses. Its powers, by clause 13, are to be, as the common form of the draftsman now runs, 'in addition to and not in derogation of any other powers conferred by Act of Parliament.' Surely, instead of hobbling on with this clause, the Libraries Acts ought to be repealed and re-enacted, and the present bill consolidated with them.

## SPECULATING FOR DIFFERENCES.

The case of *Salaman* v. *Warner and others*, decided in the Court of Appeal on April 28 last (Notes of Cases, p. 78), not only raises questions of great interest to all who are in any way concerned with Stock Exchange transactions, but has given rise to a decision of the greatest importance on a point of principle in the law of tort. The case was briefly commented on in our issue of May 2 (*ante*, p. 297).

The facts as disclosed in the pleadings and for the purposes of the decision taken by the Court as true were (so far as they are necessary to understanding the important points of the judgment) as follows: The plaintiff was a stockbroker and a member of the Stock Exchange. The defendants were respectively the owner of a patent medicine which was to be sold to a limited company formed for the purpose of buying it, the brokers of that company, and one of its promoters. The plaintiff, hearing of the formation of this company, and presumably believing, from all that came to his ears, that there would be plenty of buying and selling of 'Warners,' which would give a chance of profit in the ordinary way of business, entered into contracts to sell 'Warners' with persons other than the defendants. It must be taken from the decision that the plaintiff was not induced to enter into these contracts by anything which the defendants represented to him, but made them on quite independent grounds, so that there was no privity of contract between the plaintiff and the defendants, and no liability from the defendants to the plaintiff on this ground.

According to the statement of claim the course of events then was that the defendants conceived the idea of making a corner in 'Warners,' and conspired together to carry it out by procuring the allotment of the bulk of the shares to nominees of themselves, so that they themselves might have the control of the shares. The interposition of the nominees was necessary, as otherwise the directors would have known that two-thirds of the shares had not been allotted to the public, and would not have been able to make the statement to the Stock Exchange Committee which is necessary for obtaining a quotation and settlement. The next step was for the defendants to cause the directors to make that statement to the committee, such statement being in the defendants' mouths of course false and fraudulent. Then the squeeze began. When the plaintiff wanted to fulfil his contract to deliver the shares, he found that he could only obtain them from the defendants, from whom ultimately he was obliged to take them at a fancy price. This action was brought to recover from the defendants, as damages for a tort, the difference between this fancy price and the normal price of the shares. The fraud alleged was double-barrelled: first, in leading and allowing the directors to think that the shares were being allotted to the public instead of to the defendants; and, secondly, in causing the fraudulent statement to be made to the Stock Exchange by the directors that two-thirds of the shares issued had been alloted to the public.

The materiality of these two frauds is that they would alter in vital points the data on which a business man estimates his chance of profit and loss in such a bargain as one about the shares of a company which has not yet gone to allotment. For in estimating the price of such shares, and the risk of a 'corner' as an element in the price, any member of the Stock Exchange would know that he was safe against an allotment of the bulk of the shares to the promoters. For, if that were done, the Stock Exchange Committee would not grant a settlement; and, if no settlement were granted, contracts entered into for the sale of the shares would not be binding. But, if the bulk of the shares were once to be in the hands of the public, a stockjobber might well be willing, and, indeed, in the ordinary course of business is obliged, to take the risk of a 'corner.'

The case, then, that the plaintiff alleged against the defendants was in substance this, that the defendants, with the intention of damaging such members of the public (including the plaintiff) as should have entered into contracts to sell shares in the company, conspired together, first, by means of fraud, to get the bulk of the company's shares under their own control, and then, also by fraudulent means, to obtain a settlement from the Stock Exchange Committee. The damage consisted in this, that sellers were forced to obtain shares for delivery at a fancy price when, but for the fraud practised, the shares would have been obtainable at a normal price.

Such a case might have been very difficult to prove at the trial, but it came before the Court on a motion to strike out the statement of claim as disclosing no cause of action, for which purpose, as on a demurrer, all that was alleged must be taken as true. The Court of Appeal, affirming the judgment of the Divisional Court, decided against the statement of claim, and also refused leave to amend it. If this decision stands, it is hard to see that the public will ever get protection against 'corners,' even when brought about by means of fraud, for the case put forward in the statement of claim alleged plenty of fraud at every stage.

On broad principles, however, it is submitted that there ought to be a remedy in such a case as the plaintiff put forward. There is, singularly, little direct authority on the point, and, as the growth of 'corners' in recent years has become at least more notorious than formerly, there would seem to be room and opportunity for a 'leading case.' The case of *Bedford* v. *Bagshaw*, 4 H. & N. 538, was not unlike the present case, and might have assisted the plaintiff but that it was disapproved of in the House of Lords by Lord Chelmsford in *Peek* v. *Gurney*, 43 Law J. Rep. Chanc. 19; L. R. 6 H. L. p. 397.

Treating the question, therefore, as one of principle, it is at any rate beyond dispute that, if the allegations in the statement of claim were true, the defendants were open to indictment as members of a criminal conspiracy for the false and fraudulent statement which they caused to be made to the Stock Exchange Committee (*Regina* v. *Aspinall*, 46 Law J. Rep. M. C. 145; L. R. 2 Q. B. Div. 48). It was argued for the plaintiff that, as he had been damaged by this fraud, since the effect of it had been to make his contract binding on him, it followed from the liability to indictment that the defendants were also liable to *him* in a civil action for damages, and the *dictum* of Lord Justice Fry was relied on: 'I cannot doubt that whenever persons enter into an agreement which constitutes at law an indictable conspiracy, and that agreement is carried into execution by the conspirators by means of an unlawful act or acts which produce private injury to some person, that person has a cause of action against the conspirators' (*The Mogul Steamship Company* v. *M'Gregor Gow*

58 Law J. Rep. Q. B. 465; L. R. 23 Q. B. Div. at p. 624). But the Divisional Court and also the Court of Appeal held that the existence of the conspiracy did not give the plaintiff any further right of action than he would have had if the act which the conspirators agreed to do had been done by a single person.

The plaintiff was thus driven to base his right of action on some such ground as this: 'That the defendants having by fraudulent means, designed for that very purpose, inflicted damage on the plaintiff, were liable to the plaintiff for the damage so inflicted.' It seems to have been assumed in the judgments delivered that the plaintiff would have no remedy on such a ground against the defendants unless the fraud was practised by them directly on the plaintiff; and the judgment of the Master of the Rolls was to some extent devoted to showing that none of the fraudulent representations complained of were made to the plaintiff directly or indirectly. But the gist of the plaintiff's grievance was that the fraud was a secret one, practised to his detriment behind his back. As to this the Master of the Rolls said: 'The plaintiff claimed that he had a right of action, because, as he said, the defendants had not told some one else, who was in no way connected with the plaintiff, the truth. There is no such right as this by the law of England.' That, however, is surely too broadly stated in view of the law of libel. The Court of Appeal seem to have considered that the want of privity between the plaintiff and the defendants was fatal to the plaintiff's case. But in tort the course of the damage normally flowing from the tort takes the place of privity. And as regards the remoteness of the damage in such a case as the present, it would be an impudent thing for a defendant who had intended to bring about damage by a certain course of action to object that the damage was too remote when it occurred in the very way that he intended. To put a parallel case where there is an equal absence of privity between the plaintiff and defendant, suppose that the plaintiff has contracted to buy goods monthly from B., and that the price may be raised 10 per cent. whenever C. thinks that the current price-lists make it fair that it should be so raised; suppose then that the defendant, with the intention of damaging the plaintiff, puts before C. fraudulently concocted price-lists in order to induce him to raise the price on the plaintiff. If C., accepting the price-lists as genuine in all good faith, raises the price at a time when, if he had seen genuine price-lists, he would have left it unaltered, it would be hard if the plaintiff were denied a remedy against the defendant. The only point in which it can be said that these cases are not parallel is that in *Salaman* v. *Warner* the parties were engaged in trade competition with one another, and that what one gained the other must lose. But the whole course of the transaction on the defendants' part was alleged to have been done 'with intent to injure the plaintiff, *i.e.* with malice,' so that the excuse that what was done was done in the way of legitimate trade rivalry is cut away. The Master of the Rolls, in the course of his judgment, asked what legal right of the plaintiff had been invaded by the defendants. That right is complicated, perhaps, and not easy to state shortly, but it might be put thus: a right to have the normal action of the forces that settle the price of a vendible commodity freed from fraudulent interference.

## IMPERSONAL TRUSTS.

In the earlier as well as the latest edition of 'Lewin on Trusts' it is stated in general terms that 'a trust must be for the benefit of some *person or persons*, and if this ingredient be wanting, as in a trust for keeping up family tombs, the trust is void.' The high authority of the learned author, however, appears to be the chief, if not the only, foundation for this proposition. No less than ten cases are, indeed, cited in support of it, but most of these will be found to be cases in which, as in *Lloyd* v. *Lloyd*, 21 Law J. Rep. Chanc. 596; 2 Sim. (N.S.) 255, trusts were attempted to be created without any limit of time, for the repair of family tombs, not forming part of the fabric of the church; while in another case referred to, *Thompson* v. *Shakespear*, 29 Law J. Rep. Chanc. 140, 276; Johns. 612; 1 De G. F. & J. 399, the testator gave property for the formation of a merely private museum, also without any limit of time. Not being charitable trusts, these bequests were clearly void on the ground of perpetuity. In *Thompson* v. *Shakespear* there was the additional circumstance that the trust was also void for uncertainty, but the ground of perpetuity was mentioned by Lord Hatherley in his judgment, and commenting on the cases in *Rickard* v. *Robson*, 31 Law J. Rep. Chanc. 897; 31 Beav. 244, Lord Romilly says: '*Lloyd* v. *Lloyd*, and the other case of *Thompson* v. *Shakespear*, show that a gift merely for the purpose of keeping up a tomb or building which is of no public benefit, and only an individual advantage, is not a charitable use but a perpetuity.' These cases, therefore, so far from establishing the proposition for which they are cited, seem to us to tell in reality the other way. Another class of case in which a trust has been held valid, though it can hardly be said to be for the benefit of any person or persons, is where provision has been made for the maintenance of favourite animals after their owner's death. Thus, in *Mitford* v. *Reynolds*, 17 Law J. Rep. Chanc. 238; 16 Sim. 105, a testator gave the remainder of his property, 'after deducting the annual amount that will be requisite to defray the keep of my horses (which I will and direct be preserved as pensioners),' to the Government of Bengal for a charitable purpose; and the order on further consideration contained a declaration that the provision for the maintenance of the testator's horses was good. The point was probably uncontested. The next case of the kind—*In re Dean; Cooper Dean* v. *Stevens*, 58 Law J. Rep. Chanc. 693; L. R. 41 Chanc. Div. 552—came before Mr. Justice North in 1889. There a testator charged his land with an annuity of 75*l.* to be paid to his trustees during fifty years from his death if any of his horses or hounds should so long live, and declared that the trustees should apply the money in their maintenance, and Mr. Justice North held the trust a valid one. His judgment, which is a valuable statement of the law, begins as follows: 'It is said that there is no *cestui que trust* who can enforce the trust, and that the Court will not recognise a trust unless it is capable of being enforced by someone. I do not assent to that view. There is not the least doubt that a man may, if he pleases, give a legacy to trustees upon trust to apply it in erecting a monument to himself, either in a church or in a churchyard, or even in unconsecrated ground, and I am not aware that such a trust is in any way invalid, although it is difficult to say who would be the *cestui que trust* of the monument. In the same way I know of nothing to

prevent a gift of a sum of money to trustees upon trust to apply it for the repair of such a monument. In my opinion such a trust would be good, although the testator must be careful to limit the time for which it is to last, because, as it is not a charitable trust, unless it is to come to an end within the limits fixed by the rule against perpetuities, it would be illegal. But a trust to lay out a certain sum in building a monument, and the gift of another sum in trust to apply the same to keeping that monument in repair, say for ten years, is, in my opinion, a perfectly good trust, although I do not see who could ask the Court to enforce it. If persons beneficially interested in the estate could do so, then the present plaintiff can do so; but, if such persons could not enforce the trust, still it cannot be said that the trust must fail because there is no one who can actively enforce it.' On the other hand, as lending some support to the general proposition quoted at the commencement of this article, we may refer the reader to the observations of Lord Eldon in the well-known case of *Morice* v. *The Bishop of Durham*, 10 Ves. 522, 539, and also to the actual decision in *Brown* v. *Burdett*, 52 Law J. Rep. Chanc. 52; L. R. 21 Chanc. Div. 667, where an eccentric testatrix devised a house to trustees with specific directions to block it up for the term of twenty years, putting only a housekeeper in occupation, and subject thereto to hold it in trust for a devisee in fee, and Vice-Chancellor Bacon, saying he must 'unseal this useless, undisposed-of property,' held that there was an intestacy for the term. The case, however, was argued on the footing that there was no disposition by will of the property within the Wills Act, s. 3, and the law of trusts does not seem to have been taken into consideration. We think, on the whole, that if the general proposition to which we have referred is to be retained, it must be taken to be subject to the two exceptions we have stated; also that it deserves consideration, whether the general proposition and these exceptions can consistently stand together.

# Reviews.

## GODEFROI ON TRUSTS.

*The Law relating to Trusts and Trustees.* By Henry Godefroi, Barrister-at-Law. Second Edition. London: Stevens & Sons (Lim.). 1891.

This book has grown out of all recognition. It was originally intended as a work upon the General Law of Trusts for Students and Practitioners. Mr. Godefroi has thoroughly revised his first edition, and the result of his reconstruction, combined with the necessary addition of a quantity of new matter dealing with recent legislation and a mass of judicial decisions, has been to transform the book from a modest little manual into an imposing treatise of more than 900 royal octavo pages. We have carefully tested Mr. Godefroi's work, and have no hesitation in pronouncing it thoroughly reliable. The cases have been incorporated down to a very recent date. In its new guise the book will, perhaps, be more appreciated by practitioners than by students, for whom it is now somewhat too much elaborated. The index is very full and complete, and the table of cases gives references to all the reports. The price is 32*s.*

## WILSON'S LEGAL HANDY BOOKS.

*The Law of Private Trading Partnership.* By James Walter Smith, Esq., LL.D. 1891.

Some thirty years ago, as the author of the present little treatise points out, there was no branch of the law which stood more upon judicially declared principle and less upon legislation than the law of private trading partnership. Now it is to a great extent codified by the Partnership Act, 1890. The author of this work is, however, no doubt right in saying that this Act is 'hard reading to most non-lawyers, who usually prefer to receive information by methods more explanatory, though less scientific.' To such persons this work will be acceptable and useful.

## A BANKRUPTCY CHART.

*The Bankruptcy Acts*, 1883 *and* 1890. Chart showing the principal steps to be taken from the act of bankruptcy to discharge. Prepared by R. T. Hunter, Chief Clerk, County Court, Stockton-on-Tees. London: Waterlow & Sons (Lim.). 1891.

This chart will be invaluable to solicitors practising in bankruptcy. It gives a bird's-eye view of the whole procedure under the Bankruptcy Acts and rules, enabling anyone who consults it to see at a glance the proper step to be taken at any particular stage in a bankruptcy, and referring him to the sections and rules under which he must proceed. The idea is distinctly a good one, and well carried out.

## GREENWOOD'S CONVEYANCING.

*Greenwood's Manual of the Practice of Conveyancing, showing the Present Practice relating to the Daily Routine of Conveyancing in Solicitors' Offices.* To which are added concise Common Forms and Precedents in Conveyancing. Eighth Edition. Edited by Harry Greenwood, Barrister-at-Law. London: Stevens & Sons (Lim.). 1891.

This is a carefully revised edition of a most useful work. When a book has reached its eighth edition its position is assured, and its patrons are probably so numerous that all words of recommendation may be deemed superfluous. Nevertheless, we feel bound once more to place on record our opinion that no better book can be found as a practical guide to place in the hands of a conveyancing clerk in a solicitor's office. The whole book has been revised having regard to the important alterations effected by recent legislation and to the cases decided since the publication of the last edition, while the precedents have been resettled and added to. The hope of the editor that the alterations which have been made will render the work still more useful to those for whom it is intended appears to us to be fully justified. The price of the new edition is 16*s.*

Rents Collected and Distraints Levied to Recover Same, by Messrs. Henry C. Wood (Surveyor to the Parish of Tooting) and Henry Kirby (Wood & Kirby), Certificated Brokers, 1 Great James Street, Bedford Row, W.C. No charge made to Landlords if Rent over 20*l.* Troublesome tenants got rid of. Possession also taken under Bills of Sale, Mortgages, &c. Bailiffs to the Parish of St. Dunstan in the West and City of London (Farringdon Ward). Money paid over same day received. Bankers: City Bank, Holborn Viaduct. References, if desired, to clients of many years' standing. Prompt and personal attention given.—Advt.

# Unreported Cases.

## QUARTER SESSIONS.

POOR LAW—PAUPER LUNATIC—ORDER OF MAINTENANCE—SETTLEMENT BY PAYMENT OF RATES—PAYMENT OF RATES DURING PART OF YEAR OF OCCUPANCY.

THE case of *The Guardians of the Taunton Union (appellants)* v. *The Guardians of the St. Saviour's, Southwark, Union (respondents)* was heard on Thursday, April 16, at the County of London (South) Easter Sessions, before Sir P. H. Edlin, Q.C., and other justices. It was an appeal against an order of maintenance, by which the settlement of Ernest Victor Kallend, a pauper lunatic, was adjudicated to be in the appellant union. The grounds upon which the order of removal was made, and the last settlement of the pauper lunatic adjudged to be in the appellants' union, were that the pauper lunatic had resided for three years and upwards, up to about four and a half years ago, at No. 15 Bridge Street, Taunton, in the appellant union, and so had acquired a settlement by residence under the Poor Law Amendment Act of 1876; that the pauper lunatic was the lawful son of James Henry Kallend, which said James Henry Kallend, prior to his said son's emancipation, was also last legally settled in the appellant union by renting and payment of rates for a period of twenty years in respect of tenements situate in Bridge Street, Taunton; that the pauper lunatic was born in the parish of St. James, Taunton, on November 23, 1866, in the appellant union. The appellants admitted that when the pauper lunatic left Taunton in June, 1886, he was legally settled there, but they contended that since he left Taunton he had acquired in the years 1887 and 1888 a settlement by payment of rates in the united parishes of St. James and St. Paul, in the Barton Regis Union, Bristol, and still retained that settlement; that he had also acquired a status of irremovability by residence in the respondent union, and so was irremovable therefrom; but this point was not argued. It appeared at the hearing that the pauper lunatic, Edward Victor Kallend, in July, 1887, agreed to rent of Mr. J. Abrahams, of Belvoir Road, Bristol, the house and premises known as Ross Villa, North Road, Bristol, in the united parishes of St. James and St. Paul, in the Barton Regis Union, from the half-quarter day, August 9 or 10, 1887, for one year, at 27*l.* a year rent, and so on from year to year; a quarter's notice to be given and taken on either side; the pauper lunatic to pay the rates and taxes. He was married on August 3, 1887, and took possession of the premises on August 9. A portion of his furniture had previously been put into the house. A poor-rate was made on October 26, 1887, which was paid in November, and a general district or sanitary rate was paid on December 21, which was made on October 25, 1887. The landlord paid the property-tax direct to the collector, the pauper lunatic paying the inhabited house duty. There was no land-tax. The half-quarter's rent to Michaelmas, 1887, was paid, as were also the quarters' rents due at St. Thomas' Day, 1887, Lady Day, 1888, and Midsummer, 1888. In July, 1888, E. V. Kallend, having become insane, was taken to London to his parents' house. The landlord agreed with his wife to take the house off their hands at quarter-day, August 11, 1888. The wife left the house on August 3, 1888, but she did not give up the key of the house. The half-quarter's rent was paid and the key given up to the landlord on the August 11, 1888, by a friend of the wife under her instructions, on which day the incoming tenant took possession. There was a poor-rate made in April, 1888, and also a general district rate, but neither of these, although demanded, were paid by the pauper lunatic E. V. Kallend.—Poland, Q.C., and Hon. R. Coleridge for the appellants: We admit that the pauper lunatic was settled in Taunton in May, 1886, but we contend that he gained a settlement in the united parishes of St. James and St. Paul in the Barton Regis Union by payment of parochial rates under 3 Wm. & Mary, c. 11, s. 6; and 4 & 5 Wm. IV. c. 76, s. 66, during the time he occupied Ross Villa, North Road, Bristol, and the conditions imposed as to occupancy by 4 Geo. IV. c. 57, s. 2, have been satisfied. It is only necessary to prove the payment of rates during some portion of the year of occupancy and not for the whole year. We rely on *Regina* v. *The Inhabitants of St. Mary Kalendar*, 9 Ad. & E. 626; 8 Law J. Rep. (N. S.) M. C. 754; 1 Per. & Dav. 497, and *Regina* v. *Stoke Damerel*, 6 Ad. & E. 308; 6 Law J. Rep. (N. S.) M. C. 55. The renting and rating are such as to satisfy the statute (*Rex* v. *Great Bentley*, 10 Barn. & Cress. 520; *Rex* v. *Ringstead*, 7 Barn. & Cress. 607). The order of the justices ought to be quashed.—E. Layman (with him G. E. Lyon), for the respondents, contended that the statute 4 & 5 Wm. IV. c. 76, s. 66, had rendered it necessary to prove the payment of poor-rates for the whole year of occupancy in settlements by payment of taxes for tenements as well as in settlements by renting tenements, and even assuming that the later statute does not affect the statute of Geo. IV., section 6 of the statute of 3 Wm. & Mary, c. 11, under which settlements by payment of rates were created, still required that, to gain such settlement, any person charged with public taxes of a parish must pay his share towards them; that, in the present case, it had been proved that the pauper lunatic, E. V. Kallend, had not paid all the taxes or rates which had been assessed upon 'Ross Villa,' North Road, Bristol, during the year of his occupancy, and that, therefore, he had not paid his share towards the public taxes of the parish, and had not gained a settlement by payment of rates, and the pauper lunatic in such case took the settlement he had acquired in the appellant union when he left Taunton, and had not acquired another since. The order of the justices was right.—The bench were of opinion that sufficient facts had been proved to show that the pauper lunatic, E. V. Kallend, had gained a settlement by payment of parochial rates in the united parishes of St. James and St. Paul in the Barton Regis Union, Bristol, and that the case of *Reg.* v. *St. Mary Kalendar (sup.)* was conclusive, and that the order of removal and maintenance should be quashed.—Appeal allowed with costs.

## ELECTION OF MEMBERS OF THE BAR COMMITTEE.

THE following gentlemen have been duly proposed as candidates at the ensuing election:—

QUEEN'S COUNSEL.

1. Mr. Henry Mason Bompas, Q.C., 3 Harcourt Buildings, Temple.
2. Mr. R. B. Finlay, Q.C., M.P., 4 Temple Gardens, Temple.
3. Mr. George Pitt-Lewis, Q.C., M.P., 4 Paper Buildings, Temple.
4. Mr. Edward Cutler, Q.C., 12 Old Square, Lincoln's Inn.
5. Mr. W. C. Renshaw, Q.C., 5 Stone Buildings, Lincoln's Inn.
6. Mr. E. W. Byrne, Q.C., 3 Stone Buildings, Lincoln's Inn.
7. Mr. Samuel Hall, Q.C., 6 New Court, Carey Street.
8. Mr. George Farwell, Q.C., 10 Old Square, Lincoln's Inn.

Outer Bar.

1. Mr. Edward Francis Bigg, 2 Elm Court, Temple.
2. Mr. Hugh Fenwick Boyd, 11 King's Bench Walk, Temple.
3. Mr. Kenelm E. Digby, 1 Paper Buildings, Temple.
4. Mr. Frank Evans, 15 Old Square, Lincoln's Inn.
5. Mr. M. Ingle Joyce, 4 Stone Buildings, Lincoln's Inn.
6. Mr. W. W. Knox, 7 Stone Buildings, Lincoln's Inn.
7. Mr. O. Leigh Leigh-Clare, 11 New Court, Carey Street.
8. Mr. B. Fossett Lock, 8 Old Square, Lincoln's Inn.
9. Mr. Francis Beaufort Palmer, 5 New Square, Lincoln's Inn.
10. Mr. Decimus Sturges, 11 Old Square, Lincoln's Inn.
11. Mr. E. P. Wolstenholme, 2 Stone Buildings, Lincoln's Inn.

Only sixteen candidates can be elected.

The electors are the whole of the bar.

The election will be by voting papers, to be personally filled up and signed by the electors.

Each elector will have eight votes. The votes may be divided in any manner between two or more candidates, but so that not more than four votes be given for any one candidate.

Voting papers must be delivered or sent by post to the honorary secretary within the week ending May 30, 1891.

Voting papers may be obtained on application at the chambers of Honorary Secretary, Farrar's Building, Temple, or at the Common Rooms after the 16th inst.

Eight members of the Outer Bar must be elected.

S. H. Lofthouse, Hon. Secretary.

Farrar's Building, Temple:
May 11, 1891.

## CORPORATION RECORDS.

Sir John Monckton, the town clerk, and Dr. R. R. Sharpe, the records clerk of the Corporation of London, have recently presented a report to the Library Committee of the progress made during the past year in arranging, calendaring, and indexing the records of the corporation. They state that the second and concluding part of a calendar of wills enrolled in the ancient Court of Hustings from 1358 to 1888 had been put through the press. An exhaustive index had been added, and an introduction written briefly illustrating the nature of the various bequests. Copies had been sent to public libraries at home and abroad, the universities, and other public bodies. Dr. Sharpe was now bestowing his time and attention upon the new historical work upon the influence exercised by London and its citizens on political, commercial, and social affairs of England. In this the City's records tell their own tale. They supply the main thread of the narrative, the leading events and most of the characters. The background was filled in from contemporary chronicles of Matthew Saris, Wallingham, Ralph Higden, and others, as well as from chronicles of Arnold, Fitz Thedmar, William Gregory, and Robert Fabyan, all aldermen, in their several ages, of the city of London itself. The work was laborious, and the result not always adequate. A rough draft had been written of twelve chapters, bringing the work down to the end of the reign of Henry VII. Copies and translations had been made of various letters which passed between the Crown and Corporation, and which, it is believed, have never before been printed, and of other interesting documents. The work of removing index-slips which had been pasted over chamber accounts of the time of Elizabeth, and arranging and rebinding them in their original form, had been successfully executed by skilled workmen at the Record Office. The chamber accounts thus revealed form a valuable addition to the City's archives. They were a century earlier than any accounts of the City chamberlain hitherto known to exist, and were a record of the finances and expenditure of the City in a variety of objects—from fees paid to the common hunt, for fuel, for hounds' meat, and for keeping up the City's hawks and kennel of spaniels, down to sums paid to the mayor and sheriffs in compensation for the wax, herring, and sturgeon at one time payable to them by 'the Easterlings of the steel-yard.' Strange as those entries might appear in the present day, it was still more strange to find that the civic authorities in Elizabeth's reign found it necessary to pay persons to kill otters and cormorants at so much a head, and that the Lord Mayor for the time being enjoyed a day's hunting in St. James's Park. The City authorities, as is well known, had a drastic method of ridding the City of beggars, vagrants, and 'masterless' men, and here there was a record of expenses incurred in conveying all the Irish begging people in or near London to Bristol, for the purpose, no doubt, of causing them eventually to be sent back to their native land. Another method employed was to press them into military service and send them to serve the queen in Flanders; and a record is preserved of the chamberlain's accounts for the transportation and necessary provision of 2,420 soldiers to the Low Countries in 1584–85. An index to the calendar of deeds enrolled in the Court of Hustings—a work in eight volumes—was still in course of progress.

## ARBITRATION BY COMMERCIAL ARBITRATORS.

Mr. Roscoe writes to the *Times* as follows —

In your recent leader on the subject of the commercial business of the High Court you suggest that some adoption of the practice of arbitration by commercial arbitrators would have been desirable as part of the procedure of the High Court. It may, therefore, be opportune to point out that the practice has been in existence in the High Court of Admiralty and in the Probate, Divorce, and Admiralty Division for many years. In the fifteen years from 1875 to 1890 the number of 'references' has much more than doubled, showing that the system gives satisfaction to shipowners and underwriters. It is satisfactory because, in one word, it is a businesslike system, prompt, efficient, and comparatively free from legal technicalities. After the merits of a collision have been decided by the Court the damages are referred. The tribunal consists of the registrar or assistant-registrar and one or two merchants, or an Elder Brother of the Trinity House when a nautical point, such as the propriety of an abandonment, is involved. In the larger number of references the case has never been before the Court at all, having been referred by agreement. Such I find to be the case in regard to the two first references for next week, in one of which the damages claimed are 27,000*l.*, and in the other 37,000*l.* In the case of references there are no pleadings, and, as a rule, no interlocutory applications, and the whole matter can be settled within a few weeks after a vessel has been lost or repaired. It has also to be borne in mind that Admiralty suitors have the advantage of a registry in which Admiralty business alone is transacted, so that cases of commercial importance are not shouldered about by trivial actions as is the case in Queen's Bench Division, and in which every official bears constantly in mind the necessity of the rapid and easy despatch of litigation which involves very large pecuniary interests.

Although, therefore, the re-establishing of the Guildhall Courts may do a little to prevent the further loss of commercial business by the Queen's Bench Division, much more drastic changes will be needed if commercial busi-

ness is to any extent to be brought back. A tribunal for the assessment of damages in commercial causes (which causes must be defined as a class) analogous to that in the Admiralty Registry must be established. The interlocutory business and taxations must be dealt with by masters specially appointed for the work, which must be looked at from a business rather than from a legal point of view. It is doubtful, indeed, if even then this business will be regained without the creation of an entirely new 'commercial division of the High Court,' managing its own business, and looked to by commercial men as a special tribunal in which they have confidence.

## VARYING TRUST INVESTMENTS.

WHETHER Lord Hatherley's decision in *In re Ward*, 2 Jo. & H. 191, was right or wrong 'is a matter which concerns nobody.' That is so, no doubt, since Lord Justice Lindley thus dismissed it in *In re Dick; Lopes* v. *Dick*, though Mr. Justice North followed it, as being still applicable in *In re The Manchester Royal Infirmary*, L. R. 43 Chanc. Div. 420; but it is even of more consequence to learn, on the same authority, that Mr. Justice North's decision itself may be now alike disregarded, though it appears to have misled Mr. Justice Stirling also. *In re Warde* decided that section 32 of Lord St. Leonards' Act (22 & 23 Vict. c. 35), which enlarged the powers of trustees with regard to investments, did not enable the trustees of a settlement of a fund invested in a particular manner to sell out the investments, there being no power in the settlement to vary investments. It happens, however, that Lord Romilly came to a different conclusion in *Waite* v. *Littlewood*, 41 Law J. Rep. Chanc. 636, but the case does not appear to have been argued, nor was *In re Wards* cited; but again, in *In re The Clergy Orphan Corporation*, L. R. 18 Eq. 280, where it was held that the trustees of a charity might, under section 11 of Lord St. Leonards' Act, sell out trust funds then invested in consols for the purpose of reinvestment in other securities authorised by the General Order of February 1, 1861, with regard to cash under the control of the Court, Vice-Chancellor Malins considered that *In re Warde* had no general application. In practical effect, no doubt, the question would be greatly shorn of its consequence if it could be maintained, on the authority of *In re Cooper's Trusts*, W. N. 1873, p. 87, that, where an instrument allows a choice of investments, a power to vary is implied. But it is very doubtful if that is right, and Lord Justice Lindley gave it no countenance in *In re Dick*. Then, in 1888, the Government reduced the interest or dividend payable upon Government securities, in consequence of which reduction it was thought necessary or at least desirable to extend the powers which were formerly enjoyed by trustees as regards the investment of trust moneys. The Trust Investment Act, 1889 (52 & 53 Vict. c. 32), was passed accordingly; but certainly, if the Legislature intended to enable trustees to sell out existing investments made independently of the Act, it is at least singular, having regard to *In re Warde*, that the language used in the enabling part of section 3 should be similar to that used in the previous Acts. Does this power to vary investments, given by section 3, apply to all investments authorised by that section, whether made under the power given by the Act, or whether made prior to the Act by the settlor or testator or by the trustees since the trust commenced? According to the decision in *In re Warde*, the power of investment would relate only to money awaiting investment, and would not apply to funds already invested; and, according to Mr. Justice Stirling, in *In re Dick*, following *In re Manchester Royal Infirmary*, trustees, having no power under the instrument of trust to vary investments, are not authorised to sell out existing investments for the purpose of investing the proceeds in the manner sanctioned by the Trust Investment Act, 1889. Section 3 declares that 'it shall be lawful for a trustee, unless expressly forbidden by the instrument (if any) creating the trust, to invest any trust funds in his hands, in manner following,' then enumerating a series of investments, and concluding with the provision, 'and also from time to time to vary such investment.' A trustee has power to invest 'any trust funds in his hands' (the same words varying in Lord St. Leonards' Act): 'and also to vary any such investment'—'such' as what—does this extend to existing investments, or does it only apply to enable the varying of investments made already under the authority of the Act?

Turning to *In re Dick; Lopes* v. *Dick*, reported in the LAW JOURNAL for April, we find Lord Justice Lindley referring, in the first place, to another section of the Act, section 6, which provides that the Act 'shall apply as well to trusts created before as to trusts created after the passing of this Act, and the powers hereby conferred shall be in addition to the powers conferred by the instrument, if any, creating the trust.' That, said he, 'is a section which is in some respects remarkable, because it says in plain language that the Act shall apply to trustees who hold moneys under trusts created before the passing of the Act; and the whole object of that section is to redress the inconvenience, and perhaps injustice, which would be the inevitable result of the reduction of the interest payable upon Government securities if there were no such Act as this.' Expressly made retrospective, the statute is certainly an enabling one, the Legislature seeking, as it had done from 1859 down to 1889, to decrease the difficulties of making investments of a kind which would be sought for by trustees, and enlarging their powers accordingly as regards investments and instruments, whether made before or after the passing of the Act.' The provision in section 3, said Lord Justice Fry, 'should be read as if the words "any such investment" were followed by the words "as hereinbefore mentioned." I think, therefore, that the power of variation applies to investments of the specified character, whether the investments be made by the testator during his lifetime, or by the trustees under his will or under their statutory powers. I have come to that conclusion, induced in the first place very largely by the view that I take of the object of the Act—the object of the Act being to enlarge the powers of selection of investments given to trustees, who are exposed to the difficulty of obtaining remunerative investments of a particular kind. But there are other circumstances in the case which incline me to the same conclusion. In the first place, it would be a very strange result if, in a case where a testator left trust funds invested in securities of the description enumerated in the Act—*e.g.* Parliamentary stocks—without conferring on the trustees any power of variation, and also left cash which was to be invested by the trustees also in Parliamentary stock, the trustees should find themselves placed in the position of having power to vary one portion of the stock—namely, the Parliamentary stock purchased with the cash after the passing of the Act—but no power to vary the other portion of the same class of stock in which the trust funds were invested before the Act came into operation. I think that that is an impossible conclusion, and that it is not one which we ought to arrive at. Again, the fact that the Act applies to documents existing at the passing of the Act seems to me to be very strong to show that it must apply to enable a variation to be made of the stocks in which investments have been made under the powers of the existing document. Again, section 6 provides that "the powers hereby conferred shall be in addition to the powers conferred by the instrument creating the trust." It consequently follows that the true mode of construing this power is, as was said by Mr. Farwell, to read it into the will, and

then the power to vary investments applies to all investments of the specified descriptions made under the will and under the Act of Parliament, unless they are excluded by the express language of the will. The intention of this Act evidently is that the powers given by the Act should be in addition to the powers of the trustees under the will.' 'It is,' said Lord Justice Kay, 'extremely easy to put difficult cases with regard to either view of construction. The power to vary such investments, even if you read the whole section into the will, only means a power to vary such investments as are mentioned in section 3. It is quite possible there might be, under the will or settlement, investments not mentioned in section 3 which, if the will or settlement contained no power to vary, would not be variable under the power given in this section, even if you read it into the will. That is a difficulty which was put to counsel during the argument, and a difficulty which would still remain even after the construction which the Court has put upon the Act.' But, though the Court rightly overruled the narrow construction previously put on the Act, 'I fear,' added the learned judge, 'that our decision will subject trustees to greater importunities on the part of tenants-for-life than heretofore, and therefore I wish to add that, in changing existing investments, trustees have to exercise a discretion, and it would not be a proper exercise of that discretion to change the investment merely for the sake of increasing the income of the life tenant, if in so doing the security of the capital fund is diminished.' *Irish Law Times.*

## THE LAW OF HUSBAND AND WIFE.

MR. INDERWICK writes to the *Times* as follows:—

Lord Penzance, while stating the case of the husband mated to an evasive wife, deprecates any alteration of the law which would extend the grounds of divorce, but he refrains from suggesting any alternative remedy. I venture to propose a remedy which, if not heroic, will at least be found to be practical.

The so-called Weldon Relief Act of 1884 declared that it should no longer be lawful for any Court to condemn a husband or wife to perpetual imprisonment for refusing to live with an uncongenial spouse, and the Court of Appeal has lately decided that, whatever a husband's rights may be at common law, they do not in fact include a right to subject his wife to lifelong confinement. In substitution for the power of enforcing its decrees by imprisonment, the Act of 1884 empowered the Court to order the offending spouse to make satisfactory arrangements for the support of the innocent party and the children. If the husband is the fugitive no difficulty arises. He is ordered to make a settlement or an allowance which does not usually err on the side of insufficiency, and in default of compliance he can be imprisoned and his property taken from him. Neither is there a difficulty as to the wife unless her property is settled without power of anticipation, in which case the Courts have declared themselves powerless to enforce any order against her.

It was said some years ago of the Scotch judges that, having invented the doctrine of constructive murder, they became so enamoured of their legal offspring that, though bloody murderers occasionally received the mercy of the Crown, no constructive murderer ever espaced the gallows. The doctrine of restraint on anticipation has been similarly adopted by the Court of Chancery, and the books are full of cases where married women of large estates have defrauded their creditors, their relations, and their friends by the application of a rule invented for the purpose of preventing their weakly yielding to the blandishments of their husbands and squandering their property during the marriage. So far, indeed, had the operation of this rule been carried that it was found necessary to insert a clause in the Conveyancing Act of 1881 to enable the Court of Chancery, on the wife's application, to disregard this restraint, and to enable her to charge or alienate her property when such a course would clearly be for her own pecuniary benefit. Let, therefore, the Legislature pass an Act conferring on the judges of the Divorce Division a power to disregard this restraint on anticipation in such cases as it may seem to them just and reasonable to do so. This will carry into effect what was undoubtedly the intention, though apparently not the language, of the Act of 1884, and it will go far to put an end to these unseemly squabbles. Many people may say that vulgar pecuniary considerations should hardly be permitted to influence an adjudication upon the sacred rights and duties of married life. To this I would reply that during my experience, which, unhappily, has been long, I am not aware of any one of these cases of restitution of conjugal rights where money was not the principal, if not the only, moving cause of dispute.

## THE LATE JUDGE MORGAN HOWARD.

HIS HONOUR JUDGE COLPITTS GRANGER took his seat at the Launceston County Court on Friday, the 1st inst., for the first time since his appointment as judge of the County Court Circuit No. 59, in succession to the late Judge Morgan Howard.

Mr. C. H. Peter, on behalf of the bar, said this was the second time it had fallen to his lot to express the regret of the legal profession practising in that Court at the death of the judge who presided there. This was the first opportunity that had been afforded in the circuit of bearing public testimony to the worth of the late judge. Mr. Morgan Howard's sudden death, after a short illness, came as a painful surprise. His amiability of character, his invariable courtesy to the bar, and his great anxiety to do justice to the parties who came before him, were highly appreciated in that Court, and they mourned his loss very deeply. While lamenting the death of the late judge, it was their pleasure to welcome his successor, and they trusted his honour would be long spared to preside over the Courts in the circuit. Judge Granger came from a distant part of the country, but he would find the Cornish people not quite the barbarians they were sometimes supposed to be, but a warm-hearted race. The duties of a County Court judge were extremely onerous and difficult, involving jurisdiction in matters of very great intricacy and requiring the widest knowledge and experience in dealing with them, and he could promise his honour that the utmost assistance of the bar would be at his disposal.

Mr. Graham White joined in the expression of regret at the death of the late judge and of welcome to the new judge, between whom and the members of the bar, he hoped, the good relations which had subsisted between the judge and the legal profession in that Court would always exist.

Mr. Registrar Grylls added his regret at the death of Judge Howard, in whom, he said, the county had lost a valuable servant and himself a personal friend. He also joined in the welcome to Judge Granger.

His Honour said he could not too strongly indorse all that had been said about his friend, Mr. Morgan Howard, whom it was his great pleasure to have known for many years. No man was more missed at the bar in London than Mr. Morgan Howard when he was appointed judge of that circuit. It was in some senses a difficulty and in others a help to succeed a judge so able and conscientious as Mr. Morgan Howard. He was sure no judge ever tried to do justice more thoroughly than the late Mr. Howard,

because he was not only the perfection of courtesy in all the relations of life, but also scrupulously careful and painstaking. In acknowledging the welcome extended to himself, he could only say it would be his endeavour to cultivate a good feeling between himself and the bar. Nothing was more important to a judge in the administration of justice than to have the assistance of an able and trustworthy bar, because the duties of a County Court judge were exceedingly varied and extensive, embracing practically all the branches of the law. Nothing had given him greater pleasure on entering on the duties of his office than to read in a letter written by the late judge to a brother-judge, who was thinking of taking his duties there for a month, the very high terms in which he spoke of the gentlemen who practised before him, and of the registrars who assisted him in the administration of his duties.

## ARRANGEMENTS FOR QUEEN'S BENCH CHAMBERS.

*Trinity Sittings*, 1891.

### A to F.

ALL applications by summons or otherwise in actions assigned to Master Pollock are to be made returnable before him in his own Room, No. 173, at 11.30 A.M., on Tuesdays, Thursdays, and Saturdays up to June 20, after which date they are to be made returnable before the masters in chambers in this division.

### G to N.

All applications by summons or otherwise in actions assigned to Master Macdonell are to be made returnable before him in his own Room, No. 183, at 11.30 A.M., on Mondays, Wednesdays, and Fridays.

### O to Z.

All applications by summons or otherwise in actions assigned to Master Manley Smith are to be made returnable before him in chambers up to June 13, after that date in his own Room, No. 114, at 11.30 A.M., on Tuesdays, Thursdays, and Saturdays.

The parties are to meet in the anteroom of Masters' Chambers, and the summonses will be inserted in the printed list for the day after the summonses to be heard before the master sitting in chambers, and will be called over by the attendant on the respective rooms for a first and second time at 11.30, and will be dealt with by the master in the same manner as if they were returnable at chambers.

BY ORDER OF THE MASTERS.

### MASTERS IN CHAMBERS.

#### A to F.

Mondays, Wednesdays, and Fridays: Master Kaye.
Tuesdays, Thursdays, and Saturdays: Master Johnson.

#### G to N.

Mondays, Wednesdays, and Fridays: Master Walton.
Tuesdays, Thursdays, and Saturdays: Master Butler.

#### O to Z.

Mondays, Wednesdays, and Fridays: Master Manley Smith, for Master Archibald, to June 13. Tuesdays, Thursdays, and Saturdays: Master Wilberforce.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## ORDER OF TRANSFER.

Tuesday, May 12, 1891.

WHEREAS, upon the request of the Lord Chancellor, the Honourable Mr. Justice Vaughan Williams has, with the concurrence of the Lord Chief Justice of England, consented to sit and act as an additional judge of the Chancery Division for the purpose of hearing any causes or matters which may be assigned to him by the Lord Chancellor, or any application therein; I, the Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, do, pursuant to the Supreme Court of Judicature Act, 1884, s. 5, hereby order that in addition to the causes assigned under the Order of Court, dated April 28, 1891, the several causes and matters set forth in the schedules hereto be assigned to Mr. Justice Vaughan Williams for the purpose of hearing the same or any application therein, and be marked in the cause books accordingly; and if on the termination of such sitting any of such causes and matters shall remain undisposed of, then I do also order that such causes and matters be retransferred without further order for the purpose only of hearing or of trial to the Hon. Mr. Justice Romer. And this order is to be drawn up by the registrar and set up in the several offices of the Chancery Division of the High Court of Justice.

### SCHEDULE.

*From* MR. JUSTICE ROMER.

Duke of Sutherland *v.* Heathcote —1890 S. 980
Heathcote *v.* Blair—1890 H. 1,335
Jones *v.* Merionethshire Permanent Benefit Building Society —1890 J. 158
Froude *v.* Wilberforce—1890 F. 1,081
Adney *v.* Adney—1890 A. 840
Vernall *v.* Reed—1890 V. 326
Cunliffe *v.* Bellite Explosives (Lim.)—1889 C. 1,166
Hampton *v.* Davis—1890 H. 1,884
In re Bliss, dec.
Bliss *v.* Bliss—1889 B. 2,568
Wrensted *v.* Bede—1890 W. 1,578
Wagner *v.* Costerlitz—1890 W. 417
Automatic Weighing Machine Co. (Lim.) *v.* National Exhibitors Association (Lim.)—1890 A. 826
Jones *v.* Wemyss—1890 J. 26
Bellite Explosives (Lim.) *v.* Bellite Co. (Lim.)—1890 B. 1,035
Jensen *v.* Hilder—1890 J. 527
Lloyd *v.* Fox—1889 L. 1,861
Booty *v.* Goodwin—1890 B. 1,764
Lincoln Brick Co. (Lim.) *v.* Handley—1890 L. 1,349
Godfrey *v.* Walker—1889 G. 1,463
Alliance Pure White Lead Syndicate *v.* M'Ivor's Patents (Lim.) —1890 A. 931
Viney *v.* Lewis—1889 V. 809
In re Parker, dec.
Lowe *v.* Parker
Parker *v.* Lowe—1890 P. 1,233
Dawson *v.* Church
Church *v.* Dawson—1889 D. 1,990
Simeon *v.* Freshwater, Yarmouth, and Newport Railway Co.—1890 S. 1,980
Denney *v.* Frisby—1890 D. 896
Nicol *v.* Charsley—1890 N. 1,270
Horwood *v.* Millins—1890 H. 557
Belsey *v.* Brooks—1890 B. 2,190
Twyeroald *v.* Chamber Colliery Co. (Lim.)—1890 T. 614
Norton *v.* Burr—1890 N. 313
Bender *v.* Macpherson—1890 R. 96
In re Kinahan's Trade-mark, No. 14,636, and Patents Designs Act, 1883—motion with witness by order
Coulson *v.* Lock—1890 C. 2,636
Beaumont *v.* Provident Assurance Co. (Lim.)—1889 B. 3,452
Bendall *v.* Alexander, Daniel, Selfe & Co.—1890 B. 1,454
Wood *v.* Lamplough—1888 W. 2,171
Ward *v.* Langdon—1889 W. 912
I'Anson *v.* Turner—1890 I. 1,078
Brear *v.* Hirst—1890 B. 4,063
Cleworth *v.* National Provident Institution and others—1889 C. 2,554
In re Stevens, dec.
Stevens *v.* Stebbington—1890 S. 3,287
Byers *v.* Grey—1890 B. 2,802
Lawrence *v.* Edge—1890 L. 1,184
Hamerton *v.* Bex—1890 H. 3,346
Copping *v.* Gilmore—1890 C. 2,192
Bolton *v.* Natal Land and Colonisation Co. (Lim.)—1886 B. 2,055
Kennedy *v.* Smith—1890 K. 742
Fairfax *v.* Lyons—1890 F. 1,260
Savage *v.* Jessup—1890 S. 2063
Thornton *v.* Union Discount Co. of London—1890 S. 1,861
Ogilvie *v.* Blything Union Sanitary Authority—1890 O. 1,338
Eastwood & Co. (Lim.) *v.* Craig—1890 E. 1,193

HALSBURY, *C.*

GRAY'S INN.—The undermentioned gentlemen have been elected benchers of the Honourable Society of Gray's Inn: His Honour Judge Paterson; and Messrs. Edward Henry Power, J.P.; James Mulligan (of the equity bar); Miles Walker Mattinson, M.P. (Recorder of Blackburn); and J. C. Lewis Coward (Recorder of Folkestone).

# SITTINGS PAPERS.

## SUPREME COURT OF JUDICATURE.

*Trinity Sittings*, 1891.

## COURT OF APPEAL.

### APPEAL COURT I.

FINAL AND INTERLOCUTORY APPEALS FROM THE QUEEN'S BENCH DIVISION, THE PROBATE, DIVORCE, AND ADMIRALTY DIVISION (ADMIRALTY), AND THE QUEEN'S BENCH DIVISION SITTING IN BANKRUPTCY.

*May*
Tuesday 26 Appeal Motions *ex parte*, Original Motions, and Appeals from Orders made on Interlocutory Motions.
Wednesday 27, Thursday 28 } Queen's Bench Final Appeals.
Friday 29 Bankruptcy Appeals and Queen's Bench Final Appeals.
Saturday 30 Queen's Birthday—no Sitting.
*June*
Monday 1 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required.
Tuesday 2, Wednesday 3, Thursday 4 } Queen's Bench Final Appeals.
Friday 5 Bankruptcy Appeals and Queen's Bench Final Appeals.
Saturday 6 Queen's Bench Final Appeals.
Monday 8 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required.
Tuesday 9, Wednesday 10, Thursday 11 } Queen's Bench Final Appeals.
Friday 12 Bankruptcy Appeals and Queen's Bench Final Appeals.
Saturday 13 Queen's Bench Final Appeals.
Monday 15 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required.
Tuesday 16, Wednesday 17, Thursday 18 } Queen's Bench Final Appeals.
Friday 19 Bankruptcy Appeals and Queen's Bench Final Appeals.
Saturday 20 Queen's Bench Final Appeals.
Monday 22 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required.
Tuesday 23, Wednesday 24, Thursday 25 } Queen's Bench Final Appeals.
Friday 26 Bankruptcy Appeals and Queen's Bench Final Appeals.
Saturday 27 Queen's Bench Final Appeals.
Monday 29 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required.
Tuesday 30, *July* Wednesday 1, Thursday 2 } Queen's Bench Final Appeals.
Friday 3 Bankruptcy Appeals and Queen's Bench Final Appeals.
Saturday 4 Queen's Bench Final Appeals.
Monday 6 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required.
Tuesday 7, Wednesday 8, Thursday 9 } Queen's Bench Final Appeals.
Friday 10 Bankruptcy Appeals and Queen's Bench Final Appeals.
Saturday 11 Queen's Bench Final Appeals.
Monday 13 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required.
Tuesday 14, Wednesday 15, Thursday 16 } Queen's Bench Final Appeals.
Friday 17 Bankruptcy Appeals and Queen's Bench Final Appeals.
Saturday 18 Queen's Bench Final Appeals.
Monday 20 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required.
Tuesday 21, Wednesday 22, Thursday 23 } Queen's Bench Final Appeals.
Friday 24 Bankruptcy Appeals and Queen's Bench Final Appeals.
Saturday 25 Queen's Bench Final Appeals.
*July*
Monday 27 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required.
Tuesday 28, Wednesday 29, Thursday 30 } Queen's Bench Final Appeals.
Friday 31 Bankruptcy Appeals and Queen's Bench Final Appeals.
*Aug.*
Saturday 1 Queen's Bench Final Appeals.
Monday 3 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required.
Tuesday 4, Wednesday 5, Thursday 6 } Queen's Bench Final Appeals.
Friday 7 Bankruptcy Appeals and Queen's Bench Final Appeals.
Saturday 8 Queen's Bench Final Appeals.
Monday 10 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required.
Tuesday 11, Wednesday 12 } Queen's Bench Final Appeals.

N.B.—Admiralty Appeals (with Assessors), and also the Queen's Bench New Trial Paper, will be taken on days to be appointed by the Court.

SPECIAL NOTICE.—The Queen's Bench Final Appeals will be taken as stated in the above order of business, but subject to the New Trial Paper, which will be taken on days to be appointed by the Court, notice of which will be published on the Daily Cause List.

### APPEAL COURT II.

FINAL AND INTERLOCUTORY APPEALS FROM THE CHANCERY, AND PROBATE, DIVORCE, AND ADMIRALTY DIVISIONS (PROBATE AND DIVORCE), AND THE COUNTY PALATINE AND STANNARIES COURTS.

*May*
Tuesday 26 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required.
Wednesday 27 Chancery Final Appeals.
Thursday 28 County Palatine Appeals and Chancery Final Appeals.
Friday 29 Chancery Final Appeals.
Saturday 30 Queen's Birthday—no Sitting.
*June*
Monday 1, Tuesday 2 } Chancery Final Appeals.
Wednesday 3 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required.
Thursday 4 County Palatine Appeals (if any) and Chancery Final Appeals.
Friday 5, Saturday 6, Monday 8, Tuesday 9 } Chancery Final Appeals.
Wednesday 10 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required.
Thursday 11, Friday 12, Saturday 13, Monday 15, Tuesday 16 } Chancery Final Appeals.
Wednesday 17 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required.
Thursday 18, Friday 19, Saturday 20, Monday 22, Tuesday 23 } Chancery Final Appeals.
Wednesday 24 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required.
Thursday 25, Friday 26, Saturday 27, Monday 29, Tuesday 30 } Chancery Final Appeals.
*July*
Wednesday 1 Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required.
Thursday 2 County Palatine Appeals (if any) and Chancery Final Appeals.
Friday 3, Saturday 4, Monday 6, Tuesday 7 } Chancery Final Appeals.

| | | |
|---|---|---|
| | *July* | |
| Wednesday | 8 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required. |
| Thursday | 9 | Chancery Final Appeals. |
| Friday | 10 | |
| Saturday | 11 | |
| Monday | 13 | |
| Tuesday | 14 | |
| Wednesday | 15 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required. |
| Thursday | 16 | Chancery Final Appeals. |
| Friday | 17 | |
| Saturday | 18 | |
| Monday | 20 | |
| Tuesday | 21 | |
| Wednesday | 22 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required. |
| Thursday | 23 | Chancery Final Appeals. |
| Friday | 24 | |
| Saturday | 25 | |
| Monday | 27 | |
| Tuesday | 28 | |
| Wednesday | 29 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required. |
| Thursday | 30 | Chancery Final Appeals. |
| Friday | 31 | |
| | *Aug.* | |
| Saturday | 1 | |
| Monday | 3 | |
| Tuesday | 4 | |
| Wednesday | 5 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required. |
| Thursday | 6 | County Palatine Appeals (if any) and Chancery Final Appeals. |
| Friday | 7 | Chancery Final Appeals. |
| Saturday | 8 | |
| Monday | 10 | |
| Tuesday | 11 | |
| Wednesday | 12 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required. |

N.B.—Lunacy Petitions (if any) are taken in Appeal Court II. on every Monday, at Eleven, until further notice.

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# HIGH COURT OF JUSTICE.

## CHANCERY DIVISION.

### CHANCERY COURT I.

#### BEFORE MR. JUSTICE CHITTY.

| | | |
|---|---|---|
| | *May* | |
| Tuesday | 26 | Motions and Non-Witness List. |
| Wednesday | 27 | Non-Witness List. |
| Thursday | 28 | Motions and Non-Witness List. |
| Friday | 29 | Petitions, Short Causes, Opposed Petitions, Procedure Summonses, and Non-Witness List. |
| Saturday | 30 | Queen's Birthday—no Sitting. |
| | *June* | |
| Monday | 1 | Sitting in Chambers. |
| Tuesday | 2 | Non-Witness List. |
| Wednesday | 3 | |
| Thursday | 4 | |
| Friday | 5 | Motions and Non-Witness List. |
| Saturday | 6 | Petitions, Short Causes, Procedure Summonses, Opposed Petitions, and Non-Witness List. |
| Monday | 8 | Sitting in Chambers. |
| Tuesday | 9 | Non-Witness List. |
| Wednesday | 10 | |
| Thursday | 11 | |
| Friday | 12 | Motions and Non-Witness List. |
| Saturday | 13 | Petitions, Short Causes, Opposed Petitions, Procedure Summonses, and Non-Witness List. |
| Monday | 15 | Sitting in Chambers. |
| Tuesday | 16 | Non-Witness List. |
| Wednesday | 17 | |
| Thursday | 18 | |
| Friday | 19 | Motions and Non-Witness List. |
| Saturday | 20 | Petitions, Short Causes, Procedure Summonses, Opposed Petitions, and Non-Witness List. |
| Monday | 22 | Sitting in Chambers. |
| | *June* | |
| Tuesday | 23 | Causes with Witnesses. |
| Wednesday | 24 | |
| Thursday | 25 | |
| Friday | 26 | Motions and Non-Witness List. |
| Saturday | 27 | Petitions, Short Causes, Opposed Petitions, Procedure Summonses, and Non-Witness List. |
| Monday | 29 | Sitting in Chambers. |
| Tuesday | 30 | Causes with Witnesses. |
| | *July* | |
| Wednesday | 1 | |
| Thursday | 2 | |
| Friday | 3 | Motions and Non-Witness List. |
| Saturday | 4 | Petitions, Short Causes, Procedure Summonses, Opposed Petitions, and Non-Witness List. |
| Monday | 6 | Sitting in Chambers. |
| Tuesday | 7 | Non-Witness List. |
| Wednesday | 8 | |
| Thursday | 9 | |
| Friday | 10 | Motions and Non-Witness List. |
| Saturday | 11 | Petitions, Short Causes, Opposed Petitions, Procedure Summonses, and Non-Witness List. |
| Monday | 13 | Sitting in Chambers. |
| Tuesday | 14 | Non-Witness List. |
| Wednesday | 15 | |
| Thursday | 16 | |
| Friday | 17 | Motions and Non-Witness List. |
| Saturday | 18 | Petitions, Short Causes, Procedure Summonses, Opposed Petitions, and Non-Witness List. |
| Monday | 20 | Sitting in Chambers. |
| Tuesday | 21 | Non-Witness List. |
| Wednesday | 22 | |
| Thursday | 23 | |
| Friday | 24 | Motions and Non-Witness List. |
| Saturday | 25 | Petitions, Short Causes, Procedure Summonses, Opposed Petitions, and Non-Witness List. |
| Monday | 27 | Sitting in Chambers. |
| Tuesday | 28 | Non-Witness List. |
| Wednesday | 29 | |
| Thursday | 30 | |
| Friday | 31 | Motions and Non-Witness List. |
| | *Aug.* | |
| Saturday | 1 | Petitions, Short Causes, Opposed Petitions, Procedure Summonses, and Non-Witness List. |
| Monday | 3 | Sitting in Chambers. |
| Tuesday | 4 | Non-Witness List. |
| Wednesday | 5 | |
| Thursday | 6 | |
| Friday | 7 | Motions and Non-Witness List. |
| Saturday | 8 | Remaining Motions, remaining Petitions, Adjourned Summonses (Procedure), and Non-Witness List. |
| Monday | 10 | |
| Tuesday | 11 | Sitting in Chambers. |
| Wednesday | 12 | |

SPECIAL NOTICE.—When the Non-Witness List is exhausted, the Witness List will be resumed subsequently to July 2.

Any Cause intended to be heard as a Short Cause must be so marked in the Cause Book at least one clear day before the same can be put in the Paper to be so heard. Two copies of minutes of the proposed Judgment or Order must be left in Court with the Judge's Clerk one clear day before the Cause is to be put in the Paper.

N.B.—In the weeks when Non-Witness Actions are taken, Further Considerations will be taken on Tuesdays. In the weeks when Witness Actions are taken, Further Considerations will not be taken on Tuesdays, but may be taken on Saturdays.

N.B.—The following papers on Further Consideration are required for the use of the Judge—viz. Two copies of Minutes of the proposed Judgment or Order, one copy Pleadings, and one copy Chief Clerk's Certificate, which must be left in Court with the Judge's Clerk one clear day before the Further Consideration is ready to come into the Paper.

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### CHANCERY COURT II.

#### BEFORE MR. JUSTICE NORTH.

| | | |
|---|---|---|
| | *May* | |
| Tuesday | 26 | Motions and Adjourned Summonses. |
| Wednesday | 27 | General Paper. |
| Thursday | 28 | |
| Friday | 29 | Motions and Adjourned Summonses. |
| Saturday | 30 | Queen's Birthday—no Sitting. |
| | *June* | |
| Monday | 1 | Sitting in Chambers. |
| Tuesday | 2 | General Paper. |
| Wednesday | 3 | |
| Thursday | 4 | |
| Friday | 5 | Motions and Adjourned Summonses. |
| Saturday | 6 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 8 | Sitting in Chambers. |
| Tuesday | 9 | General Paper. |
| Wednesday | 10 | |
| Thursday | 11 | |
| Friday | 12 | Motions and Adjourned Summonses. |
| Saturday | 13 | Short Causes, Petitions, and Adjourned Summonses. |

| | | |
|---|---|---|
| | *June* | |
| Monday | 15 | Sitting in Chambers. |
| Tuesday | 16 | General Paper. |
| Wednesday | 17 | |
| Thursday | 18 | |
| Friday | 19 | Motions and Adjourned Summonses. |
| Saturday | 20 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 22 | Sitting in Chambers. |
| Tuesday | 23 | General Paper. |
| Wednesday | 24 | |
| Thursday | 25 | |
| Friday | 26 | Motions and Adjourned Summonses. |
| Saturday | 27 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 29 | Sitting in Chambers. |
| Tuesday | 30 | General Paper. |
| | *July* | |
| Wednesday | 1 | |
| Thursday | 2 | |
| Friday | 3 | Motions and Adjourned Summonses. |
| Saturday | 4 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 6 | Sitting in Chambers. |
| Tuesday | 7 | General Paper. |
| Wednesday | 8 | |
| Thursday | 9 | |
| Friday | 10 | Motions and Adjourned Summonses. |
| Saturday | 11 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 13 | Sitting in Chambers. |
| Tuesday | 14 | General Paper. |
| Wednesday | 15 | |
| Thursday | 16 | |
| Friday | 17 | Motions and Adjourned Summonses. |
| Saturday | 18 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 20 | Sitting in Chambers. |
| Tuesday | 21 | General Paper. |
| Wednesday | 22 | |
| Thursday | 23 | |
| Friday | 24 | Motions and Adjourned Summonses. |
| Saturday | 25 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 27 | Sitting in Chambers. |
| Tuesday | 28 | General Paper. |
| Wednesday | 29 | |
| Thursday | 30 | |
| Friday | 31 | Motions and Adjourned Summonses. |
| | *Aug.* | |
| Saturday | 1 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 3 | Sitting in Chambers. |
| Tuesday | 4 | Remaining Motions, remaining Petitions, and Adjourned Summonses. |
| Wednesday | 5 | |
| Thursday | 6 | |
| Friday | 7 | Motions and Adjourned Summonses. |
| Saturday | 8 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 10 | Sitting in Chambers. |
| Tuesday | 11 | General Paper. |
| Wednesday | 12 | |

N.B.—Mr. Justice North will begin the trial of Actions with Witnesses on Tuesday, June 2.

Any Cause intended to be heard as a Short Cause must be so marked in the Cause Book at least one clear day before the same can be put in the Paper to be so heard. Two Copies of Minutes of the proposed Judgment or Order must be left in Court with the Judge's Clerk the day before the Cause is to be put in the Paper.

## LORD CHANCELLOR'S COURT.

### BEFORE MR. JUSTICE STIRLING.

| | | |
|---|---|---|
| | *May* | |
| Tuesday | 26 | Motions, Adjourned Summonses, and General Paper. |
| Wednesday | 27 | General Paper. |
| Thursday | 28 | |
| Friday | 29 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 30 | Queen's Birthday—no Sitting. |
| | *June* | |
| Monday | 1 | Sitting in Chambers. |
| Tuesday | 2 | General Paper. |
| Wednesday | 3 | |
| Thursday | 4 | |
| Friday | 5 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 6 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 8 | Sitting in Chambers. |
| Tuesday | 9 | General Paper. |
| Wednesday | 10 | |
| Thursday | 11 | |
| Friday | 12 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 13 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 15 | Sitting in Chambers. |
| Tuesday | 16 | General Paper. |
| Wednesday | 17 | |
| Thursday | 18 | |
| Friday | 19 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 20 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| | *June* | |
| Monday | 22 | Sitting in Chambers. |
| Tuesday | 23 | General Paper. |
| Wednesday | 24 | |
| Thursday | 25 | |
| Friday | 26 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 27 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 29 | Sitting in Chambers. |
| Tuesday | 30 | General Paper. |
| | *July* | |
| Wednesday | 1 | |
| Thursday | 2 | |
| Friday | 3 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 4 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 6 | Sitting in Chambers. |
| Tuesday | 7 | General Paper. |
| Wednesday | 8 | |
| Thursday | 9 | |
| Friday | 10 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 11 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 13 | Sitting in Chambers. |
| Tuesday | 14 | General Paper. |
| Wednesday | 15 | |
| Thursday | 16 | |
| Friday | 17 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 18 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 20 | Sitting in Chambers. |
| Tuesday | 21 | General Paper. |
| Wednesday | 22 | |
| Thursday | 23 | |
| Friday | 24 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 25 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 27 | Sitting in Chambers. |
| Tuesday | 28 | General Paper. |
| Wednesday | 29 | |
| Thursday | 30 | |
| Friday | 31 | Motions, Adjourned Summonses, and General Paper. |
| | *Aug.* | |
| Saturday | 1 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 3 | Sitting in Chambers. |
| Tuesday | 4 | Remaining Petitions, Adjourned Summonses, and General Paper. |
| Wednesday | 5 | |
| Thursday | 6 | Motions, Adjourned Summonses, and General Paper. |
| Friday | 7 | Remaining Motions, Adjourned Summonses, and General Paper. |
| Saturday | 8 | |
| Monday | 10 | Remaining Motions. |
| Tuesday | 11 | Sitting in Chambers. |
| Wednesday | 12 | |

Any Cause intended to be heard as a short Cause must be so marked in the Cause Book at least one clear day before the same can be put in the Paper to be so heard, and the necessary Papers, including Minutes of the proposed Judgment or Order, must be left with the Judge's Clerk one clear day before the Cause is to be put into the Paper.

## CHANCERY COURT IV.

### BEFORE MR. JUSTICE KEKEWICH.

| | | |
|---|---|---|
| | *May* | |
| Tuesday | 26 | Motions and Adjourned Summonses. |
| Wednesday | 27 | General Paper. |
| Thursday | 28 | |
| Friday | 29 | Motions, Short Causes, Petitions, and Adjourned Summonses. |
| Saturday | 30 | Queen's Birthday—no Sitting. |
| | *June* | |
| Monday | 1 | Sitting in Chambers. |
| Tuesday | 2 | General Paper. |
| Wednesday | 3 | |
| Thursday | 4 | |
| Friday | 5 | Motions and Adjourned Summonses. |
| Saturday | 6 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 8 | Sitting in Chambers. |
| Tuesday | 9 | General Paper. |
| Wednesday | 10 | |
| Thursday | 11 | |
| Friday | 12 | Motions and Adjourned Summonses. |
| Saturday | 13 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 15 | Sitting in Chambers. |
| Tuesday | 16 | General Paper. |
| Wednesday | 17 | |
| Thursday | 18 | |
| Friday | 19 | Motions and Adjourned Summonses. |
| Saturday | 20 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 22 | Sitting in Chambers. |
| Tuesday | 23 | General Paper. |
| Wednesday | 24 | |
| Thursday | 25 | |

| | | |
|---|---|---|
| | *June* | |
| Friday | 26 | Motions and Adjourned Summonses. |
| Saturday | 27 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 29 | Sitting in Chambers. |
| Tuesday | 30 | General Paper. |
| | *July* | |
| Wednesday | 1 | |
| Thursday | 2 | |
| Friday | 3 | Motions and Adjourned Summonses. |
| Saturday | 4 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 6 | Sitting in Chambers. |
| Tuesday | 7 | General Paper. |
| Wednesday | 8 | |
| Thursday | 9 | |
| Friday | 10 | Motions and Adjourned Summonses. |
| Saturday | 11 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 13 | Sitting in Chambers. |
| Tuesday | 14 | General Paper. |
| Wednesday | 15 | |
| Thursday | 16 | |
| Friday | 17 | Motions and Adjourned Summonses. |
| Saturday | 18 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 20 | Sitting in Chambers. |
| Tuesday | 21 | General Paper. |
| Wednesday | 22 | |
| Thursday | 23 | |
| Friday | 24 | Motions and Adjourned Summonses. |
| Saturday | 25 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 27 | Sitting in Chambers. |
| Tuesday | 28 | General Paper. |
| Wednesday | 29 | |
| Thursday | 30 | |
| Friday | 31 | Motions and Adjourned Summonses. |
| | *Aug.* | |
| Saturday | 1 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 3 | Sitting in Chambers. |
| Tuesday | 4 | General Paper. |
| Wednesday | 5 | |
| Thursday | 6 | |
| Friday | 7 | Motions and Adjourned Summonses. |
| Saturday | 8 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 10 | Remaining Motions, remaining Petitions, and Adjourned Summonses. |
| Tuesday | 11 | Sitting in Chambers. |
| Wednesday | 12 | |

Liverpool and Manchester Business will be taken as follows: Motions on days appointed for Motions. Short Causes, Petitions, and Adjourned Summonses on Saturdays. Summonses in Chambers on Friday afternoons, Liverpool and Manchester Summonses being taken on alternate Fridays, commencing with Manchester Summonses on Friday, May 29.

## CHANCERY COURT III.

### BEFORE MR. JUSTICE ROMER.

Actions transferred for Trial or Hearing only will be taken in the order in the Cause List on every day of the Sittings from May 26 to August 12, both inclusive.

# CAUSE LISTS.

## HIGH COURT OF JUSTICE.

## QUEEN'S BENCH DIVISION.

*Trinity Sittings*, 1891.

### SPECIAL PAPER.

FOR ARGUMENT.

*Set down March* 24, 1891, *due March* 29, 1891.

Cleaver & others v. Mutual Reserve Fund Association

### OPPOSED MOTIONS.

FOR ARGUMENT.

Cullum v. Strousberg
In re Arbitration between De Morgan, Snell & Co. and the Rio de Janeiro Flour Mills (Lim.)
Crisford v. West Lancashire Railway Co.
Same v. Same
Ross v. Bourke
In re a Solicitor, ex parte Incorporated Law Society
Boyce v. Williamson
Pollock v. Sharpe
In re Four Solicitors, ex parte Incorporated Law Society
In re Alliance Aluminium Co. ex parte Oresunds Chemiske Fabriker of Copenhagen
Day v. Ocean Railway and General Accident Assurance Co. (Lim.)
M'Intyre & Co. v. M'Intyre
Court v. Sheen
Gibb and another v. Todman
Browne v. Clulow
Perkins and another v. Daintrey
Aaron's Reefs (Lim.) v. Osborne
Munday v. Norton
Wolff v. Clinton and another
Lawrence Automatic Gas Co. (Lim.) v. Wright
Ellis v. Sykes and another
Hirst v. Holdsworth
In re a Solicitor, ex parte Incorporated Law Society
Stewart v. Nobel
Green v. Educational Newspaper Co. (Lim.)
Chappell v. North
Bowes and others v. Pape

### CROWN PAPER.

FOR JUDGMENT.

Northumberland—Gibson v. Lawson
Plymouth—Curran v. Treleaven
Durham (Darlington)—In re Onward Building Society and Building Societies' Acts, 1874, &c.

FOR ARGUMENT.

London—Jones and others v. Dobson and others
Surrey (Kingston)—Wimbledon Local Board v. Underwood (Simmons, claimant)
Glamorganshire—Regina v. J. C. Fowler, Esq. Stipendiary Magistrate for Swansea (ex parte Crabb)
Yorkshire (West Riding)—Mayor, &c. Borough of Sheffield v. Guardians of Poor Wortley Union and others
Staffordshire—Company, &c. of Birmingham Canal Navigation v. Hickman
Kent—Regina v. Sandgate Local Board (ex parte Justices, &c. of Kent)
Same—Whiffen and another v. Bligh and others, Licensing Justices, &c.
Durham—Harland v. Earl of Durham
Middlesex (Westminster)—Edmunds v. Steele
Surrey (Wandsworth)—Keeling v. Cleaver and another
Yorkshire (Leeds)—Leeds Patent Brick Co. v. Perlman
London—Lewis v. Davies
Metropolitan Police District—Osborne v. Skinners' Co.
Salop—In re Local Government Act, 1888, and In re County Council of Salop
Lancashire (Bacup)—Paterson v. Hoyle & Sons
Middlesex—Regina v. Registrar of Joint Stock Companies (ex parte Johnstone)
Lancashire (Blackburn)—Bagley v. Baynes
Lincolnshire (Parts of Kesteven)—Regina v. Reeve and another, Justices, &c. and others (ex parte Lannyman)
Kent (Greenwich)—Gilbertson and another v. Wood
Surrey—Fenwick v. Rural Sanitary Authority of Croydon Union
Metropolitan Police District—Wilson and another v. Vestry of St. Giles, Camberwell
Glamorganshire (Swansea)—Anderson v. Swansea Shipping Co. and another
Salford—Brown v. Mortgage Insurance Corporation
Middlesex (Westminster)—Ruston v. Bonham and another (Hicks and another, claimant)
Essex—Regina v. Vicar of All Saints', Prettlewell (ex parte Burrell)
Lancashire (Blackburn)—Cunliffe and another v. Tipping

### REVENUE PAPER.

CAUSES FOR HEARING.

Attorney-General v. Mayor, &c., of Hythe and another
Same v. De Burton and others
Same v. Chapman & White

CASES AS TO INCOME-TAX AND CORPORATION DUTIES.

FOR ARGUMENT.

Whitehead, appellant, and Wilson (Surveyor of Taxes), respondent
In re Duty on the Bootham Ward Strays, York
Murphy, appellant, and Colquhoun (Surveyor of Taxes), respondent

Motions for Attachment for Contempt, 10

*Divisional List.*

SUMMARY.

| | |
|---|---|
| Special Paper | 1 |
| Opposed Motions | 27 |
| Crown Paper | 26 |
| Revenue | 16 |
| Total | 70 |

## APPEALS AND MOTIONS IN BANKRUPTCY.

*Appeals for hearing before a* DIVISIONAL COURT *sitting in Bankruptcy.*

In re Entwistle, ex parte Turner
In re Fiddian, Squire & Co. ex parte H. Fiddian and H. V. Squire
In re Powlton, ex parte Williams
In re Cook, ex parte Cook
In re Crump, ex parte Crump
In re A. C. Powell & Co. ex parte Alexander Pollock Watt and The Lantern (Lim.)
In re Judge, ex parte Judge
In re M'Innes, ex parte Burgess, R. M.

*Motions in Bankruptcy for hearing before* MR. JUSTICE CAVE.

In re Wood, ex parte Roberts v. Sonan
In re Spanton, ex parte Official Receiver v. Lenanton and others
In re Artolo Bros. ex parte Pardinus v. Huribatt
In re Veale, ex parte Singleton v. Miles
In re Dear, ex parte Oddy
In re Inman, ex parte Jackson v. Bayley
In re Jackson, ex parte Woodward v. Bayliss
In re Same, ex parte Same v. Hogan and Hughes
In re Same, ex parte Same v. Jackson
In re Martin, ex parte Pierson v. Martin
In re Giles, ex parte Ward v. Giles
In re Same, ex parte Same v. Bridges
In re Buchanan, ex parte Churchman v. Haslock
In re Lamb, ex parte Stogden v. Cobbett
In re Seager, ex parte Glyn and others v. Pratt
In re Eastone, ex parte Cope
In re Gregory, ex parte Collins v. Brown
In re Fischel, ex parte Woodthorpe v. Pinchin and others
In re Benson, ex parte Haslock v. Cochrane
In re Seager, ex parte Cole & Co. v. Pratt
In re Gillchrist, ex parte Whinney v. Ponsonby and another
In re Hartmann, ex parte Official Receiver v. Harrison
In re Same, ex parte Same v. Osborne & Co.
In re Same, ex parte Same v. Goodall & Co.
In re Same, ex parte Same v. Farris

MATTERS IN BANKRUPTCY.

Total Appeals and Motions . . . . . 33

## RAILWAY AND CANAL COMMISSION COURT.

Pickering, Phipps, and others v. London and North-Western Railway Co.
Same v. London and North-Western Railway Co. and Great Northern Railway Co.
Same v. London and North-Western Railway Co. and others.
Town Council of Maidstone v. South-Eastern Railway Co., and London, Chatham, and Dover Railway Co.
Portway v. Colne Valley and Halstead Railway Co.

NOTICE.—The Court will sit on Tuesday, May 26, at 10.30, when the first three Cases will be in the List.

The following Courts will sit until Saturday, May 30, for the trial of the following classes of actions:—

Two Courts for Middlesex Special Juries.
One Court for Middlesex Common Juries.
Two Courts for London Special Juries.
Two or Three Courts for Actions without Juries.

## MIDDLESEX.

### SPECIAL JURY ACTIONS.

Actions beyond No. 2050 in this List will not be taken before Monday, June 1.

The following Numbers will be in the List for Trial on Tuesday, May 26: Nos. 40 to 98, both inclusive.

40 Langmead (May 27) v. Winter and others
18aDyster, Nalder & Co. v. Benjamin Bros.
1920 Nelson v. Chapman
1966 Claridge v. Galsworthy
1981 Scovel v. Publishing Co. (Lim.) and others
1987 Lee-Smith v. Commercial Trust, &c. (Lim.)
2001 Commercial Trust and Agency Co. (Lim.) v. Smith
19 Hannay's Patents Co. (Lim.) v. Harden Star and Sinclair Fire Appliance Co. (Lim.)
23 King v. Sedgwick
26aSellers and others v. Newton and others
50 Dawes v. Pilcher
98 Wilkinson v. Clark
781 Wiedemann v. Walpole
943 Clement v. Richards
1035 Newell (after No. 2403) v. Corporation of Liverpool
1062 Edwards & Co. v. Meux
1161 Zapp & Bennett v. Buddiman, Johnston & Co.
1162 Lamport & Holt v. England
1315 Worley v. Hindley
1325 Humphrey v. Leuville
1338 Tuppenney v. New
1345 James and others v. Land and Water and others
1358 Gilbert v. Perryman
1405 Clarke v. Tebb
1487 Memory v. Annesley and others
1507 Stumore v. Campbell and others
1508 Gillespie v. Salmon and others
1518 Guinness & Co. v. Heritage
1655 Crompton & Co. (Lim.) v. Phillips
1689 London and Edinburgh Shipping Co. v. East London Waterworks Co.
1752 Collins v. Houghton & Sons
1852 Colbourne v. Southwark, &c. Trams Co.
1855 Gwynne v. Shippey
1901 Coombs v. Barber and others
1912 Boyton v. Williams
1925 Nobel v. Stewart
1926 Same v. Same
1937 Cowley v. Soames
1967 Perry v. London Street Trams Co.
1968 Cowan v. Anderson
1971 Hawker v. Attenborough and others
1976 King v. Lewis
1999 Linton v. Mackenzie
2003 Dicker v. Lacons, Youell & Co.
2004 Minter v. Hilton and others
2020 Craig v. London Street Trams Co.
2022 Stallard v. North Metropolitan Trams Co.
2038 Harvey v. Lambert and another
2044 Coulson v. North
2045 Rumsey v. Edwards
2050 Davis v. London and South-Western Railway Co.
2052 Thomas v. Brough and another
2054 Mears v. Mitchell
2060 Owen v. Nicholls
2073 Folkard v. Lockwood
2080 M'Murdo v. Kosterlitz
2085 Drake v. Milburn
2087 Gilletts and another v. Havant Gas Co. (Lim.)
2090 Buckland and others v. Davison
2106 Howard v. Kidd
2116 Briggs v. Elephant and Castle, &c., Repository (Lim.)
2123 Griffiths v. Curtis and another
2125 Hatton v. Whiting
2127 Logan v. Byers
2131 Renton v. De Leuville
2146 Ramus v. Midland Railway Co.
2159 Crowley v. Woodhouse
2165 Good v. London and South-Western Railway Co.
2177 Cutler v. North
2189 Shelbourne v. Band
2195 Sanguinetti v. Hilton and others
2197 Bottomley v. Smith and another
2210 Lane v. Wells
2211 Beard v. National Telephone Co. (Lim.)
2215 Duck v. Cooper
2217 Nagle v. Parish
2223 Josephs v. Army and Navy Co-operative Society (Lim.)
2234 Newton v. Hickmott
2248 Hayes and others v. British Empire Mutual Life Assurance Co.
2251 Clement-Smith v. Macdonald
2253 Harris v. Daniell
2258 Hanson v. Martyn
2260 Burton v. Hotham
2264 Brain v. Stanley
2277 Smoke Abatement, &c. Association v. J. Hanson & Co.
2282 Toser v. Short
2285 De Jongh v. Levy
2290 Williams v. Simon
2291 Wilkinson v. Fry
2294 Ebury and others v. Dickinson & Co. (Lim.)
2305 Lethbridge v. Whitehead
2313 Arthur v. Pare and others
2316 Willis v. Lord

### COMMON JURY ACTIONS.

Actions beyond No. 1970 in this List will not be taken before Monday, June 1.

The following numbers will be in the List for trial on Tuesday, May 26: Nos. 1714 to 1835, both inclusive.

1714 Hurley v. London General Omnibus Co.
1788 Dowden v. White
1804 Escott v. Southern
1810 Weeks v. Smith
1832 Hounsell v. Land and Water (Lim.)
1825 Green v. Grant
1829 Cannon v. Neighbour
1839 Hill v. Schmalbach and others
1850 Studd v. Victoria Steamboat Association (Lim.)
1862 Harris v. North London Tramways Co.
1871 Wright v. Barwell
1883 Rayner v. Richards & Co.
1894 Reynolds v. Graham
1897 Lloyd v. Willis
344 Langford v. Goodman
825 Lloyd v. Eckersley
1151 Wilson v. Proprietors of the Labour Elector
1407 Daniel v. Walker
1462 Guinness & Co. v. Langham
1479 Jones v. Whitaker & Co.
1588 Whatford v. Rogers
1599 London and Provincial Printing Ink Co. v. Corbett
1763 Nash v. Brown
1764 Simpkins v. Same
1800 Naylor v. Stanley and others
1803 Patten v. Jones
1875 Biggs v. Healey
1902 Jones v. Smith and another
1905 West London Commercial Bank v. Cobbett
1927 Nathan v. Barnett
1930 Farmer v. Williams
1935 Kemp v. Madge
1942 Matthews v. Merdes
1953 Venerables & Co. v. Jelks
1954 Lawrence v. Donaldson
1957 Thurley v. Whittaker
1958 Callow and another v. Sell and others
1970 Palmer v. Taylor
1972 Ortelli v. Emerson
1983 Cruickshank v. Pelicann
1995 Harris v. Kite
1998 Alldred v. Everett and others
2013 Wells v. Hooker
2014 Longman v. Hargreaves
2022 Cowdrey v. Smith
2023 Somner v. Barnett
2024 Clarke v. Ramus
2026 Parry and Wife v. Regent's Canal, &c. Co.
2027 Hase v. Williams and others
2031 Roberts v. Beirnstein
2033 Norman & Stacey (Lim.) v. Beeman

2034 Beer v. Standard Supply Stores
2036 Bendall v. Pullen
2039 Philpot and Wife v. Green
2042 Leidig v. Hooker
2043 Clarke v. Cutforth Bros.
2047 Imperial Loan Co. (Lim.) v. Stone
2049 Winstanley v. Smith
2051 Longley v. Rawlings
2053 Jacobs v. Adams
2062 Barnes v. Dale
2065 Behrend v. Smith
2072 Morgan v. Preston
2081 Harvey v. Elgar
2086 Beauchamp v. Fagg
2095 Brough v. Packer
2098 Keiller v. Browne
2100 Read v. Theobald & Co. and another
2101 May and another v. Powis & Son
2102 Willis v. Bex
2112 Donovan v. Brotherton
744 Damiral v. Mallalue
2119 Mortlock v. Cracknell
2120 Alexander v. Jenkins
2128 Semple v. Orr
2142 Hunt v. Hoare
2147 Saunders v. Rous & Co.
2149 Sides v. Iles
2151 Wall v. Clarke
2152 Burchell v. St. Leonards Freehold Land Society
2156 Blanche v. Kersey
2160 Bona v. Erskine
2162 Everson v. Leith
2163 Kearley and another v. Wardle
2166 Warner v. White
2172 Lane v. Hobbs
2180 Colcock v. Goodings
2181 Akerman v. Head and others
2194 M'Arthur v. Isaacs and another
2196 Stroud and Wife v. Dines and another
2209 Spencer v. Kingcombe
2225 Oakley v. Oakley and another
2232 Bennett v. Cruickshank
2236 Jennings v. Nurse
2239 Freeman v. Baker
2241 Aitchison v. Witty
2254 Gray v. London and County Stock and Share Agency Co.

## ACTIONS WITHOUT JURIES.

Actions beyond No. 1870 in this List will not be taken before Monday, June 1.

The following Numbers will be in the List for Trial on Tuesday, May 26: Nos. 1431 to 1737, both inclusive.

1431 Steamship Insurance Syndicate v. Mortgage Insurance Corporation (Lim.)
2368 West and others v. Marks and another
Middle Class Dwellings Co. v. St. Giles' District Board of Works
1458 Wills v. Freeman
20A Stubbins v. Churchill & Son
1793 Belcher v. Belcher
1794 Smith & Co. v. Cooke and another
1796 Wigg v. Grant
1798 Wolff v. Fontaine
1807 Jones v. Purkiss and another
1809 Poland v. Walpole & Co.
1812 City of Genoa Waterworks Co. v. Argentine Loan, &c. Co.
1820 Woodrow v. Wilcox
1822 Sturgeon v. Wallwork & Co.
1823 Tucker v. Savage
1827 Hurford v. New Westminster Brewery Co. (Lim.)
1830 Bailey v. Brown
1835 Riman v. Steedman
1836 Hargreave v. Sultan
1838 Bennett and another v. Pipe
1841 Grogan & Boyd v. Wilson
1843 Russell v. Richens
1844 Bird v. Jubber
1846 Productive Investment Benefit Building Society v. Ewing
1847 Williams v. Wynniatt
1854 Mossop and another v. Hope
1857 Preston & Co. v. Caldwell
1578 Norton v. Burr and another
1583 Lamplough v. Harries
1625 Hamer v. Thompson
1638 Knight v. Hobbs
1645 Chariton, M'Allum & Co. v. W. Crundall & Co.
1657 Northam Bridge and Road Co. v. London and South-Western Railway Co.
1683 Morton v. Birkbeck Freehold Land Society
1695 Scott v. Woollranch
1693 Tanner v. Green
1694 Collingwood v. Wilson
1695 Smith v. Adamson
1706 Walter and another v. Gilbert and another
1734 Cassells v. Fraser
1740 Watson v. National Debenture, &c. Corporation (Lim.) and another
1743 Moore v. Budd
1759 Forster v. Eyre
1767 Jacomb v. Turner
1773 Glaister v. Stainton
1775 Hirst and others v. Boyle and others
1776 Pocock v. Richardson
1781 Pedder v. Richardson
1783 Howell v. Rasetti
1786 Young v. Phillips
1631 Jupe v. Rawlins
1634 Healing v. C. H. Healing (Lim.)
1643 Rose v. Bank of Australasia
1692 Lane v. Simmons
1737 House Investors' Corporation (Lim.) v. Sussems
1748 Lankester & Co. v. Fardell & Co.
1753 Prentis & Co. v. Reed
1757 Ross v. Flatau & Co.
1762 Henry Roberts & Co. v. Phillips & Son
1766 Mixen v. Goodyear
1772 Farquharson v. Croaker
3 Boyd v. Farrar
21 Tilt Cove Copper Co. v. Comptoir d'Escompte and others
72 Head and another v. Bumpus
666 Watkins v. Chaney
692 James v. Willis
745 B. Morris & Sons (Lim.) v. Morris
835 Young v. American Telephone Co.
1176 Mitchell v. De Veysey and another
1200 Peat v. Webster
1346 Ingle v. Duke of Manchester
1360 Hedger v. Payne and others
1437 Lund v. Fairhead
1541 Thompson v. General Stock Exchange, &c. Co. (Lim.)
1859 Smith v. Salomon
1861 Smith v. Ratcliffe
1869 Reynold's Gold Mining Co. v. Bailey
1870 Same v. Macnaughten
1874 Brass v. Abrahams
1877 Todd v. Ridgway
1878 Blake v. Hanbury
1881 Fleck v. Flower
1884 Brothers and another v. North & Co.
1890 Corporation of Lancaster v. Brash
1891 Dixon v. Cook
1892 House Property, &c. Co. (Lim.) v. Wiles and another
1893 Cook and others v. Eckroyd and others
1895 Samuel & Escombe v. Magniac
1896 Cotching v. Simmons
1898 Fletcher v. Morrison
1904 Wadeson v. Morgan
1906 Lewis v. Foster and another
1910 Hart v. Martin
1914 Dinn v. Grover
1915 Major v. Tarrant and another
1916 Davis v. Gill
1917 Shroff v. Barwick and another
1918 Thompson's Patent Gravity Switchback Railway Co. (Lim.) v. Earle
1921 M'Rae and another v. Palmer and another
1922 M'Namara & Co. (Lim.) v. Clark
1928 Daniel v. Preston
1929 Smoke Abatement and Coal Saving Association (Lim.) v. Croft, Wells & Co.
1931 Goodman v. Wyatt and another
1933 Maclure and others v. Hatch
1934 Hancock and another v. Hatch
1939 Myers v. Lawson
1940 Same v. British Cattle Foods Co. (Lim.)
1941 Thorpe v. Wigg
1943 Jenkinson and another v. Bullock
1944 British Empire Mutual Life Assurance Co. v. Bellaggio Estate and others
1945 W. T. Henley's Telegraph Works Co. (Lim.) v. Halifax and Bermudas Cable Co.
1946 Same v. Same
1947 Same v. Same
1949 Cattell & Co. v. Pearce
1950 Coates, Son & Co. v. Macklin
1951 London and Suburban Co-operative Stores (Lim.) v. Jones
1955 Barrett v. Hinds
1956 Oppenheimer Brothers & Co. v. Nugent
1961 Pugh, Jones & Co. v. Hilton
1962 Smith v. Gronow and others
1963 Wyatt v. Maude and Langham
1964 Bedford v. Bennett
1965 Same v. Bennett & Co.
1969 Egleton v. Nichols & Son
2715 In re Nichols's Patent
1974 Brogden v. Lord C. J. Hamilton and others
1979 Hobbs v. Jarvis and another
1980 Forde v. Forde
1982 Chettleburgh v. Golledge
1985 Kingston v. Wylie & Ponsonby
1986 Mills v. Fisher
1988 Poland and another v. Stopford
1990 Gates v. Cannon & Gaze
1991 Same v. Cannon
1993 Barrow v. Powell
1994 Barber v. Hall
1996 Wilson v. Union Oil Mills (Lim.) and another
1997 Harris v. Downs and another
2000 Dobbin v. Green and another
2006 Macrory and another v. Hawkins
2008 Lepard & Smiths v. Allison & Radcliffe
2011 Argent and another v. Benham
2012 Hood v. Prim
2017 J. Hunter, Wiltshire & Co. (Lim.) v. Leigh and another
2018 Hughes & Co. v. Same
2019 Salomon v. Garnar
2021 Rosenfeld (trading, &c.) v. Meinertzhagen
2030 Manigot v. Taylor
2035 Sage v. Thorne
2041 Martin v. Goodrham
2046 Hart v. Tallack
2048 Bennetts v. Ludlow
2056 Tullock v. Richards & Co.
2057 Smith v. Bodley
2058 Burbidge v. Smith and Richardson
2059 Schaap and Hilburn v. Raffaele
2064 Brooke and Addison v. Macevoy
2068 Universal Stock Exchange Co. (Lim.) v. Boteler
2071 Gruggen v. Laitwood and another
2074 Foale v. Toser
2075 Naylor and others v. Oliver
2076 Greaves v. Hyde
2079 Cheese v. Grocott
2091 Gwynne v. Meek
2094 Jacobs v. Potter
2099 Jones v. Gruggen
2107 Wilson v. Honess
2108 Golds v. Roberts and others
2109 Ferreira and others v. Poole
2111 Pegge v. Donaldson
2113 Milligate and others v. Longhurst
2114 Panmure, Gordon & Co. v. Whitworth
2115 Davis v. Norris
2118 Fold v. Deerhurst
2121 Mercer and others v. Innes
2124 Brewer v. Waring
2129 Brandreth v. Hillyard
2130 House v. House
2134 Tice v. Cox and others
2135 Same v. Tipping

## SUMMARY.

Actions entered for Trial to May 18, 1891.

| | |
|---|---|
| Middlesex—Special Jury | 200 |
| Common Jury | 230 |
| London—Special Jury | 71 |
| Common Jury | 31 |
| Without Juries | 544 |
| Total | 1,076 |

NOTE.—This Summary shows the total number of actions for trial up to and inclusive of the above date, and includes the actions contained in the foregoing printed Lists.

## LONDON.

### SPECIAL JURY ACTIONS.

Actions beyond No. 2685 in this List will not be taken before Monday, June 1.

The following Numbers will be in the List for Trial on Tuesday, May 26: Nos. 1864 to 2522 both inclusive.

1864 Adamson v. 'Bayonne' SS. Co. (Lim.)
2138 Ames v. Great Western Railway Co.
2474 Bannister v. Same
2150 Flynn v. Worthington & Co.
2155 Were v. Darby & Co. (Lim.)
2175 Dinn v. O'Malley and the Star
2240 Vickers v. Gardiner
2506 Austin v. Alexander, Maw & Co.
2522 Potter v. Moore and another
2547 Whimster and another v. Southern States Land, &c. Co. (Lim.)
2571 Hampton & Sons v. London Electric Supply Corporation (Lim.)
2580 'Amur' SS. Co. (Lim.) v. Strand Slipway Co.
2581 'Oxus' SS. Co. (Lim.) v. Same
2601 Dinn v. Copleston and others
2604 Fisher and another v. Hilton and others
803 Lamb v. London and India Docks Joint Committee
911 M'Farlane v. Lonergan
1283 Mora, Ona & Co. v. Watts, Ward & Co.
1375 Adamson & Co. v. Horsley & Co.
1751 North v. Stopes
1818A Jeffrey v. Crawford and others
1842 Nelson, Donkin & Co. v. Lomer & Co.
1919 Marten and others v. Munich Assurance Co. (Lim.)
1989 Churchill & Co. v. National SS. Co.
2037 Uriing v. Nordaas
2212 Pinto v. Aviss
2228 Redfern, Alexander & Co. v. McKeone & Co.
2262A Calvert v. Inglis
2270 Wagner v. Wagner
2289 Wilson, Sons & Co. (Lim.) v. 'Lanarkshire' Ship Co. (Lim.)
2299 Marx & Co. v. Moxon, Meyer & Co.
2339 Blackater v. Paul
2493 Friend v. Friend
2515 Service and others v. Moller & Co.
2540 Young v. Zealand Steamship Co.
2572 Southampton Naval Works v. Meek
2598 Wills & Co. v. Isaacs & Sons
2618 Smyth v. Perkins
2654 Day v. Argus Printing Co. and others
2656 Neott v. Newmarch
2659 Aarons v. Paddington Land, &c. Society (Lim.)
2661 Lawrence v. Redfern, Alexander & Co.
2672 Batt & Co. v. Byrne, Stothert & Co.
2679 Hayres v. Chisnell
2685 Cohen v. Rivaz
2698 Welch, Perrin & Co. v. Anderson & Co.
2698 Giddy v. Benham
2701 Marcussen v. Hilton and others
2753 Henderson v. Underwriting and Agency Association (Lim.)
2760 Willis v. Towerzey and others
2778 Boehm v. Vogt & Co.
2786 Bainbridge v. Boyes'
2795 Lewis & Peat v. May, Malcolm & Co.
2806 May, Malcolm & Co. v. Lewis & Peat
2807 Boret v. Musmann and another
2834 M'Gowan v. Stephens, Smith & Co.
2840 Jones v. Mockford
2847 Parker v. South-Eastern Railway Co.
2855 Webber v. Bonner
2857 Cocker v. London and South-Western Railway Co.
2866 Murray v. London Street Trams Co.
2899 Dallson v. Formby Cement Co. (Lim.)
2911 Jay v. London and Colonial Syndicate
2926 Hargreave v. Spink & Son

## OBITUARY.

WE regret to announce that Mr. SAMUEL BATE, formerly of Springfields, near Newcastle, and late of The Firs, Aylestone, near Leicester, died on May 5, after a week's illness. Mr. Bate was for many years agent for Lord Camoys; Mrs. Marsh-Caldwell, of Linley Wood, the well-known authoress; Mr. J. Ayshford Wise, of Clayton Hall, at one time M.P. for Stafford; and other Staffordshire landowners. He went to reside in Leicestershire in 1883, when extensive improvements upon the estates of his clients in that county required his more constant supervision. Ever-increasing business claims prevented him from taking any active part of late years in public matters, but in his younger days—as one of a long race of British yeomen—he felt a deep interest and took an active part in the Free Trade discussion. He was an ardent Protectionist and a frequent speaker at provincial meetings of that party. He was accustomed to contend that the prosperity of the country was very largely bound up with that of the agricultural interest, and was convinced that a too great dependence upon foreign supplies of corn must, in case of war with a strong naval power, seriously imperil the safety of the British Empire as it did in old times of the Roman. He strenuously advocated the adoption of a sliding scale instead of the total abolition of the duties on corn, and at the time of his death he confidently anticipated the speedy adoption by the whole nation of a Fair Trade policy and an Imperial federation with our colonies. He was a member of the Fair Trade League, of the Agricultural Benevolent Association, and for very many years of the Royal Agricultural Society and similar bodies of a local character. He was born at The Styche, near Market Drayton, a property and birthplace of the great Lord Clive, and was in his seventy-fourth year.

We have also to perform the sad duty of announcing the decease, within seven days of that of his father, of Mr. ROBERT BARRETT BATE, the late Mr. Bate's youngest son. The circumstances are peculiarly painful. Whilst Mr. Samuel Bate was passing through his fatal illness, his son was constantly at the invalid's bedside, and was with him during the last night of his life. On the day following his father's death it was remarked that he was looking unwell—his health had for some time been unsatisfactory—and on the following morning he was pronounced by his medical attendants to be too ill for removal. Despite all that could be done for him, he rapidly sank, and died in the morning of May 12, just a week after the decease of his father. Mr. Robert Bate, who was in his thirtieth year, was his father's constant companion and assistant in his business. The family will have the sincerest sympathy of all in the double bereavement which has thus fallen upon them. The funeral took place on Friday at Aylestone, there being no room for the remains to be placed in the family vault at Stoke-on-Trent. We understand that Mr. Bate's only surviving son, Mr. Samuel Stringer Bate, solicitor and land agent, who has been associated with his father and suspending private practice since the death of his elder brother, Mr. Alfred Bate, land and mineral agent, of Turnhurst Hall, Staffordshire, in 1881, succeeds to the business of them both. Mr. Stringer Bate, who was admitted in 1873, was a pupil of Matthew Folliott Blakiston, Esq., a nephew of Sir William Blakiston, Bart. (now of the firm of Hand, Blakiston & Everitt, of Stafford, and clerk of the peace for that county), and practised for several years at Newcastle-under-Lyme. In 1879 Mr. Bate, having the double qualification of a legal and estate agency experience, was a candidate for the comptrollership of the Chamber and Bridge House Estates of the City of London, and received very high testimonials, which were read before the corporation. But the chief clerk to the former comptroller was preferred for the appointment. Mr. Bate obtained the freedom of the City of London on that occasion.

SIR PATRICK (MAC CHOMBAICH DE) COLQUHOUN died on May 18 at his chambers in King's Bench Walk, Temple, from pneumonia, which was supposed to have ensued upon an attack of influenza. He was the eldest son of the late Chevalier James de Colquhoun, was born in 1815, and educated at Westminster, and St. John's College, Cambridge, where he took his B.A. degree in 1837. He graduated M.A. in 1844, and was subsequently elected Honorary Fellow of the college. Besides these degrees he received that of Juris Utriusque Doctor at Heidelberg, and in 1852 that of LL.D. at Cambridge. In 1838 he was called to the bar at the Inner Temple, joining the Home Circuit, and soon afterwards was appointed Plenipotentiary by the Hanseatic Republic, of which his father had been agent and consul-general, to conclude commercial treaties with Turkey, Persia, and Greece. In 1857 he became Aulic Councillor to the King of Saxony, and he held the post of standing counsel to the legation of that sovereign until the abolition of the office in 1866. From the Government of Saxony, as well as from that of Oldenburg, for which he was Councillor of Legation, he received decorations. In 1858 Sir P.

Colquhoun was appointed by Sir E. Bulwer Lytton to be a member of the Supreme Court of Justice of the Ionian Isles; he became Chief Justice of the Court in 1861, and in the same year received the honour of knighthood. When the islands were ceded to Greece in 1864 he returned to England. Four years later he was made a Q.C. and a Master of the Bench of the Inner Temple, to which he was appointed treasurer in 1888. He was president of the Royal Society of Literature—in succession to Prince Leopold—up to the time of his death, and was president of the committee of that section of the International Orientalist Congress of which Dr. Leitner is the moving spirit. He wrote various treatises on political and classical subjects. His principal work, published between 1849 and 1860, was 'A Summary of the Roman Civil Law, illustrated by Commentaries and Parallels from the Mosaic, Canon, Mahomedan, English, and Foreign Laws.' Sir P. Colquhoun married, in 1843, Katherine, daughter of M. de St. Vitalis.

# Court of Appeal Register.

## APPEAL COURT I.

Before the LORD CHANCELLOR, the MASTER OF THE ROLLS, and FRY, L.J.

THURSDAY, MAY 14.

*Lewis* v. *The Pontypridd, Caerphilly, and Newport Railway Company* (appeal of defendants from judgment of Denman, J., dated November 22, at trial without a jury in Middlesex).—Dismissed.

*Cox and another* v. *Welch and another* (appeal of defendant from judgment of Lawrance, J., dated January 15, at trial without a jury in Middlesex).—Dismissed.

## APPEAL COURT II.

Before LINDLEY, L.J., LOPES, L.J., and KAY, L.J.

THURSDAY, MAY 14.

*Dobson and another* v. *Festi, Rasini & Co.* (Q.B. *Division*) (for leave to sign judgment against firm in default of appearance; heard May 13).—Dismissed.

*Scholes* v. *Brook* (appeal of defendants Brook and another from judgment of Romer, J., dated January 21).—Dismissed.

*In re W. Worswick, dec. Robson* v. *Worswick* (appeal of chaplains and poor of Wyggeston's Hospital, Leicester, from order of North, J., dated April 17, refusing liberty to cross-examine on affidavits in support of appellant's claim).—Dismissed.

FRIDAY, MAY 15.

No sitting.

## NOTICES FOR THE WEEK.

ROTA OF REGISTRARS.

MONDAY, May 25.—Court of Appeal No. 2: Mr. Rolt. Mr. Justice Chitty: Mr. Pemberton. Mr. Justice North: Mr. Pugh. Mr. Justice Stirling: Mr. Godfrey. Mr. Justice Kekewich: Mr. Clowes. Mr. Justice Romer: Mr. Lavie.

Tuesday, May 26.—Court of Appeal No. 2: Mr. Farmer. Mr. Justice Chitty: Mr. Ward. Mr. Justice North: Mr. Beal. Mr. Justice Stirling: Mr. Leach. Mr. Justice Kekewich: Mr. Jackson. Mr. Justice Romer: Mr. Carrington.

Wednesday, May 27.—Court of Appeal No. 2: Mr. Rolt. Mr. Justice Chitty: Mr. Pemberton. Mr. Justice North: Mr. Pugh. Mr. Justice Stirling: Mr. Godfrey. Mr. Justice Kekewich: Mr. Clowes. Mr. Justice Romer: Mr. Lavie.

Thursday, May 28.—Court of Appeal No. 2: Mr. Farmer. Mr. Justice Chitty: Mr. Ward. Mr. Justice North: Mr. Beal. Mr. Justice Stirling: Mr. Leach. Mr. Justice Kekewich: Mr. Jackson. Mr. Justice Romer: Mr. Carrington.

Friday, May 29.—Court of Appeal No. 2: Mr. Rolt. Mr. Justice Chitty: Mr. Pemberton. Mr. Justice North: Mr. Pugh. Mr. Justice Stirling: Mr. Godfrey. Mr. Justice Kekewich: Mr. Clowes. Mr. Justice Romer: Mr. Lavie.

Saturday, May 30.—Court of Appeal No. 2: Mr. Farmer. Mr. Justice Chitty: Mr. Ward. Mr. Justice North: Mr. Beal. Mr. Justice Stirling: Mr. Leach. Mr. Justice Kekewich: Mr. Jackson. Mr. Justice Romer: Mr. Carrington.

## HONOURS AND APPOINTMENTS.

MR. THOMAS HACK (of the firm of Hack & Morris), of 8 Pancras Lane, Queen Street, Cheapside, has been appointed a Commissioner for Oaths. Mr. Hack was admitted in 1882.

Mr. Charles Thurston Nicholls, of 10 Lincoln's Inn Fields, W.C., has been appointed a Commissioner for Oaths. Mr. Nicholls was admitted in 1884.

Mr. Alfred William Lightbody (of the firm of Cleveland & Lightbody), of the Outer Temple, Strand, W.C., has been appointed a Commissioner for Oaths. Mr. Lightbody was admitted in 1881.

Mr. Charles Eldred M'Leod, of 5 Dean's Court, Doctors' Commons, E.C., has been appointed a Commissioner for Oaths. Mr. M'Leod was admitted in 1884.

Mr. Thomas William Hargraves, of 18 St. Thomas Street, Southwark, has been appointed a Commissioner for Oaths. Mr. Hargraves was admitted in 1885.

THE CHANCERY DIVISION AND MR. JUSTICE WILLIAMS.—Mr. Justice Chitty, on returning into Court after the midday adjournment on May 14, stated that during the ensuing Trinity sittings Mr. Justice Williams would continue until the circuits commenced to sit as an additional judge of the Chancery Division to try witness actions, and, by an arrangement with Mr. Justice Romer, would take a portion of the witness actions in Mr. Justice Romer's list. This was what had been arranged, and his lordship thought that it ought to be known as soon as possible.

THE HEARING OF PROBATE AND DIVORCE CAUSES.—The following are the arrangements for hearing probate and matrimonial causes during the ensuing Trinity sittings—viz. causes for hearing before the Court itself will be taken from Monday, June 8, to Monday, June 29, both days inclusive: (1) defended matrimonial, (2) probate, (3) undefended matrimonial. Special jury cases will be taken from Wednesday, July 1, to Monday, July 20, both days inclusive, probate causes first and matrimonial afterwards. Common jury causes will be taken on and after Wednesday, July 22, probate being taken first and matrimonial after. Notices of any alteration and further information will be inserted in the daily lists from time to time. Summonses will be heard in chambers at 10.15, and motions will be heard in Court at 11.30 on Tuesday next, and on every succeeding Tuesday during the sittings.

## CALENDAR OF THE COUNTY COURTS.

### From May 25 to May 30.

| No. of Circuit | His Honour | May 25 | May 26 | May 27 | May 28 | May 29 | May 30 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Pfoulkes | — | — | — | Warrington | Birkenhead | — |
| 8 | Judge Heywood | — | Manchester | Manchester | Manchester | Manchester | — |
| 15 | Judge Turner | Middlesbrough | Stockton-on-Tees | — | — | — | — |
| 19 | Judge Barber | — | Ilkeston | Burton | Ashbourne | — | — |
| 47 | Judge Powell | — | Lambeth | Woolwich | Lambeth | Greenwich | — |
| 54 | Judge Metcalfe | Bristol | Bristol | Bristol | Bristol | Bristol | — |

Queen's Bench Actions.—The number of Queen's Bench actions set down for trial during the ensuing Trinity sittings reach a total of 1,076, consisting of 200 special and 230 common jury cases in the Middlesex list, 71 special and 31 common jury cases in the London list, and 544 cases in the non-jury list. The case of *Wiedemann* v. *Walpole* (which is the strange breach of promise action brought by Miss Wiedemann against Mr. Walpole, the first trial in which was heard some time ago, and resulted in a nonsuit, after which the plaintiff ultimately obtained a new trial) is only twelve down in the list of special juries in the Middlesex list, and will therefore soon be reached when the Courts reopen; and the baccarat case of Sir William Gordon Cumming against Mr. Wilson and others has been fixed for hearing before the Lord Chief Justice and a special London jury on Monday, June 1. In the long list of Queen's Bench actions published on Saturday last, only eight cases of breach of promise of marriage are set down for trial. It is announced that at the commencement of the Trinity sittings two Courts for special and one Court for Middlesex common juries will be constituted; two Courts will sit to hear London special juries; and two or three Courts will try actions without juries.

The Working of the First Offenders Act.—By the Probation of First Offenders Act, 1887 (50 & 51 Vict. c. 25), magistrates received power to release on probation persons convicted of larceny, false pretences, or any other offence punishable with not more than two years' imprisonment, where no previous conviction is proved, if it appears to the bench, on account of youth, character, and antecedents, or the trivial nature of the offence, to be expedient to do so. The offender is to enter into recognisances, with or without sureties, to come up for judgment, if called on, within a specified time. A return has just been laid before Parliament showing the number of cases in which persons have been released under the provisions of this Act in the Metropolitan Police District, the West Riding of Yorkshire, Lancashire, Staffordshire, Warwickshire, and Durham—the most densely populated parts of England—during 1888, 1889, and 1890, and also the number of cases in which such persons have been called upon to appear and receive judgment, or are known to have been subsequently convicted of a fresh offence. The figures seem to show that the statute has worked efficaciously. Out of 614 persons released on probation in 1888, thirty-six have either been called up for judgment through failure to observe the condition of their recognisances or have been subsequently convicted; out of 924 released in 1889, sixty-nine; and out of 992 in 1890, sixty-four were recalled or convicted a second time. These figures, however, do not represent altogether the application of the principle of the Act by magistrates. In some very important Courts, including three in London, the provisions of section 16 of the Summary Jurisdiction Act, 1879, are used instead, and the same end thus secured, while in other Courts long adjournments, without proceeding to conviction, are employed, or cautious and nominal punishments are administered.

## BIRTHS.

At Rondebosch, Cape Town, the wife of H. Juta, Barrister-at-Law, of a daughter.

On May 15, at 2 Upper Phillimore Gardens, W., the wife of Percy F. Wheeler, Barrister-at-Law, of a daughter.

On Whit-Sunday, May 17, at 4 Gledhow Gardens (the residence of her mother, Lady Henderson), the wife of Reginald J. N. Neville, Barrister-at-Law, of a daughter.

## MARRIAGES.

On May 12, at the English Church, Rue d'Agnesseau, Paris, Reginald Raoul Lemprière, Barrister-at-Law, only son of the Rev. William Lemprière, Seigneur of Rozel Manor, Jersey, to the Baroness Clementine Justine Fanny, only child of the late Baron Constantine von Gültlingen, of Stüttgart, Germany.

On May 13, at the Parish Church, Wimbledon, William T. Hick, Solicitor, son of the late Captain W. T. Hick, of Scarborough, to Elizabeth (Lise), daughter of the late G. H. Champion, of Riverhead, Kent, and stepdaughter of Henry Bull, of Calcutta.

On May 14, at the Catholic Apostolic Church, Mare Street, Hackney, George Willson, Solicitor, of Downs Park Road, Hackney, eldest son of George Willson, Esq., of Dudley House, Ramsgate, to Mary Elizabeth, only daughter of Thomas Pratt Hollick, Esq., of Shore Road, Hackney.

On May 15, at Draxford, Henry Reginald, eldest son of F. R. H. Sharp, of Woodlawn, Blackheath, late of the Madras Civil Service, to Edith Maude, sixth daughter of the late W. A. Way, Solicitor, of Botley and Portsmouth.

## DEATHS.

On March 19, drowned in the Saigon River, Cochin China, Robert Peter Tait, Second Officer s.s. Abyssinia, son of Thomas Tait, Solicitor, Moffat.

On April 26, at Willesden, Amelia Susan Marie, only daughter of the late Chevalier Wolff, wife of William Nicholson, Esq., Barrister-at-Law.

On April 28, at 49 Upper Bedford Place, W.C., Alfred Tanner Harris, Solicitor, aged 41, eldest son of Charles Harris, Solicitor, late of Bristol.

On May 12, suddenly, at Wandsworth, Robert Crawford, only surviving son of the late John Holland, Barrister-at-Law.

On May 13, at the Lawn, Lincoln, Richard Caparn, of Holbeach, Solicitor, aged 76 years.

On May 13, at 104 New Walk, Leicester, Jane Eliza, widow of the late George Toller, of Leicester, Solicitor, aged 73 years.

On May 14, at the Red House, Wateringbury, Kent, Francis Russell, Esq., Barrister-at-Law, Clerk of the Peace for the County of Kent, aged 75 years.

On May 15, at 15 Brunswick Street, Hillside, Edinburgh, Andrew John Dickson, Solicitor Supreme Courts, in his 69th year.

On May 15, at Beryl, Wells, John Henry Blackburne, Captain (Retired) R.A., son of the late Right Honourable Francis Blackburne, some time Lord Chancellor and Lord Chief Justice of Ireland.

On May 16, at Holbeach, William Bennett Stableforth, Solicitor, in his 41st year.

On May 18, at 4 Manor Gardens, Holloway, in her 93rd year, Mary, widow of J. B. Meredith, Esq., Solicitor, Cheltenham, and second daughter of the late William Ebsworth, of Bristol.

On May 18, at his residence, Bromley, Kent, Samuel Mullens, Solicitor, aged 72 years.

On May 18, at Coventry, of pneumonia, George Woodcock, Solicitor, aged 54 years.

On May 19, at 2 Vicarage Gardens, Kensington, Donald MacLennan, Barrister-at-Law, of the Inner Temple.

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# The Law Journal.

*SATURDAY, MAY* 30, 1891.

## 'OBITER DICTA.'

Now that Whitsuntide is past and gone, it is not very difficult to foresee what Acts, in addition to some score already passed, of which the Tithe Act is the most important, may be expected to be placed on the statute-book of 1891. Of amending Government bills, the Irish Land Bills, the Free Education Bill (though not yet introduced), the Factories Bill, the Summary Jurisdiction (Youthful Offenders) Bill, the Penal Servitude Bill, the Public Health Metropolis (Amendment) Bill, and the recently introduced Evidence Law Amendment Bill will in all probability be passed; but the fate of the Public Trustee Bill must perhaps be considered doubtful. Amongst consolidating measures, the Evidence Law Consolidation Bill, two Stamp Duties Bills, the Trustee Bill (by which it is proposed to consolidate the Trustee Acts and the Trustee Relief Acts), and the Public Health Metropolis (Consolidation) Bill will probably be got through. Amongst private members' bills, the Conveyancing Act Amendment Bill (by which Mr. Bolton proposes greatly to relieve the hardships of lessees in connection with the covenant not to underlet without the consent of lessors), the Slander of Women Bill, and the Museum and Gymnasium Bill (see *ante*, p. 347) seem to have the best chance. We wish we could add Lord Herschell's valuable Sale of Goods Bill to the list. If this measure could be passed, mercantile law—of which such important parts as those relating to bills of exchange, merchandise marks, and partnership were systematised in 1882, 1887 and 1890 respectively—would in point of form become by far the most intelligible branch of the law. But, unless the House of Commons can be persuaded to accept the bill *en bloc* as it will shortly come down to them from the House of Lords, the Sale of Goods Bill will remain a bill and nothing more at the close of the session. One measure, which has not been so much as mentioned in Parliament as yet, will very soon be rendered necessary by the near approach of a general election, and that is a measure to amend and *make perpetual* the Ballot Act of 1872. This Act, by an amendment made in the House of Lords, had originally a ten years' life only, is now, and has been for nearly ten more years, kept up by the very awkward machinery of the Expiring Laws Continuance Acts annually passed, and is at present limited to expire on December 31, 1891. A slip—and such a slip is possible—by which its renewal might be overlooked, would lead to a confusion in electioneering which it is perfectly frightful to contemplate.

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LETTERS from the Attorney-General and Solicitor-General respectively have recently been published in the *Times* (whether with or without the consent of those learned gentlemen does not appear) in connection with the subject of copyright. Sir Richard Webster proclaims his great interest in the endeavour to attain a proper reward for literary and artistic labour, and his desire to further it when any opportunity may arise, while Sir Edward Clarke more specifically declares himself on the side of the protectionists in the controversy between English and American printers, but otherwise expressly confines himself to general expressions of sympathy with the producers and owners of copyright. The cold reception of Lord Monkswell's bill by the Government in the House seems to show that in some high quarters, at all events, the views of the law officers are not shared, as the introduction of that bill afforded a most favourable opportunity for dealing comprehensively and satisfactorily with the subject of copyright law reform, which, fortunately for those interested in it, is absolutely unconnected with politics.

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THE American Copyright Act will 'go into effect,' as the transatlantic phrase is, on July 1 next, but it is expressly provided by section 13 that it 'shall only apply to a citizen or subject of a foreign State or nation when such foreign State or nation permits to the United States of America the benefit of copyright on substantially the same basis as its own citizens, or when such a foreign State or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States of America may, at its pleasure, become

a party to such agreement.' 'The existence of either of the conditions aforesaid,' it is added, 'shall be determined by the President of the United States by proclamation made from time to time as the purposes of this Act may require.' Turning to Article 18 of the Berne Convention, to which England, Belgium, France, Germany, Hayti, Italy, Spain, Switzerland were originally parties, and to which Luxembourg and Monaco have subsequently adhered, we find that article 18 prescribes that 'countries which have not become parties to the present Convention, and which grant by their domestic law protection of rights secured by this Convention, shall be admitted to accede thereto on request to that effect to be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union' of the contracting States for the protection of the rights of authors over their literary and artistic works. It seems, therefore, that, inasmuch as actual accession to the Berne Convention on the part of the United States of America is not required for the second condition named in section 13 of the American Copyright Act to operate, but only the right of accession, the President of the United States may see his way to determine the existence of the second condition in the case of this and other countries which are parties to the Berne Convention without having to determine the more difficult question whether the first condition exists or not.

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To what extent, if any, is a barbed wire fence legal? This is a question which must sooner or later, we should imagine, be brought before the Courts, and the recent laceration by such a fence of two of the horses of the Dorking coach has brought it prominently before the public. Considerable light is thrown upon it by the well-known cases of *Deane* v. *Clayton*, 7 Taunt. 489, and *Jordin* v. *Crump*, 8 M. & W. 782, in both of which cases the action was brought for compensation for damage to a dog by dog-spears set by the defendant to prevent dogs chasing game. In *Deane* v. *Clayton* the Court was, in 1817, equally divided, with the result that after most elaborate arguments no judgment at all was entered; but in *Jordin* v. *Crump* it was held, on demurrer, that a plea that the dog-spears were set to preserve game and to disable and kill dogs pursuing them, 'of which the plaintiff had notice,' was held good, and it was further held that the plea would have been good if there had been no allegation of notice. 'It is true,' said Baron Alderson, in delivering the judgment of the Court, 'that the law in certain cases makes an exception to the right of setting instruments capable of causing deadly injuries to *human* life, where such injury will be a probable consequence of setting them' (see 24 & 25 Vict. c. 100, s. 31, re-enacting 7 & 8 Geo. IV. c. 18); 'but, with the exception of those cases, a man has the right to do what he pleases with his own land.' Section 31 of 24 & 25 Vict. c. 100, enacts that 'whosoever shall set any spring-gun, man-trap, or other engine calculated to destroy human life or inflict grievous bodily harm, with the intent that the same may destroy life or inflict grievous bodily harm upon a trespasser or other *person* coming in contact therewith, shall be guilty of a misdemeanour.' Could not the rider of a horse in the hunting-field be a person within the meaning of this section? We incline to think that he could; but we are pretty sure that no Court would hold a barbed wire fence to be an engine. The general question will be found dealt with in the County Court case of *Bennett* v. *Blackmore* (see the *Field* for January 24, 1891), in which his Honour Judge Edge gave judgment against the owner of a barbed wire fence, following with approval the judgment of the Court of Session in the Scotch case of *The Elgin Road Trustees* v. *Innes*.

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A CONTRIBUTORY cause to the injury to the horses of the Dorking coach was the sudden appearance of two bicycles. Here we are on safer legal ground than in the case of barbed wire. The Local Government Act, 1888, s. 85, declares 'bicycles, tricycles, velocipedes, and other similar machines,' to be carriages within the meaning of the Highway Acts (so as to render any person liable to a penalty for cycling furiously), and further enacts that: (1) Lamps shall be carried by cyclists 'during the period between one hour after sunset and one hour before sunrise,' and (2) that 'upon overtaking any cart or carriage, or any horse or foot passenger proceeding along the carriage way,' every cyclist 'shall within a reasonable distance from and before passing such cart or carriage, horse, or other foot passenger, give audible warning' of the approach of the bicycle, &c. If any accident should result from these statutory requirements being disregarded, we have no reasonable doubt that an action would lie against the cyclist disregarding them at the suit of the party injured; and there is some ground for saying, on the authority of *Powell* v. *Fall*, 49 Law J. Rep. Q. B. 428, that an action would lie, even if all the statutory requirements should have been complied with.

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CONVEYANCERS are familiar enough with the recognised forms for creating a mortgage by sub-demise of leaseholds. If it is considered undesirable that the leaseholder should assign the whole of his term to the mortgagee (and, if there are any onerous covenants, it probably is so), the sub-demise leaves a nominal reversion of a day or a few days outstanding in the mortgagor. The mortgagor declares himself to be a trustee of this reversion for the mortgagee; and to obviate any difficulty that there might be in getting the mortgagor to convey it, the latter gives an irrevocable power of attorney to the mortgagee to enable him to use the mortgagor's name in any deed of assignment or otherwise as may be necessary. So far the familiar practice leads us, but in Mr. Wolstenholme's new book of 'Forms and Precedents,' 5th edit. p. 50, we find the following additional form: 'And it is hereby declared that the said [mortgagee(s)] and the persons deriving title under them shall have power to appoint a new trustee for the purpose of the trust aforesaid.' To this a note is appended—namely, 'This form (suggested by my friend Mr. Sargant) enables a vesting declaration to be made under the Conveyancing Act, s. 34.' That section, it will be remembered, enables the appointor by deed of a new trustee to vest the trust property in the new or continuing trustee or trustees by a simple vesting declaration. Henceforth, if Mr. Wolstenholme's form is adopted, the mortgagee will not suffer much from the mortgagor's refusal, unfitness, or want of capability to act in the trust, but can appoint another person to take his place. Presumably the mortgagee could not, under this power,

arbitrarily appoint a new trustee, but only if the mortgagor's case came within the provisions of section 31 of the Conveyancing Act. If the mortgagor did come within those provisions, and the mortgagee refused to appoint a new one in his stead, the mortgagor would be in the same predicament as a single trustee of a settlement is now, when the person to whom the power of appointment is committed will not appoint.

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AN interesting point was raised in *Blackman* v. *Fysh* (Notes of Cases, p. 26) on the familiar question of equitable execution. A testator devised freehold land to his son for life, and after his death unto and between his children, and declared that his son should have no power 'to sell, dispose of, mortgage, charge or otherwise anticipate' his life estate, and that in case he should do any of these things, or his estate should be 'taken in execution by any process of law for the benefit of any creditor,' then the devise should become void. After the testator's death a creditor of the son obtained judgment against him in the Queen's Bench Division, and a receiver was appointed of his interest under the will by way of equitable execution. No *elegit* was sued out, and it did not appear that there was any obstacle to the lands being extended under an *elegit*. Mr. Justice Kekewich decided that the appointment of a receiver worked a forfeiture of the son's life estate. There is no doubt that Mr. Justice Kekewich was bound to recognise the order of the Queen's Bench Division until it had been discharged; but there is equally no doubt that there was no jurisdiction to make such an order so long as the decision of the Court of Appeal in *Atkins* v. *Shephard*, 59 Law J. Rep. Chanc. 83; L. R. 43 Chanc. Div. 131, is unreversed. In that case Lord Justice Cotton says: 'Until recently nobody ever thought that an order for a receiver could be obtained in aid of a legal judgment unless there was a hindrance to obtaining execution at law. If any practice has grown up of granting such an order where there is no hindrance to obtaining execution at law, it is a practice which has never been brought before the Court of Appeal, and which, in my opinion, is wrong.'

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MR. SUMMERS has been representing in the House of Commons that in 'certain national schools' a catechism is used in which a child is taught to say that it is very dangerous to leave the Church and also a grievous sin, and further, that 'we should only attend places of worship in connection with the Church of England,' and inquiring of Mr. Smith whether this is not a violation of the 'conscience clause' of the Education Acts. The question, though legal, is a comparatively simple one. There are two kinds of school recognised as 'public elementary'—the voluntary school, or school supported by voluntary contributions, the Parliamentary grant, and the fees of the scholars; and the School Board school, supported out of the school rates, the Parliamentary grant, and the fees of the scholars. Each kind of school has a conscience clause of its own. In respect of the voluntary school, it is provided by section 7 of the Elementary Education Act, 1870, that 'it shall not be required, as a condition of any child being admitted into the school, that he shall attend or abstain from attending any Sunday school or any place of religious worship or any religious observance in the school or elsewhere,' and also that any scholar may be withdrawn from religious instruction in the school without forfeiting any of the other benefits of the school. As to a School Board school, however, it is provided expressly by section 14, subsection 2 of the Act, that 'no religious catechism or religious formulary which is distinctive of any particular denomination shall be taught in the school.' Viewed by the light of these two enactments, the catechism complained of by Mr. Summers appears to be clearly in contravention of section 14, subsection 2, if used in a Board school, as being distinctive of a particular denomination; whereas, if in a voluntary school, the use of it is clearly legal, so long as the attendance at the catechetical service is not made a condition of any child being admitted into the school.

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IN *In re Jablochkoff's Patent*, not yet officially reported, two points of interest were raised, and one of them was decided. Lord Shand intimated a strong opinion that the doctrine laid down in *In re Heurteloup*, 1 Web. P. C. 553—viz. that, for the purpose of supporting a petition for confirmation, 'publication' is 'user' within the meaning 5 & 6 Wm. IV. c. 83, s. 2—does not apply to a case in which the publication attributes the invention to the petitioner himself. At the same time, the Judicial Committee held that section 113, subsection 1 of the Act of 1883 preserves, in the case of an old patent, not only the right to confirmation but the liability, prescribed by section 25 of the Act of 1852, to expire with a prior foreign patent for the same invention. It seems, therefore, that the 'interdependence clause' will not disappear from English patent law till December 31, 1897.

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UNDER section 36 of the Building Societies Act, 1874, arbitrators '*may*, at the request of either party, state a case for the opinion of the Supreme Court of Judicature on any question of law.' Until the passing of the Arbitration Act of 1889, it was perfectly clear that the arbitrators could not be compelled to state a case, the foregoing provision being discretionary and not imperative. The arbitrators had complete jurisdiction over the matter in dispute, free from the control of any Court. Unless, agreeably with the request of either party, they chose to state a case, because they personally felt in doubt and desired to have the opinion of the Court upon a question of law, the arbitrators were not bound to do so.

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THE Arbitration Act of 1889, however, by section 19, empowers the Court to order an arbitrator to state a special case for the opinion of the Court. And in the recent case of *In re An Arbitration between Knight and The Tabernacle Building Society* (Notes of Cases, p. 28) the question arose whether, having regard to that section, the Court had jurisdiction to order arbitrators, appointed to determine a dispute between an incorporated building society and one of its members, to state a case raising a question of law for the decision of the High Court. The case came before Mr. Justice Wills and Mr. Justice Vaughan Williams, and their lordships decided it in the negative, being guided by the enactment contained in section 24 of the Act of 1889. Section 24 renders the statute applicable to every arbitration under any Act passed before or after the commencement of the Act of 1889, 'except so far

as this Act is inconsistent with the Act regulating the arbitration, or with any rules or procedure authorised or recognised by that Act.' Their lordships thought that it would be highly 'inconsistent' with section 36 of the Building Societies Act, 1874, that arbitrators should be ordered to state a case when the substance of that section was that the Court should have jurisdiction only where its assistance was invoked by the arbitrators themselves. With that decision we ventured at the time to express our entire concurrence. In fact, it seemed to us that the conclusion arrived at by the learned judge was an inevitable one.

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It seems, however, that the Court of Appeal have taken a contrary view, and, in a considered judgment, delivered on the 15th ult., the decision of the Court below has been reversed. The learned judges of the Court of Appeal did not consider the Acts inconsistent, so that the whole argument founded upon that supposition fell to the ground. If there was no inconsistency obviously there could be no doubt but that the Act of 1889 applied. In one sense, said Lord Justice Fry, the obligation to state a case in the Arbitration Act, 1889, was inconsistent with the absence of that obligation in the Building Societies Act, 1874, but that was not the kind of inconsistency meant in section 24. The inconsistency, he added, must be such that the effect of imposing the provisions of the Arbitration Act would be to make the machinery of the earlier Act entirely unworkable. Members of building societies are to be congratulated that the Court of Appeal have seen their way to so construe the statute, since it is essentially in their favour, that arbitrators, whether they like it or not, can be ordered to state a case, and blunders thereby obviated.

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The practical effect of section 80 in the Tithes Commutation Act, 1836, has probably escaped the attention of many landowners and their legal advisers. The point, however, is worth noting, and is well exemplified in our report, in another column, of a remitted action tried at Lymington County Court. The plaintiff's counsel seems to have relied on the rule existing in the analogous case of land-tax. The learned deputy-judge was, however, clearly bound to give full legal effect to the words 'allowed in account,' and gave judgment accordingly.

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## SLANDER.

Our reports for May contain two interesting cases on the subject of slander, both coming before the public with the *imprimatur* of the Court of Appeal upon them. In *Pittard* v. *Oliver*, 60 Law J. Rep. Q. B. 219; L. R. (1891) 1 Q. B. Div. 474, a guardian of the poor was charged with slandering the late clerk to the guardians in the presence of newspaper reporters, by describing him 'as a man who for years had been robbing public money,' and referring to his conduct as 'the defalcations of an unfaithful servant.' These words were used at a meeting of guardians on the question as to whether a sum should be paid to the plaintiff in settlement of his claim against the board. This claim was eventually sent to a referee in an action brought by the plaintiff against the guardians, who found in favour of the plaintiff for the whole amount claimed by him. Thereupon this action was brought, and the jury found 'that the words were spoken honestly in the discharge of a public duty, without malice, but carelessly,' and gave the plaintiff a verdict for forty shillings damages. Upon further consideration, Mr. Justice Mathew held that the occasion on which the words were uttered was privileged, and gave judgment for the defendant. The plaintiff appealed. It was conceded that the occasion would have been privileged if there had been no reporters present, as it was the duty of the guardians to discuss the conduct of their servants. In Mr. Odger's 'Digest of the Law of Libel and Slander,' 2nd edit. p. 197, cases of qualified privilege are grouped under three heads: '(1) Where circumstances cast upon the defendant the duty of making a communication to a certain other person, to whom he makes such communication in the *bonâ fide* performance of such duty; (2) where the defendant has an interest in the subject-matter of the communication, and the person to whom he communicates it has a corresponding interest; (3) fair and impartial reports of the proceedings of any Court or of Parliament.' The guardian's words were well within either class (1) or class (2), as it was his duty to communicate the fact that the person whose claim they proposed thus to compromise had been cheating them, if he sincerely believed it, to his brother-guardians, and he and they had a corresponding interest in the subject-matter of the communication. The privilege is said to be qualified by that learned author, as it may be taken away if the communication is uttered maliciously, and it has not, therefore, the absolute privilege of a judge of the High Court or a barrister. The simple question for the Court was as to the effect of reporters being present, seeing that the defendant had no moral obligation to make the communication to them, and had no common interest with them in the subject-matter of the communication. Lord Esher distinguished this case from the cases where the confidential privileges had been held lost by the mode in which the communication, otherwise privileged, had been made, namely, on a postcard or in a telegram, and decided that the guardian had not lost his privilege through the presence of the reporters. The rest of the Court came to the same decision, though Lord Justice Fry suggested that it would be well for guardians to hold discussions of this kind in private.

The second case is that of *Speight* v. *Gosnay*, 60 Law J. Rep. Q. B. 231, where the defendant uttered defamatory words about the plaintiff which were not actionable unless special damage was proved. The plaintiff's mother repeated them to the plaintiff, and she told them to a man to whom she was engaged, and who, she alleged, broke off the engagement in consequence. She then sought to make the defendant liable in damages for the slander which he had uttered. The curious point to observe is, that the plaintiff herself was part of the chain by which the slander got to her lover, and 'every repetition of a slander is a wilful publication of it, rendering the speaker liable to an action' (Odgers, p. 162). In *Parkins* v. *Scott*, 31 Law J. Rep. Exch. 331; 1 Hurl. & C. 153, Baron Bramwell said: 'Where one man makes a statement to another, and that other thinks fit to repeat it to a third, I do not think it reasonable to hold the first speaker responsible for the ultimate consequences of his speech. If I make a statement to a man, I know the consequences of making it to him when I make it; but if I do not desire, and do not authorise the man to whom

I make it to repeat it, but he does it, am I to be liable for the consequences of his so doing?' The learned baron might have added an *à fortiori*: Am I to be liable when the slandered person herself brings about the catastrophe by repeating the defamation, when she might have kept silence on the subject? In that case a wife repeated to her husband some vile abuse which another woman had uttered to her, with the result that he would no longer live with her. The Exchequer Division, holding that there was no moral obligation on the wife's part to repeat it, held that the original slanderer was not liable. The Court of Appeal in the recent case came to a similar conclusion. 'Here the words,' said Lord Justice Lopes, 'were untrue, and the mother must have known that they were untrue, and there could not be any obligation either on the mother or the daughter to repeat them to Galloway' (the lover). His lordship also pointed out that there were four classes of cases where the original slanderer could be made liable for the repetition of the slander, viz.: (1) Where he authorised the repetition, (2) where he intended it, (3) where the repetition was the natural consequence of the uttering, and (4) where there was a moral obligation on the person to whom he uttered it to repeat it. This case fell within none of those classes.

## SOME RECENT DECISIONS UPON THE LAW RELATING TO INFANTS.

THE decisions during the past year have touched upon most of the points usually giving rise to controversy in the Courts upon the law relating to infants—viz. Contracts, Maintenance, Custody, and Procedure, most of the decisions being those of the Chancery Division.

The first two cases mentioned in the following article illustrate the principle of the mutuality of contracts. In *De Francesco* v. *Barnum* (No. 1), 59 Law J. Rep. Chanc. 151; L. R. 43 Chanc. Div. 165, an attempt to apply the rule laid down in *Lumley* v. *Wagner* to the covenants in an apprenticeship deed failed, Mr. Justice Chitty holding, on the authority of *Gylbert* v. *Fletcher* (Cro. Car. 179), that, inasmuch as no action could be brought against an infant upon a covenant to serve, the negative clauses in this apprenticeship deed could not be enforced by injunction; and in the second action, before Mr. Justice Fry, the covenants in the deed being held unreasonable, no action was maintainable against a showman for enticing the apprentice away from the plaintiff's employment.

By the Infants' Relief Act (37 & 38 Vict. c. 62), s. 1, all voidable contracts by infants (1) for money lent or to be lent, or (2) for goods supplied or to be supplied (other than contracts for necessaries), and (3) all accounts stated with infants, are declared to be absolutely void. In the case of *Valentini* v. *Canali*, 59 Law J. Rep. Q. B. 74; L. R. 24 Q. B. Div. 166, the infant plaintiff had agreed to become tenant of a house and to pay a sum for the furniture therein. He occupied the house for some months, paid part of the agreed sum, and used the furniture. This contract, not being one of those mentioned in the above section, was held not to entitle the plaintiff to recover the sum paid to the defendant. In *Lowe* v. *Griffiths*, 1 Scott, 458, an infant was held liable for the lease of a dwelling-house suitable to his circumstances. Again, in *Duncan* v. *Dixon*, 59 Law J. Rep. Chanc. 437; L. R. 44 Chanc. Div. 211, Mr. Justice Kekewich held that a marriage settlement made by an infant on his marriage in 1878 (since dissolved) was, as regards the infant, voidable, and not void by the section above referred to.

The case of *Martin* v. *Martin*, L. R. 1 Eq. 369, had decided that maintenance should be allowed out of a legacy to an infant, whether vested or contingent, in the manner most beneficial to the infant, and Mr. Justice North's decisions in *In re Wells; Wells* v. *Wells*, 59 Law J. Rep. Chanc. 113; L. R. 43 Chanc. Div. 281, and in *In re Jeffery; Burt* v. *Arnold*, applied that principle.

*In re Scott; Scott* v. *Hanbury*, again before Mr. Justice North, decided that section 2 of the Infants' Settlement Act (18 & 19 Vict. c. 43), which enacted that the death of an infant under twenty-one avoids any appointment or disentailing assurance executed under the Act, does not, unless the infant is tenant in tail, make the settlement void by reason of the infant having died while still an infant. In *In re Phillips*, 56 Law J. Rep. Chanc. 337; L. R. 34 Chanc. Div. 467, the Court had decided that a settlement can be made under the Act after the wife, having been married under the age of seventeen, has attained that age, provided the settlement is really made upon the occasion and for the purposes of marriage.

*Regina* v. *Barnardo, Jones's Case*, affirmed the *primâ facie* right of a mother to the custody of her illegitimate child, which *Regina* v. *Nash*, 52 Law J. Rep. Q. B. 442; L. R. 10 Q. B. Div. 454, had established.

In *Mayor* v. *Collins*, 59 Law J. Rep. Q. B. 199; L. R. 24 Q. B. Div. 361, the Court held that interrogatories cannot be administered to an infant plaintiff or defendant, and the case of *In re Manders, an infant; Manders* v. *Manders*, before Mr. Justice Stirling, may be usefully referred to with reference to the provisions of the Guardianship of Infants' Act, 1886 (49 & 50 Vict. c. 27), the learned judge laying down that the jurisdiction of the Probate, Divorce, and Admiralty Division is not ousted by the powers given by that Act to the Chancery Division.

## LEGISLATIVE PROGRESS.

IN the House of Lords.

Second reading:—

Evidence in Criminal Cases Bill.

In the House of Commons.

Bill through Committee:—

Purchase of Land (Ireland) Bill.

Second readings:—

Stamp Duties Bill.

Stamp Duties Management Bill.

Industrial Assurance Bill.

The two former were referred to the Standing Committee on Law and the latter to the Standing Committee on Trade.

New bills:—

To Amend the Valuation of Lands (Scotland) Acts.

To Amend the Laws relating to the Rating of Allotments for Sanitary Purposes.

# Reviews.

## MONCREIFF ON FRAUD AND MISREPRESENTATION.

*A Treatise on the Law relating to Fraud and Misrepresentation.* By the Hon. Frederick Moncreiff, of the Middle Temple, Barrister-at-Law. London: Stevens & Sons (Lim.). 1891.

The object of the author of this work is to state, examine, and illustrate the principles upon which fraud and misrepresentation have been dealt with by the English Courts—a work which he rightly considers more useful than a mere digest of decisions arranged under convenient heads. He directs particular attention to the great case of *Derry* v. *Peek*, and expresses an opinion that, if the decision in it is to be carried to its logical conclusion, it must materially modify the authority of previous decisions which have hitherto been accepted as law. Here Mr. Moncreiff thinks that good work may be done by stating clearly the points yet unsettled upon which controversy still lingers. Here, too, we agree with the author in thinking that there is a field for useful work. The book is divided into two parts: the first dealing with the action of deceit in nine chapters; the latter with the law as to rescission—viz. the principles upon which Courts of equity were accustomed to grant relief upon the ground of misrepresentation and other remedies, cancellation, actions for compensation, &c. The definition of 'fraud' is the first question considered, and we are referred to a series of definitions of 'fraud' in the appendix, beginning with that of the digest and including the celebrated passage from Lord Hardwicke's judgment in *Chesterfield* v. *Janssen*. The elements in an action of deceit are next considered. There is not a legal remedy for every lie, for, if there were, a man, Lord Denman said, might sue his neighbour for any mode of communicating erroneous information, such, for example, as having a conspicuous clock too slow. There are, therefore, 'naked lies'—*e.g.* lies not clothed with the attributes on which an action is grounded. The well-known case of *Cornfoot* v. *Fowke* is made the subject of a good deal of consideration, but here we ought to have been referred to the observations of Lord St. Leonards on that case, which were quoted by the Court of Appeal in *Ludgater* v. *Love*. A large space is devoted to the law relating to companies, and due attention is bestowed on *Derry* v. *Peek* and the Directors' Liability Act. The work will be useful to those who desire to consider the difficult branches of law with which it professes to deal.

## BRETT'S COMMENTARIES.

*Commentaries on the Present Laws of England.* By Thomas Brett, Barrister-at-Law, LL.B. Second Edition. In Two Volumes. London: Wm. Clowes & Sons (Lim.).

The success which we predicted for this book on its first appearance, only a year ago, seems to be now fully assured, for we already have before us a second edition. The author of a work of this character, if he wishes to keep it before the profession, can never for any lengthened period lay down his pen; he must, in order to keep his book up to date, continually amend, re-edit, and enlarge. Mr. Brett is singularly fortunate in being called upon so soon to bring out a new edition, because he has thus been afforded an opportunity of availing himself of the suggestions of his friends and the criticisms of his reviewers by correcting the errors which were inevitable in a first edition, and also of incorporating the numerous Acts which have, since the publication of his first edition, been placed upon the statute-book by an exceedingly active Legislature. In order to indicate the extent of the alterations which have taken place, it is only necessary, for example, to refer to the changes in the law effected by the Settled Land Act, the Partnership Act, the three Companies Acts, and the Bankruptcy Act, all of which, with many others of minor importance, have become law during the past year. The effect of all this legislation has been duly incorporated, and a new chapter added, dealing with miscellaneous business in the High Court and the principal remedies by the exercise of extraordinary judicial powers, *habeas corpus*, *mandamus*, prohibition, *quo warranto*, *certiorari*, and petition of right. These changes and additions have increased the body of the book by some sixty pages, and the index has also been considerably enlarged, while the table of cases has been rendered more complete by the insertion, in the principal cases, of references to all the reports. We must not omit to mention also that, in point of get up, the book has been improved, and that in this respect nothing is left to be desired. In order to test the merits of the new edition we turn at random to a chapter which has required material alteration—viz. that entitled 'Partnership.' We find that the author has not merely contented himself with a reference to the recent Act, but he has entirely rewritten the chapter, and he has dealt in a similar manner with the succeeding chapter on companies. Having looked carefully through the book, we are able to say that the work of revision has been thoroughly done, and that no pains have been spared by the author in order to bring it up to that standard of excellence at which he evidently aims. Having so recently noticed the book at length, it is only necessary now to add that the second edition is an improvement upon what was in the first instance a work of considerable merit. The price of the two volumes is 38*s*.

# Correspondence.

## MAGISTRATES' CLERKS' CHARGES.

Sir,—Can you or any of your correspondents say whether it is correct practice for a magistrate's clerk to charge a prisoner committed to quarter sessions, or his solicitor, with 3*s*. 6*d*. for a letter accompanying the depositions in addition to the fixed charge for the copy depositions? Surely, as clerk to the magistrates, his capacity as solicitor is to a certain extent merged in the former.

Inquirer.

May 21.

## THE JURY SYSTEM.

Sir,—*A propos* of your remarks last week on the jury system, may I tell you a little tale?

A Mr. Smith, being once summoned on a jury, went in great anxiety to a Mr. Jones, whom he knew to be very clever, for advice as to 'how to get off.' 'Leave

it all to me,' said Jones. By a curious accident Smith became after all able and willing to serve, and duly attended the Court, without, however, having forewarned Jones. Smith's name being duly called, he was about to step forward with his answer, when he heard the well-known voice of Jones exclaiming: 'Dead, my lord!' K. T. L.

## COUNTY COURTS.

SIR,—In a recent number you commented upon the vagaries of County Court judges. I should like to mention two cases which have lately come under my notice. In a metropolitan County Court the following case was decided in my presence a few days ago: A shopkeeper ordered some blinds to be made and fitted to her shop. They were sent at 8.30 P.M. and fitted up. The workman then asked for his money, but was told that 'the lady' had gone home long since, but that the money should be sent next morning on her return. The workman, acting on instructions from his employer, thereupon took down the blinds and carried them away, and a few days after the employer sued for the price as for goods sold and delivered, at the same time keeping the blinds. He also sued for the workman's labour. The judge at once gave a verdict for the plaintiff for the full amount of his claim. The judge in question sat on that day from 11 A.M. to 7 P.M., with only five minutes' interval, and I doubt not was very tired; otherwise, a moment's reflection would have told him that the chattels being unascertained, the property did not pass, and that an action would not lie for goods sold and delivered. The true remedy was an action for non-acceptance, but there was no breach, and judgment ought to have been for the defendant.

I have lately been asked to advise on the following case: The owner of a horse advertised it for sale by public auction, warranted it, and gave his name. An auctioneer sold it as the horse of the owner, and referred to the advertisement under which it was to be sold. The horse was sold, and it turned out that there was a breach of warranty. An action was thereupon brought by the purchaser against the owner. The action was tried in a country County Court, when the judge promptly nonsuited the plaintiff, on the ground that the action ought to have been brought against the auctioneer and not against the owner. The solicitor for the plaintiff in vain pointed out that the auctioneer only sold as agent for a disclosed principal, and that the action, therefore, could only be brought against the principal. The judge was inexorable, and the nonsuit, which is equivalent to a verdict for the defendant, stands. As the claim was for 14*l.*, and the judge will not give leave to appeal, there is simply a denial of justice, for an action will not lie against the auctioneer.

I hope that you will allow me to say, in conclusion, that these vagaries will always take place so long as Lord Chancellors look upon County Court judgeships as their own private perquisite, to be filled up by their friends and relations, instead of being filled up by really able men. A BARRISTER-AT-LAW.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

# Unreported Cases.

## COUNTY COURTS.

### TITHE RENT-CHARGE—PAYMENT BY TENANT—ALLOWANCE IN ACCOUNT WITH LANDLORD.

AT the Lymington County Court on Tuesday, May 19, the case of *Torah* v. *Bryant* was tried before Mr. Russell (deputy-judge). It was an action remitted from the High Court of Justice, Southampton District Registry. The parties were Charlotte Torah (executrix of the will of Benjamin Elgar, late of Lymington, deceased), plaintiff, and William Brewer Bryant, of Boldre, near Lymington, defendant. The claim was for 60*l.*, made up as follows: 20*l.* due for arrears of rent up to September 29, 1889; 20*l.*, a half-year's rent due March 25, 1890; and 20*l.*, a half-year's rent due September 29, 1890.—Mr. Emanuel said defendant rented a farm of the late Mr. Elgar at the rate of 40*l.* a year, and the action was brought to recover the sum of 20*l.*, being arrears of rent due September 29, 1889, and two half-years' accrued since. Defendant, in his defence, stated that, as to the first item of 20*l.*, he had paid it, and, with regard to the balance, he counterclaimed to the amount of 26*l.* 6*s.* 4*d.* for tithes paid by him during the years 1885, 1886, 1887, 1888, 1889, and 1890, and repayable by the landlord, and the balance of 13*l.* 13*s.* 8*d.* he had paid into Court. The learned counsel said therefore it was for the defendant to prove the payment of the 20*l.* and his counterclaim of 26*l.* 6*s.* 4*d.*—Mr. Linthorne said he was taken by surprise, as he understood plaintiff's solicitor had admitted the payment of the 20*l.*—Mr. Emanuel denied this, and Mr. Linthorne called defendant, who said he took the farm of the late Mr. Elgar in December, 1884. The first two half-years' rent he paid in cash, but as Mr. Elgar did not give him a properly stamped receipt he subsequently paid his rent by cheque, commencing March 25, 1886. The cheques were produced, showing half-yearly payments of 20*l.* up to September 29, 1889. With regard to the counter-claim, in the year 1884 Mr. Elgar had refunded him 44*l.* 10*s.* 2*d.* in respect of tithes accrued during his tenancy under the former owner.—His Honour asked for proof of the items, and Mr. G. J. Prewett, from the office of Messrs. Moore, Rawlins & Vores (agents for the Rev. G. Elers, vicar of Boldre), said Mr. Bryant had always paid the tithes when demanded. He, however, could not swear to the items without his ledger.—Mr. Emanuel said witness should have been subpœnaed to produce the book, and his Honour said he should have to adjourn the case for this to be done.—Mr. Linthorne said he understood the question of these tithes having been paid by defendant was admitted, or he should have issued a subpœna.—Mr. Emanuel said to save an adjournment he would admit the fact of these tithes having been paid. He was afraid he could no longer dispute the fact of 20*l.* having been paid. With regard to the counter-claim, he submitted defendant was not now entitled to deduct the amount paid by him for tithes.—Mr. Linthorne pointed out that, by section 80 of the Tithes Commutation Act, 1836, it was enacted that a tenant who had paid a tithe rent-charge should be 'allowed the same in account with the landlord;' the defendant was, therefore, right in his counterclaim.—His Honour concurred in this view, and gave judgment for defendant, with costs.—Mr. Samuel Emanuel, barrister-at-law (instructed by Mr. D. W. B. Tayler, of Southampton), appeared for the plaintiff, and Mr. R. R. Linthorne, of Southampton, for the defendant.

## POLICE.

### FALSE TRADE NAME ON PIANOFORTE.

At Marlborough Street, on Saturday, May 23, Messrs. Anthony & Alphonse Tooth, auctioneers, of Oxenham's Sale-rooms, Oxford Street, appeared before Mr. Newton to an adjourned summons taken out by Henry W. Berridge, a clerk to Mr. Carl Bechstein, a pianoforte manufacturer, of Wigmore Street and Berlin, for having in their possession for sale a pianoforte to which a false trade description had been applied. The evidence previously given showed that Messrs. Tooth published a catalogue of a sale to take place on May 1, in which was an entry of a piano by 'C. H. Bachstein.' Mr. Berridge saw the piano, and found on the fall the words 'C. H. Bachstein, Hof Pianoforte Fabrik' (Court Piano Factory). As Mr. Bechstein claimed to be piano manufacturer to the German court, he considered that the public might be led by those words to believe that the piano was made at his factory in Berlin.—Messrs. Tooth, in defence, declared that they merely had the piano sent to them to sell in the ordinary way, and that they had no desire to do injury to any firm. Moreover, it was mentioned that, directly Mr. Bechstein made complaint, Messrs. Tooth withdrew the piano from the sale.—Mr. Anthony Tooth now deposed that he received the piano complained of from Mr. Walter Watson, of Euston Road. The catalogues were made up by his clerks, who could only take the descriptions from the goods as they found them.—Evidence was then taken in support of another summons respecting a piano bearing the name of Schiedmayer which, it was alleged, had not been manufactured by the firm of that name.—George Culverwell, manager to Messrs. Cramer, said he had seen a piano which was entered in one of Messrs. Tooth & Tooth's catalogues. It was marked 'Schiedmayer, Berlin,' but he recognised it as an instrument made by Rosenaar, of Berlin, which Messrs. Cramer had let to a woman on the hire system. At that time the name 'Rosenaar' was on the fall.—Archibald Ramsden, the English representative of Schiedmayer, of Stuttgart, said he knew of no firm of piano manufacturers of the name of Schiedmayer in Berlin.—Mr. Anthony Tooth deposed that a lady brought him the piano in question to sell, saying that she had brought it from Berlin. After he had sold it Messrs. Cramer claimed the instrument as their property. He had seen the police about the woman, and had discovered that there were several warrants out for her arrest.—A third summons was heard against *Walter Watson*, an auctioneer, of the Euston Road, for a similar offence.—Mr. Leslie, solicitor, appeared for the defence.—George Taylor, who had been for about six months in the employ of Mr. Watson, said that he had seen pianos arrive at the premises of Mr. Watson from Hamburg without names. They were marked with different names before being sent out. On April 29 two pianos were delivered at the premises of Messrs. Tooth.—Mr. Watson said that he had been carrying on business as an auctioneer in the Euston Road for about nine months. He had dealt with a pianoforte dealer named Kreuse, of Hamburg, for three years. He received the particular piano bearing the name of 'Bachstein' in February last in the same state as it was at present. He had bought several 'Bachstein' pianos from different dealers in Germany, and had not heard of Mr. Bechstein until lately. Cross-examined.—A writ had been served upon him with respect to another make of pianos. He had had Winkelmann's pianos with the name-plate separate.—Emil Pohl, a porter to Mr. Watson, said that the piano in question was now in precisely the same state as when he unpacked it on its arrival from Germany. He had sometimes stuck labels on pianos that had no name on them. The labels were sent over from Hamburg with the instruments.—Mr. Newton said that he thought Messrs. Tooth & Tooth had acted negligently. They would have to pay 10*l.*, with five guineas costs, and Watson must also pay the same amounts.—It was stated on behalf of Messrs. Tooth that they intended to appeal.—Mr. Besley and Mr. Bodkin prosecuted, and Mr. Banks appeared for the defence.

## SUCCESSFUL CANDIDATES.

The following candidates (whose names are in alphabetical order) were successful at the Preliminary Examination held on May 6 and 7, 1891:—

Archer, William Edward
Bagshaw, William
Baines, Ellis Eyton
Barraud, Milford Percy
Blaker, Harry Rowsell
Booth, Ernest
Brown, Henry Pinder
Brown, Robert
Bruce, Thomas Francis Hope
Burnaby, John Frederic Sherard
Butcher, Philip Webster
Cassidy, James
Caswell, Thomas Hill
Chaston, Walter Alan
Clark, Douglas Ariel
Close, Charles Harold
Cottier, Charles Edward
Cuningham, Francis Burdett
Dauncey, Richard
Dean, Henry John
Dixon, Clive Fletcher
Drummond, Philip Maurice
Ellison, Charles Welldon
Ess, George
Francis, Percy Ollivant
Garrard, George Frederick
Glover, William Grey
Guy, Alexander Granville Ferrers
Harrison, Herbert Basil
Haymes, John
Hicks, Thomas Arnold
Hill, Adrien Thomas Coke
Holdsworth, Charles Stork
James, George Fitzhugh Bush
Jolly, Arthur Adams
Jones, Richard Evan
Jones, Thomas Latimer
Judson, Henry Darnton
Judson, Joseph Edward
Key, Richard Blayney
King, George Hall
Knocker, Herbert Wheatley
Lawrence, James Edward Garnous
Leeds, Alfred William Henry
Lewis, George Alec
Lewis, Guy Granville
Lichtenstein, Edward Arthur La Trobe
Lightly, Charles Alfred Morton
Lockett, William Jeffery
Lodge, James William
Lord, David
M'Ardle, Bernard Vincent
M'Leod, Wilfred
Major, Henry Ernest
Mathias, Claude
Mathews, Guy
May, William Edward Southcombe
Mills, William
Mole, William Rupert
Neale, Dennis
Newby, Charles James
O'Brien, Lucius Frederic
Preston, Cecil Evans
Raikes, Reginald Durie Napier
Raine, George Edward
Reade, Henry Lister
Reeves, John
Roberts, Alfred Ernest
Roberts, Arthur Edward
Robson, Fred William
Rose, William Hugh
Sherwin, Robert Walter
Simmons, Edward Coleman
Simpson, Francis Joseph
Skeet, Fred William
Smith, Percy Hazell
Solomon, Albert Benjamin
Stenning, Edward Herbert
Stevens, Frank Herron
Strang, Robert Charles Yuille
Tanner, George Frederic
Taylor, Domville Mascie
Taylor, Frederic George
Thimbleby, Frank
Thomas, Daniel Howell Rowland
Thomas, Edmund Crewes
Travers, Harold Paget
Troughton, Aubrey Gerald Albert
Walmsley, Arnold Brunsden
Walpole, Stanley
Ward, Joseph William
Webster, Reginald
Whittenbury, Reginald
Wildey-Wright, Frank Jarvis Arnot
Wilkinson, Horace King
Willan, William Edward
Willett, Edward Reginald
Williams, Harold James
Williamson, Frank
Wilson, Arthur Gerald
Winser, Joseph Croyden
Winter, Walter James
Wiseman, Arthur Ernest
Withers, Alfred
Wood, John Crewe
Yates, George William Ross
Waller, Percy George

# CAUSE LIST.

## SUPREME COURT OF JUDICATURE.

*Trinity Sittings*, 1891.

### THE COURT OF APPEAL.

*Appeal Court I.—Notices.*

N.B.—Queen's Bench Interlocutory Appeals will be taken in Court I. on Tuesday, May 26, and afterwards on every Monday in Trinity Sittings.

N.B.—Subject to Interlocutory Appeals on Monday and Bankruptcy Appeals on Fridays, and also subject to the New Trial Paper, Queen's Bench Final Appeals will be taken every day during the Sittings until further notice. The New Trial Paper will remain until days to be appointed, notice of which will be given in the Daily Cause List.

N.B.—Admiralty Appeals (with Assessors) will be taken in Court I. on days specially appointed by the Court, notice of which will appear on the Daily Cause List.

*Appeal Court II.—Notices.*

N.B.—Interlocutory Appeals from the Chancery and Probate and Divorce Divisions will be taken in Court II. on Tuesday, May 26, and afterwards on every Wednesday in Trinity Sittings.

N.B.—Subject to Chancery Interlocutory Appeals on Wednesdays, Chancery Final Appeals will be taken every day in Court II. until further notice.

Appeals from the Lancaster Palatine Court (if any) will be taken in Court II. on Thursday, May 28, and on Thursday, June 4, Thursday, July 2, and Thursday, August 6; see Notice at end of List of Palatine Appeals.

Lunacy matters will be taken in Court II. on every Monday, at 11, until further notice.

### APPEALS FOR HEARING.

(SET DOWN TO SATURDAY, MAY 16, INCLUSIVE.)

*From the Chancery and Probate and Divorce Divisions.*

FOR JUDGMENT.

Dashwood *v.* Magniac
Low *v.* Bouverie
R. S. Hall *v.* A. M. Hall and another

FOR HEARING.

*Final List.*

1891.

In re C. Palmer, dec.
Palmer *v.* Hardwick
Jones *v.* Dinas Steam Colliery Co. (Lim.)
Cronbach *v.* Uranium Mines (Lim.)
Hair *v.* Geddes
Gray and others, exors. of Margaret Gray, added by order *v.* Sangster and others
In re Bence, dec.
Smith *v.* Bence
In re T. Metcalfe, dec.
Metcalfe *v.* Metcalfe
In re W. Jones, dec.
Griffin *v.* Porter
In re J. Gouldsmith, dec.
Roberts *v.* Thorne
Mackenzie *v.* Mackintosh
In re E. C. Eagle, dec.
Eagle *v.* Cardinall
Florence *v.* Mallinson
In re G. J. Hunter, dec.
Hunter *v.* Hunter
Westmoreland Green and Blue Slate Co. (Lim.) *v.* Fielden
Ward *v.* Royal Exchange Shipping Co. (Lim.)
Thomas *v.* Christmas
In re R. Burfield, dec.
Dean *v.* Burfield
In re C. Robson, dec.
Larkman *v.* Robson
London, Chatham and Dover Railway Co. *v.* South-Eastern Railway Co.
In re Portuguese Consolidated Copper Mines (Lim.) and Co.'s Acts
Sykes *v.* Burr
Smith *v.* Rogers
In re Jane Davis, dec.
In re T. H. Davis, dec.
Evans *v.* Moore
In re Stephens, dec.
Warburton *v.* Stephens
Faulder's Brewery Co. (Lim.) *v.* Bowmans
Mineral Residues Syndicate *v.* Levant Mine Adventurers
In re Jacobs, dec.
White *v.* Jacobs
In re Samuel Hurst, dec.
Addison *v.* Topp
Harrison, Amalie & Co. *v.* Mayor, &c. of Barrow-in-Furness

INTERLOCUTORY LIST.

1891.

Bridge *v.* Herbert
Badeley *v.* Consolidated Bank
Mangan *v.* Metropolitan Electric Supply Co. (Lim.)
Mander *v.* Falcke
In re W. Briggs, dec.
Earp and another (creditors) *v.* Briggs and another

*From the County Palatine Courts.*

FINAL LIST.

1891.

Winby *v.* Manchester, Bury, Rochdale, and Oldham Steam Tramways Co.
Perry *v.* Glazebrook
In re Higginbotham and Orrell's Settlement Trusts

N.B.—The County Palatine Appeals, as the dates of setting down are reached in the General and Separate Lists, are set aside and taken on the first Thursday in every Sittings, and afterwards on the first Thursday in the following months during the Sittings.

N.B.—During Trinity Sittings Palatine Appeals (if any reached) will be taken on the following days, viz.:—
Thursday, May 28.
Thursday, June 4.
Thursday, July 2.
Thursday, August 6.

*From the Queen's Bench and Admiralty Divisions.*

FOR JUDGMENT.

Skinners' Co. *v.* Knight and others

FOR HEARING.

*Final List.*

1890.

Rogers, Sons & Co. *v.* Lambert & Co.
Evans *v.* Newfoundland Railway Co. and others

1891.

Armour *v.* Bate
Same *v.* Same
Pelsall Coal and Iron Co. (Lim.) *v.* London and North-Western Railway Co.
Same *v.* London and North-Western Railway Co. and Great Western Railway Co.
Attorney-General *v.* Sharpe and another (Q. B. Revenue Side)
Deep Navigation Collieries (Lim.) *v.* Rhymney Railway Co.
Goddard and another *v.* Hill
F. H. Wenman *v.* Lyon & Co. (Q. B. Crown Side)
Kingsford *v.* Oxenden
Woodfin *v.* Marston & Co. (Lim.)
Braunstein *v.* Lewis and another
Hilder *v.* Hume, Webster & Co.
School Board for London *v.* Wall Bros.
London Bank of Mexico and South America (Lim.) *v.* Apthorpe (Surveyor of Taxes) (Q. B. Revenue Side)
Justices of the Peace for the County of Kent *v.* Sandgate Local Board
De Coninck *v.* Singer
Levin & Co. *v.* Seligsen (trading, &c.)
Lethbridge and another *v.* Harris and another
Handyside & Co. (Lim.) *v.* Gentry
Tomkinson and another *v.* Balkis Consolidated Co. (Lim.)
Gregory *v.* Casselden
Brown *v.* Hawkes (Q. B. Crown Side)
Nash *v.* Cunard Steamship Co. (Lim.) (Q. B. Crown Side)
Hick *v.* Rodocanachi, Sons & Co. and others
Mercantile Investment and General Trust Co. (Lim.) *v.* International Co. of Mexico
Brinkworth *v.* Pentelow
Rhymney Railway Co. *v.* Bute Docks Co.
Lovering *v.* City of London and Southwark Subway Co.
Bishop *v.* Southern Counties Deposit Bank
Brace *v.* Abercarn Coal Co. (Lim.) (Q. B. Crown Side)
Huggins *v.* London and South Wales Coal Co. (Q. B. Crown Side)
Challoner *v.* Vaughan
Cross *v.* Roberts
Pinto and another *v.* Trott & Co.
Thomas *v.* Searles and another (first issue)
Same *v.* Same (second issue)
Kirkman *v.* British Shipowners' Mutual Protection Association (Lim.)
Tinkler *v.* Smith and another
Le Messurier *v.* Taylor
Parkyn and another *v.* F. Campbell & Co.
Lloyd's Bank (Lim.) *v.* Passey
Dearne and Dove Steel Co. (Lim.) *v.* Phœnix Railway Carriage and Wagon Co.
Edmunds *v.* Gilbert
Clark *v.* Dawber
Broadbent *v.* Smedley
Patrick *v.* Dear
Clarke *v.* Chadwick
Dodson & Co. *v.* Robinson & Co.
Halpin *v.* M'Laren
Caswell *v.* Sheen and others
Bryan *v.* Atlantic Patent Fuel Co. (Q. B. Crown Side)
Snow *v.* Colonna
Dobell & Co. *v.* Watts, Ward & Co. and others
Coburn *v.* Great Northern Railway Co.
Moul and another and Groenings and another (Q. B. Crown Side)
In re Agricultural Holdings (England) Act, 1883
M'Gough and others (petitioners)
F. P. Gough and others (respondents) (Q. B. Crown Side)
Welbury *v.* Payton
Hooper *v.* Large (late Goodwin)
Everett (Assignee of Tanner) *v.* Parton (Q. B. Crown Side)
Hirst *v.* Sadler
Rendell *v.* Barraclough
Acland and others *v.* Simpson

Taws *v.* Knowles (Q. B. Crown Side)
Allchurch and another *v.* Assessment Committee and Guardians of Hendon Union (Q. B. Crown Side)
Bristol and West of England Bank (Lim.) *v.* Midland Railway Co.
Tharsis Sulphur and Copper Co. (Lim.) *v.* Morel Bros. & Co. and Richards & Co.
Grand Hotel, Prague (Lim.) *v.* Concessions Trust (Lim.)
City and South London Railway Co. *v.* London County Council (Q. B. Crown Side)
Harman *v.* Powell and others (Q. B. Crown Side)
Harrison, Ainslie & Co. *v.* Muncaster
Reeves *v.* Butcher
Towerson *v.* Jackson (extrix.) (Q. B. Crown Side)
North Wales Gold Exploration Co. *v.* Seaver and others
Lambourn Valley Railway Co. *v.* Billups

*From the Queen's Bench and Admiralty Divisions.*

INTERLOCUTORY LIST.

1890.

Giffard *v.* Mayor, &c. of Wolverhampton

1891.

Reynolds *v.* Tooth & Ward
Lysaght *v.* Clark & Co. } Same *v.* Same
Challinors and another *v.* Wright and others
Guinea Coast Gold Mining Co. (Lim.) *v.* Irvine and others
Cave *v.* Leslie and others
Guardians of the Poor of Parish of Brighton *v.* Guardians of the Poor of the Strand Union (Q. B. Crown Side)
Phillips and others *v.* J. Fowler & Co. (Leeds) (Lim.)
Regina *v.* Judge of Halifax County Court and Bairstow (Q. B. *Crown Side*)
In re an Arbitration between J. B. Williams and Sir R. A. A. K. C. Stepney, Bart.
Love *v.* South of England Marine Insurance Association (Lim.)
Walford *v.* Prince Steamship Co. (Lim.)
Finska Angfartygs Aktiebolaget *v.* Brown, Toogood & Co.
Regina on prosecution of Col. E. Mitchell *v.* H.M.'s Secretary of State for War (Q.B. *Crown Side*)
F. E. T. Fowler (judgment creditor) *v.* Jas Bowles (judgment debtor) Sarah Bowles (claimant)
North-Wales Gold Exploration Co. (Lim.) *v.* Seaver and others
Hind *v.* Raikes and others
Gough *v.* Mayor, &c. of Liverpool

*From the Queen's Bench Division.*

NEW TRIAL PAPER.

1891.

Parsons *v.* Tomlinson } Woollacott *v.* Pilkington }
Richards *v.* Stogdon
Evelyn *v.* Hurlbert
Hood *v.* Brown
Marchioness of Huntly *v.* Bedford Hotel Co. (Lim.)
Alldred *v.* West Metropolitan Tramways Co. (Vestry of Hammersmith, third parties)
Smith and Wife *v.* Bailey
Bristol and West of England Bank (Lim.) *v.* Midland Railway Co.
Lowry *v.* Humbert
Gibbs *v.* London and orth-Western Railway Co.
Keeley *v.* Appleby
Heitzmann *v.* Gowenlooh
Banks *v.* Kelly and Grundy (trading, &c.)
Brunlees *v.* Dickson

*From the Queen's Bench Division, sitting in Bankruptcy.*

1891.

In re J. G. Smith, ex parte Official Receiver
In re L. J. Twyne, ex parte Debtor
In re A. Webber, ex parte S. Slater
In re Jno. Gamgee, ex parte Ward
In re W. R. Cloete, ex parte Debtor
In re Croaker and another, ex parte Debtor

*From Probate, Divorce, and Admiralty Division (Admiralty).*

FOR HEARING.

(*With Nautical Assessors.*)

1890.

Owners, Masters, and Crews of Steamships Inverness, Flying Scud, Heather Bell, and Spurn *v.* Owners of Ship Accomac, Cargo and Freight
Owners of Ship Accomac, Cargo and Freight and Owners of Ship Albert Edward and others *v.* Owners of Ship Accomac, Cargo and Freight

1891.

Owners of Eloy Palacios and Cargo *v.* Owners of Homewood and Freight } Owners of Homewood *v.* Owners of Eloy Palacios
G. B. Vassals and others *v.* Owners of Boston City
Owners of The Star of England *v.* Owners of The Vesper
Owners of Baton Hall *v.* C. B. Theobald (captain of H.M.S. Rupert)
Teeside Iron Engine Works Co. (Lim.) *v.* C. C. Duncan
Owners of Ship Sudbourne and others *v.* Owners of Ship Mangalore

SUMMARY OF APPEALS.

| | Final | Interlocutory | Total |
|---|---|---|---|
| From the Chancery Division . | 29 . | 5 . | 34 |
| From County Palatine Courts . | 3 . | — . | 3 |
| From the Queen's Bench Division | 74 . | 18 . | 92 |
| From the Probate, Divorce, and Admiralty Division, Admiralty with Assessors . . . . | 7 . | — . | 7 |
| From the Queen's Bench Division sitting in Bankruptcy . . | 6 . | — . | 6 |
| New Trial Paper . . . . | 14 . | — . | 14 |
| Totals . . . | 133 | 23 | 156 |

# HIGH COURT OF JUSTICE.

## CHANCERY DIVISION.

*Trinity Sittings*, 1891.

## CAUSES FOR TRIAL OR HEARING.

(*Set down to Thursday, May 16, inclusive.*)

Except in the first and last weeks of the Sittings, Motions, Petitions and Short Causes will be taken on the usual days, as stated in the Trinity Sittings Paper.

Mr. Justice CHITTY will take Witness Actions on the following days—viz. June 23, 24, 25, 30; July 1, 2. When the Non-Witness List is exhausted, the Witness List will be resumed subsequently to July 2. In the weeks when Non-Witness Actions are taken Further Considerations will be taken on Tuesdays. In the weeks when Witness Actions are taken, Further Considerations will not be taken on Tuesdays, but may be taken on Saturdays.

Mr. Justice NORTH will commence taking Witness Actions on Tuesday, June 2, and will continue that class of work on the usual days in every week until further order.

Mr. Justice STIRLING will also commence taking Witness Actions on Tuesday, June 2, and will continue that class of work on the usual days in every week until further order.

Mr. Justice KEKEWICH.—With the exception of special Witness work for the first day (May 26) and for Tuesday, June 2, no Causes with Witnesses will be taken by Mr. Justice KEKEWICH until the Non-Witness List is exhausted. Prior to June 2, Adjourned Summonses will be taken first, and then Further Considerations, Points of Law, and Non-Witness Actions. His Lordship will take Liverpool and Manchester Business as follows: Motions on days appointed for Motions. Short Causes, Petitions and Adjourned Summonses on Saturdays. Summonses in Chambers on Friday afternoons. Liverpool and Manchester Summonses will be taken on alternate Fridays, commencing with Manchester Summonses on Friday, May 29.

Mr. Justice WILLIAMS will continue (until further notice) sitting as an Additional Judge of the Chancery Division. A second Transfer of fifty-two Actions from the List of Mr. Justice ROMER has been made to his Lordship. Of the first Transfer eighteen have been re-transferred to the Judges to whom they originally belonged, and three remain to be tried by Mr. Justice WILLIAMS. The second Transfer will follow, and will be proceeded with by his Lordship in Queen's Bench Court I. at the commencement of the Sittings.

Mr. Justice ROMER will take Witness Actions every day in the order as they stand in the Cause Book.

Summonses before the Judge in Chambers: Justices CHITTY, NORTH, STIRLING and KEKEWICH will sit in Court the whole day on every Monday during the Sittings to hear Chamber Summonses.

Summonses Adjourned into Court will be taken as follows: Mr. Justice CHITTY, with Non-Witness Actions, except Procedure Summonses, which (if any) are taken every Saturday; Mr. Justice STIRLING, with Non-Witness Actions. Justices NORTH and KEKEWICH on Fridays and Saturdays.

N.B.—The above note as to Chamber and Adjourned Summonses is subject to alteration as their Lordships may direct.

## BEFORE MR. JUSTICE CHITTY.

*Causes for Trial (with Witnesses).*

Freemantle v. Lafitte
Thompson v. M'Murdo
M. Melacrino & Co. v. B. M. Melacrino and others
Ramuz v. Earl Sondes
Sampson v. Royal Aquarium and Summer and Winter Garden Society (Lim.)
In re Robert Millard, dec.
Millard v. Millard
Guardians of St. Saviour's Union v. Stanhope Co. (Lim.)
In re W. E. Jones, dec.
Jones v. Greenwood
Inventions Trust Association (Lim.) v. Cole & Co.
In re Baroness Craignish, dec.
Craignish v. Hewitt
Nichols v. John Lewis & Co.
Boursot v. Boursot
Midland Railway Co. v. Metropolitan Railway Co.
Hubbard v. Elverston
Cameron v. Jones
Defence Vessel Construction Co. (Lim.) v. Scott
Garnett v. Carver
In re Gyles, dec.
Gyles v. Collinson
Barlow v. Gyles
In re Gyles, dec.
Gyles v. Collinson
Morris v. Bebro (1888, M. 3,273)
Same v. Same (1889, M. 66)
Montagu v. Burton
Reid v. Whiteley
In re Whitchurch, dec.
Cotton v. Prowse
Skelton v. Schwabe
Lindsay v. Curtis
Richards v. Unett, Moore, Bayley & Co.
Warren v. Central Permanent Building Society
Bonham (married woman) v. Ellis
In re Earl of Caithness, dec.
Buchanan v. Sinclair
Royal Exchange Assurance and others v. Norton
Burra v. Phillips
Mickalls v. Phillips
In re R. Fell, dec.
Fell v. Fell
Watson v. Hawthorn
Bolanachi v. Zirzinia
Stephens v. M'Kellar
Yeoman v. Robinson
De la Mare v. Mayor, &c. of West Ham, Essex
Landseer v. Zeffert
Van Buch v. Watson
Perceval and another v. Van Buch
Pechey v. Serle
New Wire Wove Roofing Co. (Lim.) v. Humpage
Hayman v. Cooper
Clark v. Smith
Carter v. Walter
Smith v. Rowbotham
Rowbotham v. Wilson
North v. Abbey Mills Distillery (Lim.)
Ward v. Keen
Sutton v. Gillings
Kite v. Bell
S. Kidd & Co. (Lim.) v. Perry
Allen v. Clydesdale Bank (Lim.)
Hill & Paddon v. Fuller
Bailey v. Fuller
Fuller v. Hill & Paddon
Same v. Bailey
In re Swain, dec.
Swain v. Bringeman
Bew v. Gale
Webster v. Puleston
Meek v. Traver
Marquis of Aylesbury v. Darling
Spalding v. FitzGeorge
Delvallé v. Palmer
In re E. J. Smart, an infant, ex parte Stoner
Same, ex parte Gregory
L. Hirsch & Co. v. Dean Swift
Faithfull v. Millar
Dibb v. Walker
Molineaux v. Gartside
In re Thomas Bateman, dec.
Bateman v. Bateman
Uniacke v. Scott
Scott v. Uniacke
Soppitt v. Whiting
In re Aders, dec.
Meakin v. Plimmer
Ellissen v. Surrey Machinist Co. (Lim.)
Watts v. Paynter
Sanders v. Eaton
Hollington v. Dear
Witt v. Calderon
Callender v. Grant
In re Bell Brothers (Lim.) and Co.'s Acts
Tunks & Co. (Lim.) v. Page, Son & Co.
Davis v. Acton Conservative Club (Lim.)
Same v. Same
Hill v. Winfield
In re Heinrich's Registered Designs and Patents, &c. Act, 1883 and 1888
Compton v. Bagley
Spence v. Schiedweiler
Engelhart v. Gaydon
West v. Gillett
Marshall v. Glover
Alexander v. Marshall
Same v. Same
Marshall v. Alexander
Wright v. Richmond
West India Shipping Co. (Lim.) v. Callender
Thomson v. Stewart
Hughes-Hallett v. Kent (2)
Nicholson v. Eyre
Mappin Brothers v. Mappin & Webb
Lane v. Capsey
Burdett v. Eldershaw
Anstiss v. Gatti
French v. Burchell
Tucker v. Cooper
Smelt v. Broughton
In re Lanwer, dec.
Lanwer v. Clayden
Northwich Local Board v. Northwich Salt Co. (Lim.)
Tester v. Hedgcock
James v. Isaac
T. P. Smith v. M. Smith
Hall v. Tompson
In re R. O. Perkins, dec.
Perkins v. Hillier
Hillier v. Perkins
Walker v. Walker

*Causes for Trial (without Witnesses).*

In re W. J. Barron & Sons
De Stafford v. Neville
In re J. Bone's Estate
Rice v. Bone (Order 55)
In re E. Budd, dec.
Scott v. Budd
Todd v. Reakes
Hartley v. Cooper
In re Moore & Burton's Contract and Vendor and Purchaser Act, 1874 (ex parte Purchasers)
In re Bingemann & Walmesley's Contract and Vendor and Purchaser Act, 1874 (ex parte Purchaser)
In re Bingemann, dec.
Bingemann v. Bingemann
Dean v. Dean
In re E. J. Sartoris's Estate
Sartoris v. Sartoris (Order 55)
In re Allen, a Solicitor (ex parte West)
In re J. E. Schweder's Estate
Oppenheim v. Schweder (Order 56)
J. H. Taylor v. Taylor
In re G. Baynham, dec.
Hart v. Mackenzie
In re T. H. Gloyne's Estate
Clarkson v. Rawsthorne (Order 55)
Levy v. Lyon
Same v. Same
In re W. Ostle's Estate
M'Mullon v. Redfern (Order 55)
In re J. B. Lousada's Estate
Ponting v. Lousada
In re R. H. Millett, dec.
Millett v. Marriott
Salmon v. Cheswright
In re W. S. Lewis, a Solicitor, ex parte Jane D. Moir
In re F. J. Edlmann
Edlmann v. Edlmann
Mockford v. M'Donald
In re J. C. B. Hudson, dec. and Conveyancing Act, 1881
Boulderson v. Inderwick
In re Joseph Hudson, dec.
Bell v. Hudson
In re Lindley, dec.
Lindley v. Lindley
In re Sovereign Life Assurance Co. (Salter's claim)
In re C. Blackburn, dec.
Smith v. Cook
In re J. F. G. Cook's Estate
Ayer and others v. Wrightson and others
In re W. Shawcross's Estate
Thackeray v. Coe
In re Paszoway (Galician) Petroleum Co. (Lim.) and Co.'s Acts
In re Same Co.
In re Same Co.
In re H. T. G. Fitzgerald's Estate
Saunders v. Boyd
In re J. B. Bodman's Estate
Bodman v. Bodman
In re V. Shelton's Estate
Brown v. Shelton (Order 55)
In re E. Fryman, dec.
Fryman v. Fryman
Koechlin v. Mollin
In re S. H. J. Davies's Estate
Davies v. Davies
In re Patani Concessions (Lim). (ex parte Liquidator)
In re F. H. William, a Solicitor (ex parte David Love)
In re Brodie's Settlement Trusts
In re Brodie's Estate
Hall v. Walker (ex parte Settlement Trustee)
In re S. H. Wells, dec.
Wells v. Wells
In re J. C. Llewellin, a Solicitor (ex parte D. Sanders)
In re J. S. Tharp's Estate
Bond v. Tharp (Order 55)
In re W. Hudson's Estate
Hudson v. Macintosh (Order 55)
In re Gale's Patent
In re White, dec.
Pearson v. Hughes
In re W. J. G. Eschmann, dec.
Banks v. Hammer
In re George Dodd's Estate
Milnes v. Holmes (ex parte Trustee)
Lane v. Capsey
In re W. Hodgson's Estates
In re Manchester Corporation Waterworks, 1879, and London County Council Acts, 1845–69 (ex parte Wilson and another)
In re Sarah Grimshaw's Estates
Barnard v. Yewdall (ex parte surviving Executor and Trustee)
In re Bifron's Estate, Barking, Essex, No. 3,474, Land Registry and the Land Transfer Act, 25 & 26 Vict. c. 53
In re Craven's Trusts
Craven v. Close
In re Cosen's Marriage Settlement Trusts
Cosens v. Cosens
Philips v. Low
Attorney-General v. Pinckard
Sawyer v. Bland
In re Anthony S. Allen, a Solicitor (ex parte J. H. B. Lutley)
In re W. P. Murche, dec.
Murche v. Murche

*Further Considerations.*

In re W. Evans, dec.
Evans v. Evans
In re S. Lang, dec.
Betteley v. Proctor
In re Caroline Haldane's Estate
Brew v. Humphrey
Haldane v. Brew
In re H. Ruggles, dec.
Weaver v. Bateman
In re Armstrong, dec.
Harrison v. Armstrong
Turner v. Greenough
Greenough v. Leeming

*Procedure Summonses.*

L. Hirsch & Co. v. Dean Swift
Same v. Same
Siemens v. Karo, Barnett & Co.

*Point of Law.*

Blaydes v. Selby.

## BEFORE MR. JUSTICE NORTH.

*Causes for Trial (with Witnesses).*

In re Sharpe
In re Bennett
Masonic, &c. Assurance Co. v. Sharpe
Chester v. Harris
Commercial Bank of Scotland (Lim.) v. Sanders
Burgess v. Van Hoydonck
Matthews v. Martin
Tippett v. Strutt
Stuckey's Banking Co. v. Cohen
Lindoe v. Alexander
National and Provincial Bank of England (Lim.) v. Daniel
In re M'Murdo
Penfield v. M'Murdo
Bright v. Eckersley
Walker v. Higgins
People's Co-operative, &c. Building Society v. Shaw
Showell v. Perrins
Merridew v. Morris
Hamilton v. Hamilton
Crawshay v. Cartland
In re Crawshay
Walker v. Crawshay
Capel v. Brown
Tilden v. Bond
Danks v. Jones
Taylor v. Taylor
Fielding v. Earl Northbrook
Langham v. Hedges & Abell
In re Clench
Draper v. Clench

Douglas v. Gerald & Co. (Lim.)
Halbert, Wagg & Co. v. Ransford & Co.
Church v. Gilford (Bonsall third party)
In re Lee
Lee v. Dickinson
Val de Travers, &c. Co. (Lim.) v. Neuchatel Asphalte Co. (Lim.)
Dance v. Hope
Yates v. Agnew
In re MacMahon
Phillips v. MacMahon
Garnett v. Wigley
Allen v. Union Discount Co. of London (Lim.)
British Water Gas Syndicate (Lim.) v. Nottingham and Derby Water Gas Co. (Lim.)
In re Milnes
Milnes v. Milnes
Coxon v. Schofield
Laybourn v. Gridley
M'Bryne v. Kay
Mara v. Brown
Runnalls v. Rodd
Attorney-General ex-relat. Barnett Local Board v. Vestry of St. James and St. John, Clerkenwell
In re Boyce
Boyce v. England
Baird v. East Riding Club and Race Course Co. (Lim.)
In re Raisbeck
Keenlyside v. Leefe
Law Property Assurance, &c. Association v. Wilson
Pegler v. Drake-West
Morris v. Speyer
In re Coningham
Coningham v. Coningham
Speyer v. Morris
Choudens Fils v. Lage
Vennell v. Meakin
Universal Stock Exchange (Lim.) v. Stevens
Rothwell v. Abrahams
In re Beckett
Lyons v. Hart
Brewers Investment Corporation (Lim.) v. Rowlands
Willoughby v. Kirby
Murton v. City Bank (Lim.)
Williams v. Williams
Day v. Gregory
In re Seager
West v. Seager
London Association of Shipowners (Lim.) v. London and India Docks
Procter v. Cheshire County Council
Barker v. Webber
Neale v. Hickling
Winch v. Jones
Evans v. Thompson
Mackay v. Siddeley & Co. (Lim.)
Sheldon v. Mellen
Lord Wynford v. Way
Turnock v. Evans
Chubb v. Cincinnati Breweries (Lim.)
Tindall v. Castle
Iddesleigh Mansions (Lim.) v. Hotel Windsor (Lim.) and others
Finch v. Quebrada Railway, Lead, &c. Co. (Lim.)
Ballantine v. Holmes
In re Hardcastle
Blackwell v. Hardcastle
Pratt v. Pratt
Greatorex v. Greatorex & Co. (Lim.)
In re Champion
Dudley v. Champion
Baker v. Hewitt
In re Felton
Felton v. Anslow
In re Ford
Baker v. Mayo
Wallis v. Bell

*Causes for Trial (without Witnesses).*

In re Cann
Symington v. Cann
In re Sykes
Deane v. Duffield
Dalton v. Clifton
In re Freme
Freme v. Logan
In re Lysaght
Marwood v. Baumgarten

*Adjourned Summonses.*

In re Evans
Jenkins v. Thomas
In re Rawlins
Rawlins v. Todd
In re Oxley
Oxley v. Ponsonby
In re Loughnan
Howell v. Harting
In re Terrey
Pitter v. Terrey
In re Johnstone
M'Callum v. Williams
In re Harding
Harding v. Wileman
In re Amos
Carrier v. Price
In re White
Armstrong v. White

*Further Considerations.*

In re Kurtz
Kurtz v. Kurtz
In re Singer
Singer v. Hawley
In re Jones
Jones v. Evans
In re Kerssenbrock
Biddulph v. Biddulph
In re Yager
Yager v. Honung

## Before Mr. Justice Stirling.

*Causes for Trial (with Witnesses).*

General Auction Estate, &c. Co. v. Smith
In re J. Davis
Joseph v. Davis
American Exchange in Europe v. Gillig
Leslie v. American Exchange in Europe
Hedger v. Hedger
In re Jennings
Jennings v. Jennings
Dodd v. Scholding
Burton v. Dodd
Keighley, Maxsted & Co. v. Bakewell
In re Fox
Fox v. Fox
Hill v. Bishton
In re Hodgson
Thompson v. Wilson
Wilson v. Thompson
In re Nesbitt
Nesbitt v. Freeman
Baring v. Abingdon
Abbott v. Howard
Coombs v. J. Jones & Son
In re MacIvor's Patent & Co.'s Acts
In re Wells
Molony v. Brooke
Sykes v. Crust
In re Walsh
Underwood v. Haiden
Cunningham v. Todd
Crowder v. Cooper
Same v. Same
Jackson v. Snell
Lampard v. St. George's House (Lim.)
In re Edgar
Edgar v. Edgar
In re Bowman
Bowman v. Bowman
Alexander v. Miller
Field v. Nichols
Pearson v. Petrovitch
In re Bridger
Jones v. Armfield
Reade v. Hall
Wood v. Hamblet
Bailey v. Barnes
Earl de la Warr v. King
Schreiner v. Bormard
Holdsworth v. Hull, &c. Railway Co.
Same v. Same
Freeman v. Penn
Boaler v. Brodhurst
President, &c. of St. George's Hospital v. Rumney
Svertchkoff v. Huth
Lord de Ramsey v. Powell
Brown v. Vince
Brown v. Brown
West of England Paper Mills Co. (Lim.) v. Gilbert
Ranson, Bouverie & Co. v. Whitley
In re Cash
Cash v. Hancock
In re Laurence
Kiddle v. Laurence
Fearnley v. Clydesdale Bank (Lim.)
Harris v. Harris
Trimble v. Wake
Bevan v. Webb
Folkard v. Carter
In re J. S. Smith
Smith v. Smith
Cannon v. Vickers
Bird v. Goodwin
White v. Swaine
In re Gas Lighting Improvement Co. (Lim.)
In re Linton
Linton v. Reed
Lilley v. Eliam
Meux v. Thomas
Rough v. MacIvor's Patents (Lim.)
Nelson v. Worssam
Goodrham v. Goodrham
Beddoe v. Jones
Isaacs v. Isaacs
Woodman v. Knowles
Robinson v. Partridge
Allday v. Glossop
Glossop v. Allday
Dew v. Barley
Hill v. Hickin
In re Gotobed
Gotobed v. Deuch
Lewis v. Marquis of Ailsbury
Mortgage Insurance Corporation (Lim.) v. Murly
Steele v. Savory
In re Gurney
Mason v. Mercer
Campion v. Campion
In re Hansford
Hansford v. Coombs
Weatherall v. Burgess
Everitt v. Automatic Photograph Co. (Lim.)
Cloudsdale v. Townson
Godrich v. Tod Heatly
Moore v. Moore
Beckett & Co. v. Wake
Trimble v. Beckett & Co.
Leader v. Tod Heatly
J. Richardson (Lim.) v. Proctor
In re Hampton
Hampton v. Stevens
Ryan v. Mutual Tontine Westminster Chamber Association
Pullman v. Barker
Wilkinson v. Swedish, &c. Railway Co.
Parton v. Ferme
Newen v. Mackey
Matthews v. Rogers
Johnson & Co. v. Edge
International Cable Co. (Lim.) v. Suren, Hartman & Co.
Richardson v. Westacott
Neville v. Lloyd
Hawksley v. Outram
Same v. Same
Outram v. Hawksley
Bodger v. Rafferty
Rehden v. Atkins
Everett v. Remington
In re Jones
Williams v. Jones
Oomto v. Perkins
In re the Canadian Direct Meat Co. & Co.'s Acts
Gross v. Brown
Miles v. Berridge
Cameron v. Anstruther
Marsh v. White
White v. Marsh
In re Garcias Trade-Marks, Nos. 96,822 and 96,823 and Trade-Marks &c. Act
In re Huxham
Huxham v. Huxham
Allen v. Banks
Rickard v. Hopkins
Judge v. Cole
In re Tilney
Richardson v. Rhodes
Dear v. Dear
North v. Medley
C. Dickens & Evans v. Battle
White v. Baillie

*Causes for Trial without Witnesses and Adjourned Summonses.*

In re W. Rogers, &c.
Lloyd's Bank (Lim.) v. Noale
In re Applebee
Leveson v. Beales
Burton v. Dodd
Burton v. Dod
Throusen v. Jacobs
In re Blake
Jones v. Blake
Arnold v. Tomkinson
In re Ardleigh Bread Co. (Lim.) & Co.'s Acts
Dobree v. Anglo-Austrian Printing & Publishing Union (Lim.)
In re Ehret
Pritchard v. Dasent
In re Simpson
Pickard v. Kitto
In re Atwell
Atwell v. Nash
In re Same
Same v. Same
In re Duckworth
Duckworth v. Duckworth
In re Cornwall and Chemical Co. (Lim.) & Co.'s Acts
King v. Green
In re Carfrae
Laurie v. Carfrae
In re Bickerstaff
Clement v. Pidcock
In re Same
Same v. Same
Pantaxides v. Pantaxides
Colman v. Roberts
In re the Pelsall Hall Colliery Co. Inundation Relief Fund
Brownhill v. Attorney-General
Edmonds v. Smith
Gould v. Cooke
Bays v. Felton
In re Brandon
Brandon v. Brandon
In re Cuming
Cuming v. Cuming
In re Goldsmith
Goldsmith v. Thompson

*Further Considerations.*

In re Foster
Foster v. Butt
In re Fesenmeyer
White v. Merrill
In re Blantern
Lowe v. Cooke
Lafone v. Huth & Co.
In re Parkes
Simpson v. Parkes
Saunders v. Evans
In re Elliot
Parrett v. Chinery
In re J. Nicholson
Mott v. Mott

## BEFORE MR. JUSTICE KEKEWICH.

*Causes for Trial (with Witnesses).*

Sanderson v. Allen
Jones v. Steamship Cairngoun (Lim.)
Meux, Bart v. Cobley
Richards v. Whitham
Marsden v. Thorne
In re Dunk
Dunk v. Dunk
Wright v. Cauler
Smith v. Tasker
In re Metropolitan Coal Consumers' Association (Lim.) and Co.'s Acts
Metropolitan Coal Consumers' Association (Lim.) v. Shadbolt
Thomas v. Gillard
Secretary of State for India v. British Empire Mutual Life Assurance Co.
In re Hewit
Lawson v. Duncan
Dyke v. Rutherford
In re Perry
Walker v. Walker
Edison and Swan United Electric Co. (Lim.) v. Woodhouse & Rawson United (Lim.)
Stengel v. International Commercial Co. (Lim.)
Shepherd v. Mason
Smyrke v. De Peyer
Provan v. Paterson
Castle v. Stone
Cocksedge v. Metropolitan Coal Consumers' Association
Upton v. National Mercantile Bank
Matthews v. Wells
Perry v. White
Tavner v. Martin
Clinch v. Clinch
Same v. Same
Cipri, trading, &c. v. Metal Recovery Co. (Lim.)
Mackenzie v. Sanders
Van Heck v. Isaacs
Hickman v. Harris
M'Dowell v. Sanders
Dale v. Fortescue
Cowney v. Thomson
Watling v. Watling
Banks v. Scovell
Jope v. Pountain
Cameron v. Dandicolle & Gandin (Lim.)
Savory & Moore v. London Electric Supply Corporation (Lim.)
Jahncke v. R. Bell & Co. (Lim.)
Mapleson v. Lago
Wilkins v. Clydesdale Bank (Lim.)
Same v. Same
Williams v. Jones
Petre v. Ferrers
Nettlefolds (Lim.) v. Reynolds
Same v. Same
Hazlehurst v. Rylands
Burdett & Harris v. Gorton
Robertson v. Robertson
Hall v. Hall
Falk v. Falk
Driggs Ordnance Co v. Driggs, Schroeder, &c. Co.
Cameron v. Stretton, Hilliard, Dale & Newman
Whitaker v. Whitaker
Allison v. City and South London Railway Co.
New Skegby Colliery Co. (Lim.) v. Dodsley
Cowood v. Vernon
Lowson v. Wheatley & Sons
Howell v. Broomhead
Lane-Fox v. Kensington and Knightsbridge Electric Lighting Co.
Davey v. Hugill
Kelsey v. Hodgkinson
Hill v. Hill's Waterfall Estate, &c. Co. (Lim.)
Williams v. Spargo
Elkington & Co. (Lim.) v. Hürter
Rogers v. Paragon Works (Lim.)
Kearney v. Blake
Ashworth v. Roberts
Farnan v. Kirby
Lord Hatherton v. South Staffordshire Water Works Co.
Wellby v. Still
Wilkins v. Union Bank of London (Lim.)
Same v. Same
Siemens v. Taylor
Lyric Theatre (Lim.) v. Cordingly
Bott v. Wilson
In re Wigan
Wigan v. Carpenter
J. Richardson (Lim.) v. Weddell
Cellular Clothing Co. (Lim.) v. Marsh
Hampton Wick Local Board v. Southwark and Vauxhall Water Co.
Starr v. 282nd Starr Bowkett Building Society
Davis v. Mills
Page v, Tunks
Lees v. West London Cycle Co.
James v. Jones
Williams v. Jenkins
Tyler v. Bishop
In re Steiner
Jancourt v. Kerr
Hartmann v. Kerr (No. 2)
Same v. Same
Fenner v. Holloway
Whittington v. Cusack
In re Grover
Acworth v. Grover
Thomas v. Morgan
In re Wright
Wright v. Sanderson
Trafalgar Co. (Lim.) v. Francis
Sandeman v. Pim & Co.
Hildesheimer & Faulkner v. Dunn & Co.
Eckstein v. St. Pancras Iron Works Co.
Pares Leicester Banking Co. v. Clerican, &c. Assurance Society
Micklethwaite v. Vincent

*Points of Law.*

Pitman v. Loocock
Blaiberg v. Medhurst
Willan v. Winn

*Causes for Trial (without Witnesses).*

In re Wynn
Wynn v. Wynn
In re Hunter
Hunter v. Hunter
Kingston v. Kingston
Scadding v. Burial Board for St. Pancras
Davenport v. Davenport
Holloway v. Best
In re Shorrocks
Shorrocks v. Shorrocks
Cobbett v. Saffery
Carter v. Roberts
Bentley v. Lovell

*Adjourned Summonses.*

In re Henlock
Henlock v. Henlock
In re Britannia Permanent Benefit Building Society & Co.'s Acts
In re Henry Mossley, one, &c.
In re Kay
Mackenzie v. Curtis
In re Same
Same v. Same
Hope v. Russell
Russell v. Hope
In re Akerman
Akerman v. Akerman
Hair v. Geddes
Pearks v. Holliday
In re Cakebread
Cakebread v. Cakebread
In re Same
Same v. Same
In re Same
Same v. Same
In re Kerr
Reynolds v. Bowly
Cameron v. Dandicolle & Studd
Wellby v. Still
Same v. Same
In re Layton
Jones v. Jones
Leppington v. Freeman
In re Mackay
Holman v. Huxham
In re Poinous
Sutton v. Martin
In re Lee
Farr v. Jackson
In re Taylor
Dent v. Taylor
In re Lomas
Shirley v. Lomas
Nettlefolds v. Reynolds (1890 N. 15)
Same v. Same (1890 N. 809)
In re North Australian Territory Co. (Lim.) & Co.'s Acts
Willan v. Winn
In re Martin
Abethell v. Chalk
In re Kenrick
Kenrick v. Kenrick
In re Gooch
Gooch v. Gooch
In re Reynolds
Williams v. Mitchell
In re Booker
Booker v. Herapath
M'Murdo v. Baird

*Further Considerations.*

Scott v. Scott
Lousada v. Popham
In re Goodwin
In re Sheppard
Castleman v. West
In re Jaques
In re Binns
Thompson v. Jaques
In re Lepine
Dowsett v. Culver

## BEFORE MR. JUSTICE WILLIAMS.

*(Sitting as an additional Judge of the Chancery Division.)*

*Causes for trial (with Witnesses).*

*Remaining Actions transferred by Order dated April 28, 1891.*

Foster v. Rowe
Sugden v. Cridlan
Dunston v. Arthur & Co.

*Second transfer from* MR. JUSTICE ROMER, *dated May 12, 1891.*

Duke of Sutherland v. Heathcote
Heathcote v. Blair
Jones v. Merionethshire &c. Building Society
Froude v. Wilberforce
Adney v. Adney
Vernall v. Reed
Cunliffe v. Bellite Explosives (Lim.)
Hampton v. Davis
In re Bliss, dec.
Bliss v. Bliss
Wrensted v. Kede
Wagner v. Costerlitz
Automatic Weighing Machine Co. (Lim.) v. National Exhibitors' Association (Lim.)
Jones v. Wemyss
Bellite Explosive (Lim.) v. Bellite Co. (Lim.)
Jensen v. Hilder
Lloyd v. Fox
Booty v. Goodwin
Lincoln Brick Co. (Lim.) v. Handley
Godfrey v. Walker.
Alliance Pure White Lead Syndicate (Lim.) v. M'Ivor's Patents (Lim.)
Viney v. Lewis
Denney a. Frisby
In re Parker
Lowe v. Parker
Parker v. Lowe
Dawson v. Church
Church v. Dawson
Simeon v. Freshwater, Yarmouth, and Newport Railway Co.
Nicol v. Charsley
Horwood v. Milkins
Belsey v. Brooks
Twyerould v. Chamber Colliery Co. (Lim.)
Norton v. Burr
Render v. Macpherson
In re Kinahan and Trade-mark 14,636 and Patents, &c. Act
Coulson v. Lock
Beaumont v. Provident Assurance Co. (Lim.)
Bendall v. Alexander Daniel Selfe & Co.
Wood v. Lamplough
Ward v. Langdon
I'Anson v. Turner
Brear v. Hirst
Clewerth v. National Provident Institution and others
In re Stevens
Stevens v. Stebbington
Byers v. Grey
Lawrence v. Edge

Hamerton *v.* Bex
Copping *v.* Gilmore
Bolton *v.* Natal Land and Colonisation Co. (Lim.)
Kennedy *v.* Smith
Fairfax *v.* J. Lyons & Co. (Lim.)
Savage *v.* Jessup
Thornton *v.* Union Discount Co. of London
Ogilvie *v.* Blything Union Sanitary Authority
Eastwood & Co. (Lim.) *v.* Craig

### Before Mr. Justice Romer.

*Causes for trial (with Witnesses).*

Bentley *v.* Manchester, Sheffield, &c. Railway Co.
Cummins *v.* Sargent
Stavert *v.* Passburg Grains Syndicate
Faulkner *v.* Stevens
Smith *v.* Bowler
Armstrong, Mitchell & Co. (Lim.) *v.* Pitkin
Singleton *v.* Mitchell
In re Price
In re Edwards
In re Price
Price *v.* Pontypool Gas and Water Co. (Lim.)
Hartley *v.* Dearden
Wilkinson *v.* Jennings

*Transferred for trial or hearing only, pursuant to Order dated April 20, 1891.*

In re Park
Cole *v.* Park
Park *v.* Cole
Coombs *v.* Wilks
Lloyd's Bank (Lim.) *v.* Keen
In re Casey's Patents, Nos. 10,512 and 10,513 of 1887, ex parte Isabella Stewart
Stewart *v.* Casey
Western Counties Railway Co. *v.* Anderson & Co.
Farbenfabriken vorm. Fried. Bayer & Co. *v.* Bowker
Lewis *v.* Oldroyd
Brandon *v.* Viscount Bury
In re Heywood
Heywood *v.* Heywood
Oldham *v.* Metherell
Wilson *v.* Queen's Club (Lim.)
Morris, Wilson & Co. *v.* Coventry Machinists' Co. (Lim.)
In re Morris, Wilson & Co.
Tims *v.* Schell
Schell *v.* Cutler
Alcock *v.* Smith
Theaiger *v.* York
In re Carruthers
Talbot *v.* Carruthers
Lloyd *v.* Clingo
Wroth *v.* Coathupe
Bank of British North America *v.* Anderson & Co.
Young *v.* Harris
Leach *v.* Gough
Gough *v.* Hayward
Westinghouse Brake Co. (Lim.) *v.* Williamson
Munns *v.* Howard
T. & W. Smith *v.* Bullivant
Benson *v.* D'Arcy
Radway *v.* Titmas
Brett *v.* Bowles
Savoy Publishing Co. (Lim.), *v.* O'Reilly
Duncan *v.* Baird
George *v.* Greener
Beecham *v.* Thompson
Lewis *v.* Ellis
Bliss *v.* Hart & Levy
Faull *v.* Harding
In re Cooper
Cooper *v.* Cooper
Aston *v.* Lazebrook
In re Freeland
Freeland *v.* Freeland
Jackson, Clayton & Co. *v.* Baker
Thomas *v.* Gillard
Webb *v.* Harden
Wood *v.* Dunn
Howard *v.* Goode
Robinson *v.* Trust and Investment Corporation of South Africa
Wintle *v.* Oldridge
Parker *v.* Pybus

### SUMMARY.

| | | |
|---|---|---|
| 1.—Mr. Justice Chitty—Witness Actions | 106 | |
| Non-Witness Actions, including Summonses | 58 | |
| Further Considerations and Point of Law | 7 | |
| Procedure Summonses | 3 | |
| | | 174 |
| 2.—Mr. Justice North—Witness Actions | 84 | |
| Non-Witness Actions | 5 | |
| Adjourned Summonses | 9 | |
| Further Considerations | 5 | |
| | | 103 |
| 3.—Mr. Justice Stirling—Witness Actions | 117 | |
| Non-Witness Actions, including Summonses | 29 | |
| Further Considerations | 8 | |
| | | 154 |
| 4.—Mr. Justice Kekewich—Witness Actions | 103 | |
| Points of Law | 3 | |
| Non-Witness Actions | 13 | |
| Adjourned Summonses. | 33 | |
| Further Considerations | 5 | |
| | | 157 |
| 5.—Mr. Justice Williams (sitting as an Additional Judge)— | | |
| Remainder of First Transfer | 3 | |
| Second Transfer | 52 | |
| | | 55 |
| 6.—Mr. Justice Romer—Witness Actions | | 56 |
| Total Causes and Matters for Hearing in the Chancery Division | | 699 |

## PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

### PROBATE CAUSES.

*Trinity Sittings*, 1891.

*A List of Actions in the order in which they are entered for Trial will be posted at the Registry, Somerset House, and Supplemental Lists will be printed from time to time.*

*Parties must be prepared to try their Actions ten days after the same have been entered for Trial.*

BEFORE THE COURT ITSELF—WITHOUT JURY.

Ashwin and Addis *v.* Addis (Addis and others cited)
Burchell *v.* Webber (Cowie and others cited)
Petitt and Woods *v.* Case
Wilde and others *v.* Lloyd (Joyce and others cited)
Askew and Johnston *v.* Askew
Gee *v.* Gee and others
Redhouse *v.* Blakeslee
Lees *v.* Lees and others
Phillips *v.* Barton and others
Groffman and Groffman *v.* Groffman (by Groffman, her grdian.)
Martyr (by Blackabey, his attorney) *v.* Perry
Paton *v.* Ormerod (Paton and Paton, by Corbould, their guardian, intervening)
Jones and Jones *v.* Edwardes
Radcliffe and Field *v.* Mellor (Mellor and others cited)
Barber *v.* Larrett and others
Featherstone *v.* Catterns
Witten *v.* Humphries (otherwise Witton)
Clark *v.* Dixon and others
Harris *v.* Hawker and others
Solicitor of the Treasury *v.* Harker
Ennis *v.* Leahy and others
Monk *v.* Higson and others
Meads and Bland *v.* Smith
Banks and Ivens (Johnson and others cited) *v.* Burcher
Jones and Eastham *v.* Eastham
Peacod (otherwise Pescod) *v.* Peacod
Cavendish *v.* Cavendish (by Cavendish, his guardian)
Perry and others *v.* Norman and Blundy (Perry and others cited)
Hand *v.* Scott and others
Young *v.* Whitfield and others
Boyd *v.* Johnstone
Draper and others *v.* Lawrence and others (Lawrence and others cited)
Cousins and Burbidge *v.* Tubb
Gurowski *v.* Maciejowski
Cowburn and Wood *v.* Lee (Lee cited)
Patrick *v.* Greenwell and Greenwell
Woodrooffe *v.* Elton (Fellowes and others cited)
Lambe *v.* Heathman
Johnstone and Beaumont *v.* Beaumont (Beaumont and others cited)
Jaques *v.* Jaques
Storey and others *v.* Bradshaw and others)
Eaton and Rivington *v.* Beardmore
Woodbridge *v.* Kidney

COMMON JURY CAUSES.

Mussen *v.* Mussen and Wilson
West and Chapman *v.* Conway
Swales (by her next friend) *v.* Richards
Roome *v.* Roome and Jones
Bates and others *v.* Clark and Ward (White and others cited)
Wills (Clapp and Norris cited) *v.* Clapp and Clapp

SPECIAL JURY CAUSES.

Lewsey and Allsopp *v.* Wells
Garrett and Mackay *v.* Walker (Bullock cited)
Walker *v.* Garrett and others
Mahony *v.* McCarthy
Barker *v.* Pullen and Harrison
Gumuchian *v.* Ashdjian & Vitalis (Olivo and others cited)
White *v.* Woolhead and others (Quarrington & Winslow cited)
Townsend and Sandford *v.* Townsend and others

FOR JUDGMENT.

Reeves *v.* Pennington

SUMMARY.

| | |
|---|---|
| Before the Court itself—without Jury | 43 |
| Common Jury Causes | 6 |
| Special Jury Causes | 7 |
| For Judgment | 1 |
| Total | 57 |

### DIVORCE CAUSES.

*Trinity Sittings*, 1891.

PART-HEARD CAUSES.

*Notice to be given at Court when Parties are ready to proceed with the further hearing of these Causes.*

Kalbitzer *v.* Kalbitzer (undefended)
Briscoe *v.* Briscoe and Dockerty (undefended)
Thorn *v.* Thorn and Matthews (undefended)
Sanders *v.* Sanders (J.S.) (undefended)
Matters (by her guardian, Thos. James Harvey) *v.* Matters
Martin *v.* Martin and Clark (pauper cause) (undefended)
Medina, otherwise Prentice *v.* Medina (undefended)
Scott-Lawrence *v.* Scott-Lawrence (undefended)

BEFORE THE COURT ITSELF—DEFENDED.

Storr v. Storr
Bramhall v. Bramhall and Dinely
Dobie v. Dobie
Treleaven v. Treleaven and Watling (Queen's Proctor showing cause)
De Vear v. De Vear (R.C.R.)
Vivian v. Vivian
Guttmann v. Guttmann
Johnson v. Johnson (J.S.)
Aarons v. Aarons and Wadmore
Jackson v. Jackson and Smith
Donkin v. Donkin, Atkinson, Salmon, and Lusby
Jackson v. Jackson (R.C.R.)
Taylor v. Taylor
Murdoch v. Murdoch (J.S.)
Ellis v. Ellis (Queen's Proctor showing cause)
Forde v. Forde (J.S.)
Yorke v. Yorke, Isod, and Matthews
Windsor v. Windsor and Olsen (otherwise Alston)
Sharpe v. Sharpe
Vale v. Vale (J.S.)
Jay v. Jay
Aires v. Aires (J.S.)
Brook v. Brook (otherwise Sheridan) (*in camerâ*) (N.)
Lawrence v. Lawrence (otherwise Ambery) (*in camerâ*) (N.)
Danby v. Danby
Hayward v. Hayward (Queen's Proctor showing cause)
Atterton v. Atterton and Irving (pauper cause)
Orr-Ewing v. Orr-Ewing (J.S.)
Hall v. Hall and Bagley
Speakman v. Speakman and Willet (Queen's Proctor showing cause)
Rais v. Rais and Back
Myzoule v. Myzoule
White and Dames v. The Attorney-General (Eddingtons and Fox cited) (L.D.A.)
Milner v. Milner (pauper cause)
Stay v. Stay
Johnson v. Johnson and Smith
Bruce v. Bruce and Younger
Redman v. Redman (J.S.)
Newell-Atkins v. Newell-Atkins
Bowers v. Bowers
Levi v. Levi (J.S.)
Sands v. Sands, Barton (cited as Barlow), Morissey, and Oliver
Chubb v. Chubb and Cugny
Clack v. Clack
Bill v. Bill
Ashton v. Ashton (J.S.)
Jones v. Jones and Cubberley (cited as Cuberley)
Levin v. Levin
Fairhurst v. Fairhurst and Johnston
Yarrow v. Yarrow
Tuplin v. Tuplin
Hopper v. Hopper
Gotliff v. Gotliff and Harrison
Uva v. Uva and Mooney
Welch v. Welch and Burch
Mason v. Mason (R.C.R.)
Wetherill v. Wetherill (J.S.)
Attwood v. Attwood and Roberts (Queen's Proctor showing cause)
Becker v. Becker
Scott, otherwise Kaye v. Scott (*in camerâ*) (N)
Berrey v. Berrey and Stanley
Huddart v. Huddart
Hooper, otherwise Fell v. Hooper (*in camerâ*) (N.)
Raynsford v. Raynsford (J.S.)
Clarke v. Clarke (R.C.R.)
Petch v. Petch and Bucklaw
Smith v. Smith, Clare, and Salaraki (pauper cause)
Richardson v. Richardson (Sir M. D. Gordon cited)
Mabley v. Mabley and Mitchell
Mowil v. Mowil
White v. White
Schofield v. Schofield

BEFORE THE COURT ITSELF—UNDEFENDED.

Forssell v. Forssell
M'Kenzie v. M'Kenzie (J.S.)
Henshall v. Henshall
Southam v. Southam
Swift v. Swift
Ensor v. Ensor
Palmer v. Palmer (J.S.)
Plum v. Plum
Francis v. Francis
Richmond v. Richmond
Dawson v. Dawson and Aylestubbs
Douglas v. Douglas
Bingley v. Bingley and Taylor (pauper cause)
Claybrook v. Claybrook & Russell
Crowley v. Crowley (pauper cause)
Noller v. Noller and Hawes
Davis v. Davis and Davis
Agar v. Agar
Worsnop v. Worsnop and Roulstone
Warden v. Warden
Dennell v. Dennell and Howe
Chappell v. Chappell and Darley
Chainey v. Chainey
Campbell v. Campbell
Hollmuller v. Hollmuller
Lewis v. Lewis and Casseford
Newton v. Newton
Kirk v. Kirk and Stead
Sandley v. Sandley and Lewis (pauper cause)
Hughes v. Hughes
Welman v. Welman
Lawson v. Lawson
Patrick v. Patrick and Potter
Thomson, otherwise Harris v. Thomson (*in camerâ*) (N.)
Overy v. Overy and Bremner (pauper cause)
Wheeler v. Wheeler
Parry v. Parry, Evans, and Francis
Crane, otherwise Cooper v. Crane (N.)
Welsh v. Welsh and Woodley
Wardle v. Wardle
Watts v. Watts
Spilsbury v. Spilsbury
Breaks v. Breaks (J.S.)
Sebire v. Sebire (J.S.)
Steel v. Steel and Binns
Knight v. Knight and Furner
Moss v. Moss (pauper cause)
Foster v. Foster
Morgan v. Morgan
Rhodin v. Rhodin
Brown v. Brown
Fulford v. Fulford and Hind
Ball v. Ball and Forster
Mountain v. Mountain
Shepherd v. Shepherd and Jarvis
Sicklemore v. Sicklemore (commission)
Prichard v. Prichard and Harvey
Bold v. Bold
Johnson v. Johnson
Small v. Small (pauper cause)
Fenwick v. Fenwick and Badrau
Towell v. Towell
Gooch v. Gooch and Ladbury
Taylor v. Taylor (Houlton (since deceased), Yarnell, & Parnham)
Robson v. Robson
MacOlive v. MacOlive and Glendennen
Birse v. Birse
Clark v. Clark and Kilburn (pauper cause)
Oates v. Oates
Hopthrow v. Hopthrow and Percy
Bonsall v. Bonsall and Johnson
Willison v. Willison
Lyles v. Lyles and Richardson
Woodnut v. Woodnut (pauper cause)
Denman v. Denman and Coborn

SPECIAL JURY CAUSES.

Judkins v. Judkins
McDowall v. McDowall and Jacob
Hall v. Hall and Barnard
Frerichs v. Frerichs and Lynch
Hurley v. Hurley and Menzies
Carew v. Carew
Lyon v. Lyon and Warner
Bentley v. Bentley and Dorman
Delaforce v. Delaforce & Driscoll
Russell v. Russell (J.S.)
Redfern v. Redfern, Williams, Murrell, Rae, and Herbert
Duplany v. Duplany and Cohen (intervening)
Stuart v. Stuart and Kirwan
Cantley v. Cantley
Cantley v. Cantley and Playfair

COMMON JURY CAUSES.

Elliott v. Elliott and Dines
Smith v. Smith and White
Hubbart v. Hubbart and Bond
Hipwell v. Hipwell
Willcock v. Willcock (J.S.)
Willcock v. Willcock and Jenkins
Hinds v. Hinds and Williams
Leuty v. Leuty and Bu dell (pauper cause)
Marsh v. Marsh and Marsh
Martin v. Martin and Allkins
Webb v. Webb (R.C.R.)
Plackett v. Plackett and Fletcher
Atkinson v. Atkinson & Gwyther
Creber v. Creber and Bryan
Condley v. Condley and Ball
Mills v. Mills and Lemon
Harlow v. Harlow (J.S.)
Harlow v. Harlow, Brown, and Smith
Harrison v. Harrison (J.S.)
Wattler v. Wattler and Kimber
Smith v. Smith and Kayhil
Smith v. Smith
Taylor v. Taylor
Trafford v. Trafford and Williams
Erskine v. Erskine and Gentle
Cooke v. Cooke
Steinberg v. Steinberg
Brew v. Brew and Belvere
Mackenzie v. Mackenzie, Ridley, German, and Hartsilver (cited as Hardsilber)
Dearden v. Dearden and Nuttall
Shewring v. Shewring & Houkes

SUMMARY.

| | |
|---|---|
| Causes before the Court itself—Defended | 72 |
| " " Undefended | 75 |
| Special Jury Causes | 14 |
| Common Jury Causes | 28 |
| Total | 189 |

CAUSES standing over by consent or otherwise, or stayed by order; to be replaced in the List of Causes for Hearing on the Petitioner giving Ten Days' Notice in writing to the other parties for whom an appearance has been entered, and filing a Copy of such Notice in the Registry.

Coustas v. Coustas (J.S.)
Wood v. Wood and Brook (defended) (stay security)
Williams v. Williams and Young (defended) (stayed)
Bates v. Bates and Baker (C.J.) (stay security)
Browse v. Browse (defended) (stay security)
Dodson v. Dodson (undefended) (stayed)
Wilson v. Wilson, Rand, and Wardell (stay security) (C.J.)
Bagge v. Bagge (defended order)
Pereira v. Pereira (undefd. order)
Fearn, A. E. v. Fearn, G. (order) (R.C.R.)
Nicol, M. A. v. Nicol, A. (defended order) (J.S.)
Bevington v. Bevington and Jameson (undefended) (commission)
Clark v. Clark (dfnd. order) (J.S.)
Tribe v. Tribe (C.J.) (order) (J.S.)
Titford v. Titford (defended) (stay security)
Payne v. Payne, Carter, and Fry (cited) (defended order)
Relph v. Relph (defended) (stay security)
Wood, H. v. Wood, John (defndd.) (stay security) (J.S.)
Holmes v. Holmes and Pearson (defended) (stay security)
McConachie v. McConachie and Beal (defended) (stay security)
Darvall v. Darvall, Scutter, and Curtis (defndd.) (stay security)
Arnott v. Arnott and Fox (defended) (stay security)
Bennett, D. v. Bennett, M. (defended) (stay security) (R.C.R.)
Richley v. Richley and Tate (defended) (stay security)
Piggott v. Piggott, Ball, and Kimber (defnd.) (stay security)
Amos v. Amos and Harding (defended) (stay security)
Nathan v. Nathan (defended) (stay security) (J.S.)
Prime v. Prime and Hewett (stay security) (C.J.)
Francis v. Francis and Alderman (defended) (stay security)
Williams v. Williams and Hinton (stay security) (C.J.)
Corti v. Corti and Bruce (defended) (stay security)
Cardle v. Cardle and Jaggs (stay security) (C.J.)
Hodson v. Hodson and Seager (defended) (stay security)
Burnside v. Burnside and Hardy (defended) (stay security)
Park v. Park and Ashworth (stay security) (C.J.)
Shemtob v. Shemtob and Vitali (stay security) (C.J.)
Campbell v. Campbell (defended) (commission) (J.S.)
Kavanagh v. Kavanagh and Nesbitt (defended) (stay security)
Duncan v. Duncan (undefended) (stay security)
Bucknall v. Bucknall (defd. order)
Wild v. Wild (defnd. order) (J.S.)
Clarke v. Clarke and Robinson (defended) (stay security)
Edwards v. Edwards and Edwards (stay security) (C.J.)
Hicks v. Hicks and Smith (defended) (stay security)
Scarratt v. Scarratt and Bullock (stayed) (S.J.)
Palmer v. Palmer, Sprules, and Sprules (stay security) (C.J.)
Wilkinson v. Wilkinson and Humphries (stay security) (C.J.)
Hounsell v. Hounsell (undd. order)
Smith v. Smith and Moss
Moser v. Moser (undefended) (stay security) (J.S.)
Gray v. Gray and Gutteridge (stay security (C.J.)
Webster v. Webster (sty. sy.) (J.S.)
Joseph v. Joseph (undefended)

## CALENDAR OF THE COUNTY COURTS.

FROM JUNE 1 TO JUNE 6.

| No. of Circuit | His Honour | June 1 | June 2 | June 3 | June 4 | June 5 | June 6 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Runcorn | Northwich | — | Birkenhead | — |
| 8 | Judge Heywood | — | Manchester | Manchester | Manchester | Manchester | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | — | — | — | Middlesbrough | Stockton-on-Tees | — |
| 19 | Judge Barber | — | Derby | Derby | Chesterfield | Chesterfield | — |
| 26 | Judge Jordan | Stoke | Newcastle | Lichfield | Stafford | Leek | Cheadle |
| 47 | Judge Powell | — | Lambeth | Greenwich | Lambeth | Lambeth | — |

# Court of Appeal Register.

## APPEAL COURT I.

Before the LORD CHANCELLOR, the MASTER OF THE ROLLS, and FRY, L.J.

FRIDAY, MAY 15.

*Howlett (on behalf, &c.)* v. *Mayor, &c., of Maidstone* (appeal of defendants from judgment of Denman, J., dated November 15, at trial without a jury at Maidstone; heard March 20).—Allowed.

Before the LORD CHIEF JUSTICE, the MASTER OF THE ROLLS, and FRY, L.J.

*Tynedale Steamship Co. (Lim.)* v. *Newcastle-on-Tyne Home Trade Insurance Association* (appeal of plaintiffs from judgment of Day, J., dated November 20, at trial without a jury at Middlesex; heard April 17).—Allowed; new trial ordered.

Before the MASTER OF THE ROLLS, BOWEN, L.J., and FRY, L.J.

*In re An Arbitration between J. Knight and Tabernacle Permanent Building Society and Arbitration and Building Societies Acts* (appeal of J. Knight from order of Wills, J., and Williams, J., dated February 10, rescinding order for statement of special case; heard April 7).—Allowed.

Before the MASTER OF THE ROLLS, LOPES, L.J., and KAY, L.J.

TUESDAY, MAY 26.

*Reynolds* v. *Tooth and Ward* (appeal of plaintiff from Denman, J., and Wills, J., on application for new trial, setting aside verdict and directing entry of judgment for defendant; action tried by the Lord Chief Justice at Lewes—restored after security given).—Dismissed.

*Challinors and another* v. *Wright and others* (appeal of plaintiffs from order of Day, J., and Lawrance, J., dated April 17, refusing liberty to enter judgment for amount claimed).—Dismissed.

*Guinea Coast Gold Mining Company (Lim.)* v. *Irvine and others* (appeal of plaintiffs from order of Mathew, J., and Williams, J., dated April 18, increasing amount of security directed by order of February 16).—Dismissed.

WEDNESDAY, MAY 27.

*Guardians of the Poor of Parish of Brighton* v. *Guardians of the Poor of the Strand Union* (Q. B. *Crown Side*) (appeal of the Brighton guardians from order of Smith, J., and Grantham, J., on appeal from quarter sessions on case stated under 12 & 13 Vict. c. 45, s. 11).—Dismissed.

*Phillips and others* v. *J. Fowler & Co. (Leeds) (Lim.)* (appeal of defendants from order of Day, J., and Lawrance, J., dated April 17, reversing judge's order granting liberty to defend).—Part heard.

## APPEAL COURT II.

Before LINDLEY, L.J., BOWEN, L.J., and FRY, L.J.

TUESDAY, MAY 26.

*Badeley* v. *Consolidated Bank* (appeal of W. P. V. Wallis from order of North, J., dated April 16, dismissing summons for review of taxation).—Dismissed.

WEDNESDAY, MAY 27.

*Mangan* v. *Metropolitan Electric Supply Company (Lim.)* (appeal of defendant from order of North, J., dated May 8, for transfer of action to Queen's Bench Division).—Dismissed.

*In re Bence, dec. Smith* v. *Bence (construction)* (appeal of defendant J. F. Bence from order of Kekewich, J., dated March 6).—Part heard.

## NOTICES FOR THE WEEK.

ROTA OF REGISTRARS.

MONDAY, June 1.—Court of Appeal No. 2: Mr. Pemberton. Mr. Justice Chitty: Mr. Jackson. Mr. Justice North: Mr. Leach. Mr. Justice Stirling: Mr. Farmer. Mr. Justice Kekewich: Mr. Carrington. Mr. Justice Romer: Mr. Beal.

Tuesday, June 2.—Court of Appeal No. 2: Mr. Ward. Mr. Justice Chitty: Mr. Clowes. Mr. Justice North: Mr. Godfrey. Mr. Justice Stirling: Mr. Rolt. Mr. Justice Kekewich: Mr. Lavie. Mr. Justice Romer: Mr. Pugh.

Wednesday, June 3.—Court of Appeal No. 2: Mr. Pemberton. Mr. Justice Chitty: Mr. Jackson. Mr. Justice North: Mr. Leach. Mr. Justice Stirling: Mr. Farmer. Mr. Justice Kekewich: Mr. Carrington. Mr. Justice Romer: Mr. Beal.

Thursday, June 4.—Court of Appeal No. 2: Mr. Ward. Mr. Justice Chitty: Mr. Clowes. Mr. Justice North: Mr. Godfrey. Mr. Justice Stirling: Mr. Rolt. Mr. Justice Kekewich: Mr. Lavie. Mr. Justice Romer: Mr. Pugh.

Friday, June 5.—Court of Appeal No. 2: Mr. Pemberton. Mr. Justice Chitty: Mr. Jackson. Mr. Justice North: Mr. Leach. Mr. Justice Stirling: Mr. Farmer. Mr. Justice Kekewich: Mr. Carrington. Mr. Justice Romer: Mr. Beal.

Saturday, June 6.—Court of Appeal No. 2: Mr. Ward. Mr. Justice Chitty: Mr. Clowes. Mr. Justice North: Mr. Godfrey. Mr. Justice Stirling: Mr. Rolt. Mr. Justice Kekewich: Mr. Lavie. Mr. Justice Romer: Mr. Pugh.

## OBITUARY.

LORD ROMILLY, who met with his death in the fire at his house in Egerton Gardens on Saturday, the 23rd inst., was the eldest son of Lord Romilly, Master of the Rolls, and the grandson of Sir Samuel Romilly. The deceased gentleman was born in 1835. On November 5, 1851, he became a student at Gray's Inn, but towards the close of the Crimean War he, forsaking the law for the profession of arms, became an ensign in the 23rd Royal Welsh Fusiliers, and served with that famous regiment during the Indian mutiny, and took part in the terrific fights and severe marches which marked the victorious progress of the British arms. After the suppression of the mutiny Lord Romilly returned to the law, and became a pupil in the chambers of Mr. Thomas Chitty, and was called to the Bar on November 17, 1864, and was, after some years, appointed Clerk of Enrolments in Chancery.

COMMERCIAL FAILURES.—According to *Kemp's Mercantile Gazette* the number of failures in England and Wales gazetted during the week ending May 23 was sixty. The number in the corresponding week of last year was eighty-eight, showing a decrease of twenty-eight, being a net decrease in 1891, to date, of 200.

ADVERTISEMENT HOARDINGS.—The engineer to the City Commission of Sewers (Colonel Haywood) has recently made a report to them relative to the Advertising Stations (Rating) Act, 1889. He states that clause 5 of that Act gives power to the local authorities to prohibit the affixing of advertisements to any hoard or scaffold. In the event of that prohibition not being exercised, the question of fees to be paid would have to be decided. From returns furnished by the various vestries and district boards of the metropolis, it was seen that the rate of charges varied very considerably, the highest being in the parish of St. George's, Hanover Square, and the lowest in St. Luke's. The prices in the former case had been found so high that no applications for permission to put up advertisements were made, and subsequently the vestry withdrew the tariff and prohibited altogether bills being stuck upon the hoardings in the parish. Colonel Haywood therefore proposes that to begin with the charges in the City should be for first-class streets 4*d.* per foot super per month for the first six months, and afterwards 6*d.*; for other streets 2*d.* for the first six months, and afterwards 3*d.* The first-class streets should include every one through which lines of omnibuses pass, as well as, perhaps, a few others of large traffic. A certain height—say 40 feet—should be assumed in calculating the area and the fees to be paid. On this estimate a hoarding in a first-class street having an 18 feet frontage and two 5 feet returns, and assuming it to be covered with advertisements up to 40 feet, would amount to 18*l.* 13*s.* 4*d.* per month, and for six months 112*l.*, and a similar hoarding in other streets would be 9*l.* 6*s.* 8*d.* per month, and 56*l.* for six months. The main object of all regulations for hoards and scaffolds was to get them removed as quickly as possible, on account of the general public inconvenience they caused. The Commission of Sewers have decided to sanction advertisements on hoardings in the City in cases where they thought fit, subject to the scale of fees suggested by Colonel Haywood.

RENTS COLLECTED AND DISTRAINTS LEVIED TO RECOVER SAME, by MESSRS. HENRY C. WOOD (Surveyor to the Parish of Tooting) and HENRY KIRBY (Wood & Kirby), Certificated Brokers, 1 Great James Street, Bedford Row, W.C. No charge made to Landlords if Rent over 20*l.* Troublesome tenants got rid of. Possession also taken under Bills of Sale, Mortgages, &c. Bailiffs to the Parish of St. Dunstan in the West and City of London (Farringdon Ward). Money paid over same day received. Bankers: City Bank, Holborn Viaduct. References, if desired, to clients of many years' standing. Prompt and personal attention given.—ADVT.

## HONOURS AND APPOINTMENTS.

MR. KENELM EDWARD DIGBY has been elected a Bencher of Lincoln's Inn. Mr. Digby was called to the bar in Hilary Term, 1865.

Mr. Clement Stone-Wigg, B.A., Oxon. (of the firm of Pattison, Wigg & Co.), of 11 Queen Victoria Street, E.C., has been appointed a Commissioner for Oaths. Mr. Stone-Wigg was admitted in 1883.

Mr. William Henry Mason, of 3 North Buildings, Eldon Street, Finsbury, E.C., has been appointed a Commissioner for Oaths. Mr. Mason was admitted in 1883.

Mr. Anthony Buck Creeke, jun., of 21 Lime Street, E.C., has been appointed a Commissioner for Oaths. Mr. Creeke was admitted in 1884.

Mr. William Silverwood Cope, of 150 Leadenhall Street, E.C., has been appointed a Commissioner for Oaths. Mr. Cope was admitted in 1887.

Mr. Alexander Pope, of Grecian Chambers, Devereux Court, Temple, W.C., has been appointed a Commissioner for Oaths. Mr. Pope was admitted in 1885.

Mr. Walter Perks (of the firm of Ward, Perks & M'Kay), of 85 Gracechurch Street, has been appointed a Commissioner for Oaths. Mr. Perks was admitted in 1885.

Mr. Percival George Robinson, of 72 Cannon Street, has been appointed a Commissioner for Oaths. Mr. Robinson was admitted in 1884.

Mr. Frederick Willoughby, M.A. Oxon., of Daventry, has been appointed a Commissioner for Oaths. Mr. Willoughby was admitted in 1884.

Mr. William John Down, M.A. Oxon. (of the firm of Down, Scott & Down), of Dorking, has been appointed a Commissioner for Oaths. Mr. Down was admitted in 1884.

Mr. Percy Baldwin (of the firm of Gregory, Graham & Baldwin), of Bristol, has been appointed a Commissioner for Oaths. Mr. Baldwin was admitted in 1884.

SIR CHARLES BUTT.—Sir Charles Butt, the President of the Probate, Divorce, and Admiralty Division, who is still staying at Wiesbaden for the benefit of his health, will resume his seat in Court on Monday, June 15.

THE CAUSE LISTS FOR THE TRINITY SITTINGS.—The following is a complete summary of the various appeals and causes set down for hearing during the Trinity sittings which commenced on Tuesday last—viz. In the Court of Appeal there are twenty-nine final and five interlocutory appeals from the Chancery Division, three from the County Palatine Court, seventy-four final and eighteen interlocutory appeals from the Queen's Bench Division, seven from the Probate, Divorce, and Admiralty Division, six Bankruptcy appeals, and fourteen cases in the New Trial Paper, making a total of 156 appeals. In the Chancery Division Mr. Justice Chitty has a list of 174 causes and matters, Mr. Justice North has 103, Mr. Justice Stirling has 154, Mr. Justice Kekewich 157, Mr. Justice Williams (sitting as an additional judge) fifty-five, and Mr. Justice Romer fifty-six, giving a total of 699 causes in that Division. In the Queen's Bench Division 1,076 actions have been set down; there are twenty-six cases in the Crown Paper, sixteen in the Revenue Paper, one in the Special Paper, twenty-six Opposed Motions, and thirty-three Bankruptcy appeals, which gives a total of 1,179 causes and matters in that Division. In the Probate, Divorce, and Admiralty Division there are fifty-six probate cases, 189 matrimonial causes, fourteen Admiralty actions, and five cases before the Railway Commission, making a total of 264 cases in that Division. The total number of appeals and causes therefore set down for hearing during the Trinity sittings is 2,298.

THE LAW COURTS AND HER MAJESTY'S BIRTHDAY.—The Law Courts will, according to a custom which has been observed for the last few years, be closed on Saturday, May 30, on which day Her Majesty's birthday will be officially celebrated.

AN IMPROVED DEED-BOX.—Mr. A. E. Edwards, of 51 Westdown Road, Stratford, has just introduced a patent safety deed-box, for which he claims the following advantages: (1) The box is so constructed as to prevent the lid (which opens in front) suddenly falling down when unlocked; (2) the lid, both in the course of opening and closing and when open, is supported and protected at both ends by sides or wing pieces, thus preventing the possibility of papers falling over the sides when opened, which frequently happens with the ordinary deed-box, the lid of which is supported by chains liable to break; (3) The prices, having regard to the improvements, will compare favourably with those of the old-fashioned boxes. The boxes may be inspected at Messrs. Waterlow & Sons (Lim.).

EX-PRESIDENT CLEVELAND'S ADVICE TO YOUNG LAWYERS.—If I were to tender any advice to young men in the legal profession or contemplating such a career, I think I could not refrain from asking them to dismiss from their minds the idea that the practice of the law is made up in an important degree of oratory and eloquent addresses before Courts and juries. No one should enter this profession who is not prepared to do very hard, continuous, and often irksome work. I shall follow this advice by saying that there is no mistake about another fact—to wit: In the practice of law, as in everything else, honesty, and frank fair dealing, is not only enjoined by good morals, but is the best policy. It is a delusion to suppose that the noble profession of the law can be faithfully pursued or successfully practised by trickery and overreaching subterfuges.—*N. Y. Law Journal.*

THE MORTMAIN LAWS.—A bill introduced by Mr. Cozens-Hardy, Q.C., M.P., deals with those restrictions on the acquisition of land, or any interest in land, to which charities are at present subject. Under the existing law a gift to a charity of land or of any property falling within the wide expression 'interest in land' is, if made by will, void. The bill proposes to remove the distinction between personal property which is an interest in land and pure personalty; and in lieu of making a gift of land by will in favour of a charity absolutely void, to render it compulsory on the trustees to sell the land so given, the proceeds of the sale remaining the property of the charity. The cases in which land may be validly acquired under the existing law are left untouched. The author of the bill considers that these provisions will remove the restrictions at present placed on charities, while they at the same time in no way facilitate the accumulation of land in the hand of charities. The first proposal is to declare that in the Mortmain Act 'land' shall include tenements and hereditaments, corporeal and incorporeal, of any tenure, but not money secured upon land or other personal estate arising from or connected with land. Secondly, power is to be given that land may be assured by will to or for the benefit of any charitable use; but such land must, notwithstanding anything in the will contained to the contrary, be sold within five years from the testator's death or such extended period as may be determined by the Chancery Division or any judge thereof sitting at chambers. Lastly, it is provided that any personal estate directed by will to be laid out in the purchase of land to or for the benefit of any charitable use shall be held to or for the benefitof the charitable use, as thoug hno such direction to lay out in the purchase of land had been mentioned. The bill is only intended to apply to the will of a testator who dies after its passing.

MR. JUSTICE STEPHEN, whose mental affliction has given rise to much unfavourable comment in the English newspapers, has resigned his position and retired from the bench. The complications which his continued presence there would have created have thus happily been avoided. The learned judge's retirement was made the occasion of an affecting demonstration by both the bench and the bar, and he himself is said to have been reduced to tears. In the palmy days of his career he made a name in the profession which will be enduring, and he will be known to posterity, notwithstanding the circumstances which have led to his retirement, as a lawyer of profound learning and great mental grasp, and as one of the ablest among the many able men who have been his contemporaries.—*Canada Law Journal.*

EVIDENCE IN CRIMINAL CASES.—The Lord Chancellor's bill relative to evidence provides that every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness on every hearing at every stage of the charge. This is to be the case whether that person is charged or arraigned solely or jointly with another. However, the person so charged is not to be compellable to be a witness on any hearing; nor is the wife or husband to be an admissible witness without the consent of the person charged, unless so compellable heretofore. The bill is not to qualify or affect the law as to the competency of witnesses or the rules of evidence, except as is expressly enacted in the measure. When the person charged is a witness, he is not to have the right to refuse to answer any question on the ground that it would tend to criminate him as to the offence charged. On the other hand, when a person is called as a witness under the bill, he is not to be asked any questions that tend to show that any defendant has committed or been convicted of an offence other than that with which he is then charged. An exception to this general rule is, however, allowed where the proof that the defendant has committed such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged, or where that defendant has given evidence of good character.

## BIRTHS.

On May 24, at Mount Pleasant, Glazebrook, the wife of Wyndham Smith, of Manchester, Solicitor, of a daughter.

## MARRIAGES.

On May 23, at the Church of St. Margaret, at Westminster, William Douglas Carde, M.A., to Grace Desborough, youngest daughter of John Rendall, M.A., Barrister-at-Law.

On May 26, before the Registrar, by special license, James Alexander, second son of the late James White, of Teddington, to Alice Murray, youngest daughter of the late James Hooper Dawson, of Kelso, N.B., Barrister-at-Law.

## DEATHS.

On May 19, at Rempston Lodge, Gunnersbury, after a few days' illness from inflammation of the lungs following influenza, W. F. Mackenzie Staples, only son of W. F. B. Staples, Barrister-at-Law, of the Middle Temple, and grandson of Colonel Mackenzie, of Gruinard, Ross-shire.

On May 21, Dugald William Barrett Tayler, Solicitor, Southampton, aged 34 years.

On May 23, at 28 Park Village East, Regent's Park, William Holmes, Esq., of the Inner Temple.

On May 26, at 8 Nevern Road, S.W., Helen, widow of Sir John Nodes Dickinson, late Judge of the Supreme Court, Sydney.

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# The Law Journal.

*SATURDAY, JUNE* 6, 1891.


## 'OBITER DICTA.'

THE present sittings have, so far, been marked by considerable activity on the part of the judges of the Queen's Bench Division. It is true that there have never been more than two Divisional Courts sitting, while one has been the general rule, but the business to be disposed of by those Courts is not such as to necessitate the continuous sitting of three Courts as announced. For the trial of jury and non-jury cases, however, an unusually large number of Courts have been constituted, and on several days during the present week no less than nine judges have been sitting to dispose of such cases. This is certainly a step in the right direction. Some arrangement by which the actions set down for hearing in the Queen's Bench Division may be dealt with more rapidly has long been urgently needed.

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TRIAL by a judge without a jury would seem to be becoming very popular amongst litigants in the Queen's Bench Division. At the commencement of the present sittings there was a list of no less than 544 non-jury actions—a number about equal to the special and common jury actions added together.

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THE circuit system, which has long exercised a most pernicious influence over the administration of justice in the Queen's Bench Division, continues to flourish with unabated vigour. It is announced that thirteen of the fifteen common law judges are again told off for the ensuing summer assizes, which will begin before the end of the present month. By about the second week in July all the circuits will have commenced, and only Mr. Justice Denman and Mr. Justice Charles will be left to deal with the entire business on the common law side for quite a month previous to the rising of the Courts for the Long Vacation. If the business of the circuits was such as to in any way call for such a judicial exodus from London for so long a period, there might be something to be said in favour of the retention of the present system, but as it is notorious that, except at a few of the large towns, the business, both civil and criminal, at the assizes is quite inconsiderable, it seems to us that the existing circuit arrangements are quite indefensible.

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PERHAPS one reason why the Government hesitates to recommend the appointment of another judge for the Chancery Division is the difficulty of locating him. The 'Court' assigned to Mr. Justice Williams while sitting as an additional judge is the poorest apology for a Royal Court of Justice which it is possible to conceive. A temporary platform, a couple of tables, and a few chairs have converted an arbitration-room into a very inconvenient and unsuitable Court. Happily it is not easily found, being in an unsuspected corner upstairs; and the ladies and gentlemen of fashion and high degree who have lately honoured the Lord Chief Justice with their company in his commodious Court had no opportunity for drawing comparisons. The learned judge shows no sign, however, of being affected by his surroundings, and considerable progress will, it is expected, have been made in the Cause List by the end of this week.

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WE have already (see *ante*, p. 210) noticed at some little length the all-important *Sharpe* v. *Wakefield*, which we report this month (60 Law J. Rep. M. C. 73). The judgments, it will be seen, had been carefully considered (six weeks having elapsed between the conclusion of the arguments and their delivery), and on every point but one they are unanimous. There is a slight difference between the Lord Chancellor and Lord Herschell on the point whether some change must be proved in respect of the population of a licensing district or otherwise before the renewal of a license can be refused. The Lord Chancellor appears to have thought that some change must be proved, but Lord Herschell 'did not think that the fact that a license

had been granted for the previous year would be a sufficient ground for justices presuming that the licensed house was then needed, and considering only whether circumstances had changed in the interval,' as 'it might well be that the attention of the licensing justices had not on a former occasion been called to the condition and wants of the neighbourhood.' Which of these two noble lords is right? We think Lord Herschell; but it matters little. For we have no doubt that, whatever may be said as to the propriety of the course indicated by the Lord Chancellor, the licensing justices would have *jurisdiction* to refuse to renew a license, even though no change of circumstances or population could be proved to have taken place in the year preceding the application for renewal.

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*Jackson's Case*, which we report this month (60 Law J. Rep. Q. B. 349), will, no doubt, be perused by all our readers. One of the most curious portions of the judgments is this: 'With regard to the alleged right to capture,' observes Lord Justice Fry, at the beginning of his judgment, 'there does not appear to be *a rag of authority in favour of such a right*. No authority, even of the oldest times, was cited in support of such a right.' Turning back to the argument, however, of Mr. (now Mr. Justice) Henn Collins (see p. 349), we find the following *dictum* of Lord Mansfield in *Rex* v. *Mead*, 2 Ken. 279, put forward: 'The husband has, in consequence of his marriage, a right to the custody of his wife, and whoever detains her from him violates that right; *and he has a right to seize her wherever he finds her*.' Assuming, for the sake of argument, that this *dictum* of Lord Mansfield's was wrong, we nevertheless utterly fail to see how any judge of the present day could be justified in treating it as not possessing a 'rag of authority.'

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THE cases of *Ex parte Culley, in re Adams*, 47 Law J. Rep. Bankr. 97, and *Ex parte Dearle, in re Hastings*, 54 Law J. Rep. Q. B. 74, must now be read subject to the recent decision of the Court of Appeal in *In re Gamgee, ex parte Ward*, noted in our Notes of Cases for the current week. The rule as to the presentation of a bankruptcy petition by a trustee has hitherto been taken to be that a trustee can petition, but the *cestui que trust*, unless under disability, must join in the petition, and it will be found so stated in the text-books. In this form, however, the proposition is too general, and is not fully warranted by the two cases upon the point, both of which deal with bare trustees possessed of no beneficial interest in the judgment debt. In *In re Gamgee, ex parte Ward*, the petitioning creditor was the assignee of a judgment debt for 1,300*l.* which he had purchased for 900*l.* Of rather less than one-half of this he was the absolute owner; of the remainder he was trustee for three other persons who had assisted in finding the purchase-money. In these circumstances it was objected, on the authority of the cases above mentioned, that he was not entitled to present a petition in his own name, and that the other beneficiaries ought to have joined. This view the Court of Appeal declined to take. Unlike the petitioning creditors in the cases upon which reliance was placed, the creditor in *In re Gamgee* was the absolute owner of an amount of the judgment debt far larger than was required to support a petition, and, that being so, was clearly entitled to present one. An opposite decision would have entailed the extreme proposition that a creditor could not have presented a petition upon a debt of 10,000*l.* if the debtor could have shown that in respect of 10*l.* of this debt he was a trustee for some other person. The case illustrates the extreme care necessary in the compilation of text-books. The ease with which a proposition applicable to a bare trustee alone is transferred to trustees generally is probably only equalled by the disappointment of the unfortunate suitor who, failing to refer to the authorities themselves, is misled by the over-statement.

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FORM No. 76 appended to the Bankruptcy Rules, 1886 and 1890, prescribes the form of special proxy to be used by a creditor desirous of being represented by another person at a meeting of creditors. The form contains, after the words of the instrument of proxy, the words 'Signature of witness.' Is the instrument valid if signed by the proxy himself as witness? This was the question raised in the case of *In re Parrott, ex parte Cullen*, and recently decided by a Divisional Court consisting of Mr. Justice Cave and Mr. Justice Charles. The analogous case of *Seal* v. *Claridge* (50 Law J. Rep. Q. B. 316) assisted the Court in the discovery of the principle to be applied. There the Court of Appeal held that the grantee of a bill of sale could not, although a solicitor, be the attesting witness thereof under section 10 of the Bills of Sale Act, 1878, the ground of the decision being that the grantee was a party to the transaction and had an interest, if inclined to be fraudulent, in deceiving the grantor. Is it then a principle of the English law that a party to a transaction cannot be an attesting witness, or was the decision in *Seal* v. *Claridge* founded on the special requirement of the Bills of Sale Act providing that the attesting solicitor should explain the bill of sale to the grantor? We do not propose to follow the Court through the learned disquisition, including an examination of the Roman law, by which a general principle was discovered to exist excluding parties to a transaction from being competent attesting witnesses. Suffice it to say that this principle does exist, was applied in *Seal* v. *Claridge*, and applies to the case in question of a proxy witnessing the instrument of proxy appointing him, he being a donee of the power, and therefore, although taking no beneficial interest, not a stranger to the transaction. *Freshfield* v. *Reed*, 9 M. & W. 404, which was referred to, has not much bearing upon the point, as the decision there was that a consent in writing is not duly attested simply by the consenting party being a party to the deed to which his consent is required, if his signature is not attested by a witness. The fact that no authority is to be found in the English law for the general proposition on which the case was decided is probably due to the fact that the far wider rule excluding witnesses on the ground of interest obscured the narrower, but far more reasonable, rule incapacitating a party to a transaction from being an attesting witness.

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THE *World* points out that it was not the late Archbishop of York, nor the late Mr. Merry, but Lord Young, one of the lords of the Scotch Court of Session, who spoke of an enormous gift for religious purposes as being the largest fire insurance he had ever heard

of. There is a certain amount of unfairness in the remark, which might have been made, if it could be justly made at all, more justly of a bequest, which costs the testator nothing, than of a gift, which costs the donor, at any rate, the amount of money given. Not a few bequests to charitable objects are made from motives the very reverse of charitable, and with results the very reverse of beneficial. Solicitors, who are frequently consulted about the substance as well as the form of a bequest, may frequently do good service in selecting a deserving object of it, and on the point whether a charitable bequest should be made at all, in drawing the attention of the testator to the vital distinction between money inherited by the testator and money earned by his own exertions.

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THE Judicature Act Amendment Bill, which has just been introduced by the Lord Chancellor, contains three enacting clauses only. By clause 1, any person who has held the office of Lord Chancellor may, at the request of the Lord Chancellor, sit and act as judge of the High Court or Court of Appeal. By clause 2, the Queen, on a vacancy in the office of President of the Probate, &c. Division, may appoint to that office any barrister of not less than fifteen years' standing (the qualification appears now to be ten years' standing by section 8 of the Judicature Act, 1873) or a judge of not less than one year's standing; and by clause 3 assessors may assist the House of Lords in Admiralty appeals. Clause 1 would greatly strengthen the Court of Appeal, and looking to the present extraordinary strength of the House of Lords as a judicial body (see *ante*, p. 178), perhaps that House might well occasionally spare the services of Lord Selborne and Lord Herschell. But two questions inevitably arise: (1) whether Lords of Appeal in Ordinary, as well as ex-Lord Chancellors, might not occasionally sit in the Court of Appeal; and (2) whether the provisions of section 4 of the Judicature Act, 1875, by virtue of which judges may not sit on appeal from their own judgments, ought not to be applied to the proposed new order of things.

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A COUNT-OUT of the House of Commons prevented Mr. Atherley Jones from bringing on his motion for the appointment of a royal commission to inquire into the working of the Judicature Acts. As the Government last year (see LAW JOURNAL for July 26, 1890) met Lord Esher's motion to a similar effect by a direct negative, it was hardly to be expected that Mr. Atherley Jones, even if he had obtained a hearing, would have been more successful. There is no denying, however, that the present state of things is far from satisfactory. Perhaps, as the first step towards amendment, some member of one of the Houses of Parliament may see his way to asking the Government to produce, as a Parliamentary paper, the annual reports made by the council of judges of the Supreme Court, under section 75 of the Judicature Act of 1873, 'to one of Her Majesty's principal secretaries of State.' These reports, which would now be about fifteen in number, state 'what amendments, if any,' it would in the judgment of the council 'be expedient to make' in the Judicature Acts, 'or otherwise relating to the administration of justice.' A standing commission of inquiry, in fact, is constituted by the council of judges.

A PICTURE sent back by the purchaser to the artist to be touched up or altered is not exempt from distress for rent upon the artist's studio. So it was held by Mathew, J., sitting without a jury, in *Van Knoop* v. *Moss*, of which we gave a full account (*ante*, p. 318), and the authorities as a whole seem fully to bear out his lordship's opinion. It has, indeed, been said (see *Parsons* v. *Gingell*, 16 Law J. Rep. C. P. 227) that if articles are sent to a place to remain there they are distrainable, but that if sent for a particular object, and if the remaining at the place be an incident necessary for the completion of that object, they are not. But the better opinion is that the exemption from distress arises solely for the benefit of trade and commerce (see *Lyons* v. *Elliott*, 45 Law J. Rep. Q. B. 159), as is shown by the exemption being held applicable to pawned goods at a pawnbroker's (*Swire* v. *Leach*, 34 Law J. Rep. C. P. 150), and to a carriage sent to a coachmaker for sale (*Findon* v. *M'Laren*), but not to horses and carriages standing at livery (*Francis* v. *Wyatt*, 1 W. Bl. 483), or even to a ship in the course of being built in a dock, as was held by the Court of Appeal in *Clarke* v. *The Millwall Dock Company*, 55 Law J. Rep. Q. B. 378. There is no doubt that the law of distress presses very hardly on the property of persons who are strangers to the landlord. Even their money, if contained in a sealed bag, may be seized for the rent of a friend with whom they may be staying, though money loose cannot be seized (see Bac. Abr. 'Distress,' B., citing 22 Ed. IV. 50*b*).

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THE question of alleged illegal penalties under the Vaccination Acts was recently brought before the House of Lords, and it appeared that in three cases persons had been sentenced to imprisonment with hard labour for offences against the Act, but that in two cases the sentences had not been carried out, and that, in one case of actual imprisonment, no less than 40*l.* had been paid as compensation to the party imprisoned. Referring to the Acts, we find that in only one case is even simple imprisonment directly authorised—*i.e.* under section 32 of the Vaccination Act, 1867, for the offence of inoculating a person with small-pox. The ordinary offence of neglecting to procure vaccination of a child is, by section 29 of the same Act, punishable merely by a penalty not exceeding 1*l.* But though imprisonment is not directly authorised by the Vaccination Acts, the effect of those Acts as read with the Summary Jurisdiction Act, 1879, s. 5, is indirectly to authorise it. By the latter enactment it is provided (replacing the Small Penalties Act, 1865, 28 & 29 Vict. c. 127) that the period of imprisonment imposed by a Court of summary jurisdiction 'in respect of the non-payment of any sum of money adjudged to be paid on a conviction' be such period as in the opinion of the Court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by a scale set out in the Act, the period limited, in the case of a penalty exceeding 10*s.* but not exceeding 1*l.*, being fourteen days. It is expressly added that 'such imprisonment shall be without hard labour, except where hard labour is authorised by the Act on which the conviction is founded.'

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MEMBERS of the criminal classes not unfrequently betray a sense of humour which, under happier circum-

stances—on the bench, for instance—would be highly appreciated. Albert M'Grady, who was tried before Mr. Warry, Q.C., at the Clerkenwell Sessions on Tuesday for stealing a coat, is evidently an unconscious humorist. The learned judge having pointed out to the prisoner that his plea of being 'hunted by the police' was untenable, proceeded to recount some neglected opportunities for reformation, including Mr. Wheatley's annual 'thieves' supper,' when he was interrupted, to the great amusement of his audience, by the prisoner's remark, 'Yes, my lord, I saw you there!' A sentence of seven years' penal servitude closed the scene, and *there*, at any rate, Mr. M'Grady would admit, it was the judge, and not the prisoner, who scored.

## 'LAW JOURNAL REPORTS' FOR JUNE.

THE LAW JOURNAL REPORTS for June comprise sixteen cases in the Chancery Division (pp. 313–376); fourteen cases in the Queen's Bench Division (pp. 281–360); and three Magistrates' Cases (pp. 73–88). In the Chancery Division there are three appeal cases, and in the Queen's Bench six appeal cases. The number also contains three cases in the House of Lords, two from the Queen's Bench Division and the third the famous case of *Sharpe* v. *Wakefield* in the Magistrates' Cases.

In the Chancery Division, in *Simmons* v. *The London Joint-Stock Bank* and *Little* v. *Same*, the Appeal Court, affirming Mr. Justice Kekewich, decided questions of the rights and liabilities of a stockbroker depositing his customer's securities with a bank for the purpose of obtaining advances to himself, and of the bank realising such securities, with respect to the customer whose securities were so pledged. *In re Stanger* raised points of construction in a will in reference to a discretionary trust, and the non-exercise of this discretion. *In re Smith; Williams* v. *Frere* decided points of practice with respect to the production of partnership books and the rights of persons not parties to the action. *Gedye* v. *The Commissioners of Her Majesty's Works and Public Buildings* decided what constituted possession of a reversionary interest in land, after the registration of a lease, where such land had been compulsorily taken under the Lands Clauses Act, 1845. According to *Lawrence* v. *Edwards* the office of a parish clerk is a temporal and not a spiritual office, and sequestration, unless accompanied by suspension or inhibition, does not deprive a parson of his right to appoint the parish clerk. In the case of *In re Webster* it was held that when a client has obtained *ex parte* the common order to tax a solicitor's bill, but has allowed the order to die out, he cannot, under section 37 of the Solicitors Act, 1843, obtain *ex parte* a second common order in precisely the same terms, suppressing the fact that he had obtained the former order. *In re Bullock* was a case of a trust to pay income until the annuitant's bankruptcy, a discretion in the trustees and the cesser of interest. *Perry* v. *Eames*, with which two other actions were consolidated, decided that the Crown was not bound by section 3 of the Prescription Act (2 & 3 Wm. IV. c. 71), and that no prescriptive right to the access of light over land to adjoining buildings could be acquired against the Crown during its beneficial ownership. *In re The National Whole-meal Bread and Biscuit Company* decides that where a petition is presented to ask that a voluntary winding-up may be continued under the supervision of the Court, and the petition is advertised and subsequently amended by adding an alternative prayer for a compulsory winding-up, such an order will not be made until the petition has been readvertised. In *Greenwood* v. *Turner* it was held that a person in possession under a contract of sale who has made no objection to the title, will not be ordered to pay the balance of purchase-money into Court without having the option to retire from possession, unless he has done something to interfere with the value of the property. *Ellis* v. *Dadson* involved the validity of a contract by a company working a patented invention with the patentee not to wind itself up voluntarily during the term of the letters patent. *In re Heseltine* decides that the attesting witness to a bill of sale may properly insert therein as his address the place where he is occupied during the day, though he does not sleep there. In *Mills* v. *Dunham* the plaintiff's ex-traveller was restrained from carrying on a competing business notwithstanding that the contract not to do so was expressed in very general language. *Barker* v. *Furlong* defines the rights of trustees to sue in trover for chattels of which they may never have taken actual possession, and the liability of auctioneers and agents in respect to the wrongful conversion of goods. In *M'Mahon* v. *The North Kent Iron Works Company*, a debenture-holder was held entitled to a receiver, though the principal sum secured was not immediately payable, as the security was in jeopardy through the insolvency of the company. By *In re Croom* it was decided that an interest under a will, coming into possession after a scheme of arrangement of a debtor's affairs had been approved by the Court, did not vest in the testator, but in the debtor.

In the Queen's Bench Division, in *The Commissioners of Inland Revenue* v. *Forrest*, Lords Watson and Macnaghten in the House of Lords (the Lord Chancellor dissenting) held, affirming the Court of Appeal, that the Institution of Civil Engineers, being a society for the advancement of science and not for the promotion of professional interests, was exempt from income-tax. Their lordships' House also, in *Morris and Wife* v. *Edwards*, decided questions involving the privilege of documents and answers to interrogatories. In *Chatenay* v. *The Brazilian Submarine Telegraph Company* the principles are defined of the construction of a foreign power of attorney. In *Pullman* v. *Hill* the communication of a defamatory letter to the clerk of a company who wrote and copied the letter, was held not to be privileged. *Serraino* v. *Campbell* decided questions of construction of a charterparty and bill of lading. *In re The Council of the Borough of Dover and the Kent County Council, &c.*, defines the liabilities and exemptions under the Local Government Act of 1888 of quarter session boroughs not being county boroughs. In *The Mayor, &c. of Bootle-cum-Linacre* v. *The County Council of Lancashire* was decided a number of questions arising between county justices and a corporation in consequence of the substitution of county by borough police. *Brown* v. *Hawkes* was a case of alleged malicious prosecution arising out of the purchase of and non-payment for goods. *In re Soltykoff* decides that an infant is not liable upon a bill of exchange at the suit of an indorsee of the bill, although it was accepted for the price of necessaries. In *Reid's Brewery Company (Lim.) (appellants)* v. *Male (respondent)*, a firm of brewers, who also carried on the business of bankers and money-lenders for the exclusive accommodation of their customers, were allowed to deduct, for the purpose

of income-tax, losses sustained in respect of loans and advances. According to the famous case *Regina* v. *Jackson* a husband has no right, where his wife refuses to live with him, to take her person by force, and restrain her of her liberty until she is willing to render him conjugal rights. In *Seagrave* v. *Parks* it was held that the statement in an affidavit in support of an application for the service of a writ out of the jurisdiction, that the defendant was on board one of Her Majesty's ships in the Mediterranean was insufficient. *Langston* (*appellant*) v. *Glasson* (*respondent*) was an income-tax case in which the bursar of St. John's College, Oxford, unsuccessfully sought exemption from income-tax. In *The East End Benefit Building Society* v. *Slack* a County Court judge was held to have no jurisdiction to hear a judgment summons by the assignee of a judgment debt who had not obtained leave to issue execution under the County Court Rules, 1889, Order XXV., rule 9.

In the Magistrates' Cases, by *Sharpe* v. *Wakefield*, the unanimous decision of the House of Lords, it was settled that the discretion of justices under the Alehouse Act, 1828, s. 1, applies equally to the renewal as to the granting of licenses. In *Oldham* v. *Sheasby* travellers who were served successively with refreshments at two public-houses of the same town during closing hours, were held, under the Licensing Acts, 1872 and 1874, to be *bonâ fide* travellers in respect of the second as well as of the first public-house which they visited. *In re Bellencontre* was an extradition case involving the construction of a foreign warrant.

## EVIDENCE IN CRIMINAL CASES BILL.

IT is a thousand pities that a summary of the learned, exhaustive and convincing speech with which the Lord Chancellor introduced this bill in the House of Lords was not printed by way of a memorandum explanatory of the bill itself. It is impossible to exaggerate the weight of the authority producible in favour of it, but not apparent from its clauses, not even from any clause repealing the many particular enactments already on the statute-book, by which its principle has been adopted by the Legislature. The report of the Royal Commission to which the criminal code bill of 1878 was referred, the four passed bills of Lord Bramwell, the general approval with which the present Attorney-General's bill passed the House of Commons in 1888; all these show, in addition to the long line of particular enactments, a series of strong reasons why a general bill to allow every person charged with an offence to give evidence should be passed into law.

The bill before us is a very short one. Notwithstanding the many sound reasons for passing it, there is, in accordance with the modern and, as we think, mistaken practice, no preamble. There are only two enacting clauses. By the first, which is subdivided into four, it is proposed (1) that every person charged with an offence and his or her wife or husband 'shall be a competent witness on every hearing at every stage of such charge'; (2) that no such person shall be compellable to be a witness 'unless so compellable heretofore'; (3) that the rules of evidence, 'except as herein expressly enacted,' shall remain unaltered; and (4), that no person charged, if a witness, 'shall have the right to refuse to answer any question on the ground that it would tend to criminate him or her as to the offence charged.'

A comparison of these words with the two best known of the many particular enactments under which the evidence of accused persons is already admissible—the Conspiracy and Protection of Property Act, 1875, and the Criminal Law Amendment Act, 1885—shows a great impending improvement, both in form and substance, of the law of evidence. By section 11 of the Act of 1875 it is provided that upon the hearing and determining of any indictment or information *under sections* 4, 5 *and* 6 [why this restriction?] of this Act, the respective parties to the contract of service, their husbands and wives, shall be deemed and considered [why deemed *and* considered?] competent witnesses. By section 20 of the Act of 1885 it is enacted that 'every person charged with an offence under this Act or under sections 52 to 55, both inclusive,' of 24 & 25 Vict. c. 100 (which sections relate to rape, indecent assault, and abduction), 'or any of such sections, and the husband or wife of the person so charged, shall be competent but not compellable witnesses on every hearing at every stage of such charge, *except an inquiry before a grand jury*.' It will be a great advantage to get rid of the restrictions contained in the above enactments, and to have one broad general rule applicable to criminal cases. There is one point, however, where amendment will be needed. It is proposed that 'no person shall be compellable to be a witness, nor shall such wife or husband be an admissible witness without the consent of the person so charged, *unless so compellable heretofore*.' Under what Act is a defendant now so compellable? He is not compellable under the Licensing Act, 1872, s. 51, nor under the Sale of Food and Drugs Act, 1875, s. 21, nor under the Law of Libel Amendment Act, 1888, s. 9. On reference, however, to 40 & 41 Vict. c. 14, we find that by that Act, which amends the law of evidence on the trial of an indictment for non-repair of a public highway, the defendant and his wife are not only competent witnesses, but compellable to give evidence. Surely it would be better to repeal and re-enact this insignificant little Act than leave the exception to the general rule of non-compellability to be found out anyhow.

We now come to clause 2. By this it is proposed that a person called as a witness in pursuance of the bill need not answer 'any questions tending to show that any defendant has committed or been convicted of any offence other than that wherewith he is then charged, unless the proof that the defendant has committed such other offence is admissible evidence to show that such defendant is guilty of the offence wherewith he is then charged, or unless such defendant has given evidence of good character.' To this clause we see no objection. A reference to 6 & 7 Wm. IV. c. 111, by which, if evidence of good character of a prisoner on his trial for felony be given, it may be met by evidence of a conviction for a previous felony, and to *Regina* v. *Rowton*, 34 Law J. Rep. M. C. 57, will show the grounds for the exception as to evidence of character.

Such is the Criminal Law Evidence Amendment Bill. In the House of Lords it has already been 'reported,' after some little amendment, by the standing committee of that House, and it will very soon be read a third time. In the House of Commons, of course, it will have a more stormy passage than in the House of Lords, but we see no reason why it should not ulti-

mately pass. But the sooner the dozen particular Acts which already allow accused persons to give evidence are placed in a schedule as enactments proposed to be expressly repealed, the better it will be for the prospects of the bill.

## LEGISLATIVE PROGRESS.

IN the House of Lords.

Bill through Committee:—

Evidence in Criminal Cases Bill.

Second reading:—

Elementary Education Provisional Order Confirmation (London) Bill.

New bill:—

Judicature Act Amendment Bill.

In the House of Commons.

Bills through Committee:—

Roads and Streets in Police Burghs (Scotland) Bill.
Local Authorities (Scotland) Loans Bill.
Tramways (Ireland) Act (1860) Amendment Bill.

Second readings:—

Customs and Inland Revenue Bill.
Forged Transfers (No. 2) Bill.
Public Accounts and Charges Bill.
Seal Fishery (Behring Sea) Bill.
Cork (County and City) Court Houses Bill.
Bills of Sale Act (1890) Amendment Bill.

Bills withdrawn:—

Fire Inquests Bill.
Hares and Rabbits Bill.
Sale of Intoxicating Liquors on Sunday Bill.
Land Department (Ireland) Bill.
Summary Jurisdiction Act (1879) Amendment Bill.

# Correspondence.

## TITHE ACT, 1891.

SIR,—In reference to 'E.'s' letter hereon in your issue of May 16, it seems clear that where the landowner pays voluntarily the giving of an occupier's liability notice is an empty formality, and it would doubtless be considered sufficient if given at any time before the landowner took steps to recover from the occupier. Where the landowner does not pay voluntarily, I take it he may serve the occupier's liability notice at any time before order made; but if, in consequence of this delay, the day for hearing has to be altered under rule 7, he will probably be mulcted in costs.

Land is often let on improving lease for ninety-nine years, or, in the West of England, for ninety-nine years if either of three named persons shall so long live, the rent being merely nominal. The lessee improves, and then sells part for the remainder of the term and underlets part. The landlord does not know the name of the new occupiers nor the terms on which the subtenant holds. In such a case, who is the landowner? If the freeholder and his tenant are joint owners for the purposes of the Act, must both give occupier's liability notice; and, if so, separate or joint notices? If the freeholder does not know the terms on which the occupier holds, how can he say whether section 2, subsection 6, applies? In such a case does section 1, subsection 1, destroy the freeholder's remedy against his lessee on his covenant? C.

SIR,—A lease expired at Lady Day last. The tenant, a man of position, paid me his rent subsequent to his quitting the farm, but refused to pay the tithe due April 1, though by his lease he expressly covenants to pay it.

How can I recover the amount from him? The Act says it is to be recovered from the occupier by distress and 'not otherwise'; but then he is not now the occupier nor can I distrain.

Can I proceed against him under 14 & 15 Vict. c. 25, s. 4? SUBSCRIBER.

May 28.

## THE COUNTY COURTS.

SIR,—In order that your readers may estimate the importance of County Court judgeships, I will mention the present jurisdiction of County Courts, which is as follows: In bankruptcy, unlimited; in cases under the Employers' Liability Acts, unlimited; in winding-up companies, up to 10,000*l.*; in equity cases, up to 500*l.*; in common law cases, 100*l.*; in Admiralty cases, 300*l.*; besides which the County Courts have jurisdiction in many other matters.

When it is considered that a County Court judge does not often have the assistance of the bar, and has to trust to his own knowledge of law, it will be seen that a County Court judge ought to be an admirable lawyer.

Some of the judges, such as Mr. Hall, Q.C., Mr. Barber, Q.C., Sir Richard Harington, and a few others, do their work admirably; but what can be said of the generality of Lord Halsbury's appointments except that they are simply appalling?

My respect for the bench prevents my mentioning names; but every practising lawyer knows of men who have been appointed who have never practised and are absolutely unknown in the profession.

There are numbers of well-known barristers who are admirably qualified, and are known to be so, but who will never be appointed, because they are neither related to Lord or Lady Halsbury nor to any leading Conservative politician.

Every practising lawyer knows that in some County Court districts a would-be suitor is always warned by his lawyer that it is useless to contest an important case unless he is prepared to appeal.

A BARRISTER-AT-LAW.

## *DERRY* v. *PEEK*.

SIR,—One constantly sees and hears the case of *Derry* v. *Peek* called 'great' or 'important,' and it is generally implied, if not expressed, that it decided something new or, at least, unexpected. It certainly is a 'great' case in the sense that it deals with fundamental principles of the law of tort, and affirms them in accordance with precedent and logic; but it lays down no new law. Indeed, Lord Bramwell, in giving his opinion, declined even to argue the question on the authorities, because until then he had never heard a

doubt about it—that question, of course, being whether in an action of deceit the plaintiff must prove that the inaccurate representation was made dishonestly, or whether it will be enough for him to show that it was made carelessly. Nor is it easier to see why the decision should have been unexpected, for, as Lord Justice Fry said in a subsequent case (not reported), carelessness, so far from being the same thing as deceitfulness, is in many respects its opposite. The fact is that the case, if startling at all, is startling only in its simplicity. It was important, no doubt, for lawyers to find themselves 'on bed rock' with a decision unassailable alike in logic and authority. But from the way in which people write of 'since *Derry* v. *Peek*,' as if it marked an epoch in the law, one would imagine that a new rule had been introduced into the common law, whereas, in fact, a very old rule was affirmed.

A COMMON LAWYER.

## MAGISTRATES' CLERKS' CHARGES.

SIR,—I do not think it to be the correct practice for magistrates' clerks to charge 3*s.* 6*d.* in addition to the fixed charge, and if it has been done—and I charge nobody with doing it—would he not be liable to refund the money on the principle enunciated in *Dew* v. *Parsons*, 2 B. & A. 562; and would he not be liable to an indictment on the principle of the old case of the coroner mentioned in Part 3 of Coke's 'Institutes,' cap. lxix.? And see also the case of the collectors of the fifteens mentioned in the same chapter.

June 1. B. S. W.

# Reviews.

## RINGWOOD'S BANKRUPTCY.

*Ringwood's Principles of the Law of Bankruptcy*, embodying the Bankruptcy Act, 1883, part of the Debtors Act, 1869, and the Bankruptcy Appeals (County Courts) Act, 1884. With an Appendix containing Schedules to the Bankruptcy Act, 1883, the Consolidated Bankruptcy Rules, 1886, &c. London: Stevens & Haynes. 1891.

THE law and practice of bankruptcy have been very considerably altered in recent years, the last changes being introduced by the Bankruptcy Act, 1890, and the Bankruptcy Rules, 1890. We have, also, besides the Bankruptcy Discharge and Closure Act, 1887, the Deeds of Arrangement Act, 1887, and the rules thereunder, the last set made in 1890 dealing with returns and accounts, and the Preferential Payments in Bankruptcy Act, 1888, all introducing changes with which it is necessary that the student of bankruptcy law should be familiar. A new order was also made in December, 1890, prescribing the fees and percentages which are to be charged for proceedings under the Bankruptcy Acts of 1883 and 1890 after January 1, 1891. All these are collected in Mr. Ringwood's book, some printed in full, others receiving due notice in the text. The author has also, in his chapter on Bills of Sale, 'made an attempt to follow the windings of the law on that difficult subject. The merits of this work, in respect of accuracy and arrangement, are well known, and the present edition seems well equal to its predecessors in giving the reader a clear statement of bankruptcy law and practice at its date. The only omission we have discerned is that no reference is made to the decision in *Ex parte Raison*, 60 Law J. Rep. Q. B. 206, that persons adjudicated bankrupts under the Act of 1883 fall under the more lenient provisions of the former law as to discharge where they came before the Court in the year 1891.

## INDERMAUR'S LEADING CASES.

*An Epitome of Leading Common Law Cases.* With Some Short Notes Thereon. Chiefly Intended as a Guide to 'Smith's Leading Cases.' Seventh Edition. By JOHN INDERMAUR, Solicitor (First Prizeman, Michaelmas Term, 1872), Author of 'Principles of the Common Law,' 'Manual of Practice,' 'Manual of the Principles of Equity,' 'An Epitome of Leading Conveyancing and Equity Cases,' 'Self-Preparation for the Final Examination,' 'Self-Preparation for the Intermediate Examination,' &c. London: Stevens & Haynes. 1891.

THE idea of this work, as stated in the preface to the first edition, which is here reprinted, is to be a help to the reading of 'Smith's Leading Cases,' an epitome which may be of service not only to those who have no time to fully peruse the large volumes of 'Leading Cases,' but also to those who, having attentively perused them, will find it profitable to speedily run through a small manual and impress the chief decisions on their memories. The present edition contains no new 'principal case,' but the recent decisons and the new statutes touching upon the matters dealt with have been added in the notes. Thus, under the leading cases on the subject of evidence, *Price* v. *The Earl of Torrington* and *Higham* v. *Ridgway*, we find a reference to the change in the law of evidence introduced by the Oaths Act, 1888; under *Miller* v. *Race* we are referred to the recent decision of the House of Lords in *Vagliano* v. *The Bank of England*; under *Moss* v. *Gallimore* to the provisions of the Tenants' Compensation Act, 1890. The work is well brought down to date and will be very useful to the student.

## HIGGINS'S DIGEST OF PATENT LAW.

*A Digest of the Law and Practice of Letters Patent for Inventions.* Including the Statutes and all Cases decided from the passing of the Statute of Monopolies to October, 1890. Second Edition. By CLEMENT HIGGINS, Q.C., and G. EDWARDES JONES, Barrister-at-Law. London: Wm. Clowes & Sons. 1890.

THE object of this work in its original form was to supply a reliable and exhaustive summary of the reported patent law cases decided in English Courts of law and equity. 'No opinion,' the authors tell us, 'is expressed upon the cases digested, and no attempt is made to reconcile conflicting decisions. All that the book contains rests upon the authority of the judges.' This principle was carried to its logical conclusion, and accordingly even a few overruled cases were retained, and several upon the same point of different dates were introduced. The Patents, Designs and Trade-marks Act, 1883, however, rendered it necessary to state the provisions of the statute law so that it might be easily referred to in connection with the cases relating to similar portions of the subject. The alphabetical arrangement is accord-

ingly applied to both Acts and cases so as to avoid the necessity of a double index, with the accompanying trouble to the reader of a double search. Thus, under the head of 'Amendments,' we have the sections and rules of the Patent Acts, 1883 and 1888, and then some twenty pages of decisions. Under the head of 'Infringement' we have sections 13 and 15 and part of section 17 set out, and then the cases, beginning with one decided in 1773. 'Subject-matter' occupies over fifty pages, and 'Threats' ten pages. The work will be of service to the practitioner in patent law, and he will probably occasionally find considerable help from the table of cases at the end of the volume classified according to subject-matter, which is compiled to facilitate the finding of a case of which the name is forgotten while the nature of the invention is known.

# Unreported Cases.

## COUNTY COURTS.

### PARISH CLERK AND SEXTON—DISMISSAL FROM OFFICE—ACTION FOR DAMAGES.

AT the Solihull County Court, on May 29, before his Honour Sir Richard Harington, an action was brought by Thomas Kent, Shirley Road, Acock's Green, parish clerk and sexton of St. Mary's Church, Acock's Green, against the Rev. James Alexander Balleine, the vicar of St. Mary's Church, in which the plaintiff claimed an account of fees received by the defendant on his behalf since April 20 last, or in the alternative 10*s.* 6*d.* damages for disturbance in his offices of parish clerk and sexton on May 11. Plaintiff also asked for an injunction restraining the defendant from receiving the fees payable to the plaintiff, and from interfering with him in the fulfilment of his duties and the enjoyment of his offices.—Mr. Pritchett, in opening the case, said the action involved the question as to who was parish clerk and sexton of St. Mary's on May 11 last. St. Mary's was a district chapelry, constituted under section 16 of 59 Geo. III. c. 134, and the plaintiff claimed to be the parish clerk and sexton. He had occupied those offices for twenty-five years, ever since the consecration of the church; but on April 20 received from Mr. Newey, the defendant's solicitor, a letter dismissing him. He wrote to the defendant, on April 22, expressing surprise that he was dismissed, according to Mr. Newey, because of complaints from members of the congregation of negligence and the unsatisfactory manner in which he had performed his duties, and urged that an opportunity should be given him of making an explanation. He asked for particulars of the complaints. On April 24 Mr. Newey wrote to the plaintiff to the effect that the defendant had handed him his letter, and requested him to point out that plaintiff had not delivered up the keys of the church to the churchwardens. The defendant and the churchwardens did not propose to discuss with the plaintiff the nature of the complaints or give him particulars. The defendant did not intend to reappoint the plaintiff, and as his office expired on March 31 he was desired not to enter the church again in an official capacity. Plaintiff consulted his solicitor, who advised him that he was entitled to remain in office, and neither the vicar nor churchwardens had the power to dismiss him. This was communicated to the defendant by Mr. Hodgkinson (plaintiff's solicitor), who further said that the plaintiff would retain the keys of the church and attend to his duties as usual.—His Honour: The question between you is whether the office was tenable at will or freehold.—Mr. Pritchett said that was scarcely the question. Section 29 of the Act to which he had referred enacted that the clerk should be annually appointed by the minister of the church or chapel. So that, so far as the clerkship was concerned, he (Mr. Pritchett) was bound to admit that the appointment was an annual one; but with regard to the office of sexton he contended that it was in the nature of a freehold, and that the defendant had no power to remove him from the office except for misconduct such as would justify it. Plaintiff was appointed clerk and sexton by Dr. Swinburn, and year after year he remained in his office by the tacit consent of the vicar, there being no formal reappointment. On the death of Dr. Swinburn last year, the defendant became the vicar, and plaintiff's contention was that, as he received no notice that he was not reappointed to his office he retained it, and defendant had no right to dismiss him in the middle of the year. It was admitted by the defendant that after the plaintiff was dismissed a funeral took place in the churchyard and that defendant drew the fees, 3*s.* 6*d.* for the clerk and 7*s.* for the sexton.—His Honour asked if Mr. Pritchett had any authority to show that the office of sexton was in the nature of a freehold office.—Mr. Pritchett said there was no authority as to the position of a sexton in a district chapelry. A parish clerk was considered a lay officer, and it was an arguable point whether there was an office of sexton attached to a district chapelry, as there was by law to a parish. But whatever offices the plaintiff held in connection with the chapelry, the gentleman whom the vicar had appointed in the place of the plaintiff presumably wanted the same offices, and the vicar admitted having received certain fees for whoever filled those offices.—Plaintiff said the church of St. Mary was consecrated in 1866, and the first incumbent was Dr. Swinburn. In September, 1866, he went before a committee, Dr. Swinburn being present, and was told that a man was required to fill the offices of clerk and sexton. He was applicant for the offices, and at a second meeting was appointed. Dr. Swinburn gave him instructions as to his duties, and hung up in the church a table of fees. The fees to be charged as clerk and as sexton were distinctly pointed out by Dr. Swinburn. Some time ago a burial board was formed in Yardley, and he received compensation for the loss of his district. Burials, however, were still conducted in the churchyard.—By Mr. Vachell: He understood when he was engaged that he was appointed for life. He did not attend the vestry meeting held on March 31 last, but he prepared the room for the meeting. He did not know that complaints had been made about the manner in which he discharged his duties.—In reply to his Honour, plaintiff said he had acted as clerk in the church between March 31 and April 20, and he cleaned the church himself or by deputy between those dates, but he was not sure whether he had dug any graves. He received no notice that he was not reappointed until April 20.—For the defence Mr. Vachell said the plaintiff's duties terminated on March 31, his appointment being an annual one, and he was not reappointed. He argued that the office of sexton could not be considered in the nature of a freehold, and that the appointment of sexton in a district chapelry was not like an appointment in old parish churches. At the vestry meeting on March 31, when the question of the appointment of clerk was considered, the defendant stated that in consequence of numerous complaints he should not reappoint the plaintiff. That was not communicated to the plaintiff until some little time afterwards; but he (Mr. Vachell) submitted that that made no difference, because the plaintiff's duties would be terminated on March 31, unless he was reappointed.—His Honour said the plaintiff was permitted to perform his duties until April 20, and it was not until then that he received a communication that the defendant did not intend to reappoint him. He thought, where a man held an annual appointment and was allowed

to go on performing his duties under the belief that he had been reappointed, that that in effect amounted to a reappointment for a year. He thought the plaintiff could be got rid of from both offices at the next meeting; but, perhaps, it would be better to pay him a moderate sum as compensation for the loss of his offices for the remainder of the year, and get rid of him forthwith.—Counsel then consulted, and ultimately agreed to adopt His Honour's suggestion and leave the matter in the hands of the archdeacon to determine what sum should be paid the plaintiff.—His Honour said that as the plaintiff was not told he was not reappointed, but was allowed to go on performing his duties from March 31 to April 20, he was entitled to hold his offices for another year. He was glad, however, the parties had agreed to submit the matter to the archdeacon. His judgment would be for the plaintiff, for a sum to be fixed by the archdeacon as compensation for the loss of his offices to March 31 next, the plaintiff undertaking not to attempt to perform any of the duties of the office in the meantime. Plaintiff was also allowed costs.—Mr. Pritchett (instructed by Mr. William Hodgkinson) appeared for the plaintiff; and Mr. Vachell (instructed by Mr. E. C. Newey) for the defendant.

## BAR STUDENTS' EXAMINATIONS.

### TRINITY, 1891.

AT the general examination of students of the Inns of Court, held at Lincoln's Inn Hall, on May 7, 8, 11, 12, 13, and 14, 1891, the Council of Legal Education have awarded Studentships in Jurisprudence and Roman Law of 100 guineas, to continue for a period of two year, to

DE VILLIERS, JACOB ABRAHAM JEREMIAS, of the Middle Temple.
D'SOUZA, FRANCIS XAVIER, of the Middle Temple.

Studentships in Jurisprudence and Roman Law of 100 guineas for one year to

STEPHEN, JOHN BRUCE CALDWELL, of Gray's Inn.
BARLOW, CLEMENT ANDERSON MONTAGUE, of the Middle Temple.

And the Barstow Law Scholarship to

FARRELLY, MICHAEL JAMES, of the Middle Temple.

The Council have also awarded to the following students certificates that they have satisfactorily passed a public examination:—

A-BECKETT, WILLIAM GILBERT, of the Inner Temple.
ABDUL ALIM, MOHAMMAD, of the Middle Temple.
ALI KHAN, ZAHID, of the Inner Temple.
BATHURST, CHARLES, of the Inner Temple.
BEAUMONT, HENRY, of the Middle Temple.
BENNETT, ERNEST EMILIUS, of Lincoln's Inn.
BIGGE, WILLIAM EGELRIC, of Lincoln's Inn.
BINGLEY, FREDERICK SPARKES NORMAN, of the Inner Temple.
BROWN, WILLIAM JETHRO, of the Middle Temple.
BRYANT, FRANCIS JOHN, of Lincoln's Inn.
CALTHROP, HORACE GEORGE, of the Inner Temple.
CALVERT, REGINALD HOUBLON, of the Middle Temple.
CHAMIER, DANIEL, of the Inner Temple.
CHAPMAN, HENRY PRICE, of the Inner Temple.
CHILD, NICOLAS GILBERT LOUIS, of the Inner Temple.
CHORLEY, HERBERT EDWARD, of the Middle Temple.
DOBB, HARRY, of Lincoln's Inn.
EVANS, SAMUEL THOMAS, of the Middle Temple.
EVERARD, SAMUEL MUMFORD, of the Inner Temple.
FARRELLY, MICHAEL JAMES, of the Middle Temple.
FEARNSIDES, JOHN WILLIAM, of the Inner Temple.
FLANAGAN, JAMES WOULFE, of the Middle Temple.
GALSWORTHY, FREDERICK TREVOR, of Lincoln's Inn.
GARDINER, BERTRAM CARDEW, of Lincoln's Inn.
GODWIN, WILLIAM CHARLES, of the Middle Temple.
GRAHAM, ARTHUR HARINGTON, of the Middle Temple.
GREY, EGERTON SPENCER, of the Inner Temple.
HARRISON, REGINALD, of the Inner Temple.
HART, HENRY D'ARCY, of Lincoln's Inn.
HEATHCOTE, WILLIAM EDWARD, of the Middle Temple.
HENRIQUES, HENRY STRAUS QUIXANO, of the Inner Temple.
HUDSON, WILLIAM HEBARD, of Lincoln's Inn.
HUME-ROTHERY, JOSEPH HUME, of Lincoln's Inn.
ISMAIL KHAN, MOHAMED, of the Middle Temple.
JACOB, EDWARD JAMES, of the Inner Temple.
JAMES, FULLARTON, of Gray's Inn.
JOHNSTON, ROBERT MATTESON, of the Inner Temple.
JONES, WALTER BUCKLEY, of Lincoln's Inn.
KENDALL, PERCY JOHN, of Lincoln's Inn.
KINGDON, FREDERICK WILLIAM WASHINGTON, of the Middle Temple.
KINGSLEY, CHARLES GEORGE, of the Inner Temple.
KNOX, HARRY, of the Inner Temple.
LEGGETT, SIDNEY PERCY, of the Middle Temple.
LLOYD, CHARLES FREDERICK, of the Inner Temple.
MAJID, ABDUL, of the Middle Temple.
MAXWELL, ANTHONY, of the Middle Temple.
MELBOURNE, CHARLES ALEXANDER DICK, of the Inner Temple.
MILLER, THOMAS FREDERICK DAWSON, of the Inner Temple.
MORTIMER, GEORGE FREDERICK LLOYD, of the Inner Temple.
MUIR, WILLIAM, of Gray's Inn.
MUNDAHL, HENRY SMETHURST, of Lincoln's Inn.
NAI PLÜM, of the Middle Temple.
NIX, JOHN ASHBURNER, of the Inner Temple.
PARR, THOMAS HENNING, of the Inner Temple.
PATERSON, NICHOLAS JULIAN, of the Middle Temple.
PEEROZSHAW, JEHANGIR, of the Inner Temple.
PENRHYN, ARTHUR LEYCESTER, of the Inner Temple.
PILCHER, JOHN HARRY WARTON, of the Inner Temple.
PLATT, BERNARD ARCHIBALD, of the Inner Temple.
REECE, HENRY WALTER, of the Middle Temple.
RICHARDSON, FRANK COLLINS, of the Inner Temple.
ST. GERRANS, HERBERT PERCY, of the Inner Temple.
SCOTT, HAROLD SPENCER, of Lincoln's Inn.
SCRIVENER, HARRY STANLEY, of the Middle Temple.
SEANOR, JAMES RICHARD, of Gray's Inn.
SEN GUPTA, CHANDRA SEKHAR, of the Middle Temple.
SLADE, MARCUS WARRE, of the Inner Temple.
STEVENS, GERALD PHILIP, of Lincoln's Inn.
STURGE, CLEMENT YOUNG, of the Inner Temple.
SYKES, ERNEST RUTHVEN, of the Inner Temple.
WEEKLEY, GEORGE MITCHELL, of the Middle Temple.
WRIGLEY, AUSTIN GUY, of the Inner Temple.

The following students passed a satisfactory examination in Roman law:—

Francis Allen, of the Middle Temple; Ernest James Bader, of the Inner Temple; Henry Richings Bousfield, of the Inner Temple; James Bennett Brunyate, of the Inner Temple; William Bernard Campbell, of the Middle Temple; Edward James Morgan Chaplin, of Lincoln's Inn; Ernest Clark, of the Middle Temple; Sidney Wrangel Clarke, of the Middle Temple; Bomanjee Cowasjee, of Lincoln's Inn; William Morse Crowdy, of the Middle Temple; William Frederic Ludlow De Quetteville, of the Inner Temple; Edward St. Leger Viscount Doneraile, of the Inner Temple; Edward Ellershaw, of the Middle Temple; Gerard Yorke Twisleton Wykeham Fiennes, of the Inner Temple; Wilfred Rowlandson Ford, of the Middle Temple; Mahimohun Ghose, of Lincoln's Inn; Alexander Grant, of the Inner Temple; the hon.

John William Harris, of the Inner Temple; Robert Hill, of the Middle Temple; Henry William Holder, of the Inner Temple; Charles Henry St. John Hornby, of the Inner Temple; Vishnu Singh Kapur, of the Middle Temple; Frederick Herbert Kelly, of the Inner Temple; William Fraser Claughton Kelly, of the Inner Temple; Hira Lal Kumar, of Gray's Inn; William Hargreaves Leese, of the Inner Temple; Aaron Ernest Lyons, of the Middle Temple; John James M'Culloch, of the Middle Temple; Robert William M'Donald, of the Middle Temple; Kenneth Edward Milliken, of the Middle Temple; Martin Henry Fitzpatrick Morris, of Lincoln's Inn; Percy Morris, of the Inner Temple; Alexander Neilson, of the Middle Temple; John Penry Oliver, of the Middle Temple; Harold George Parsons, of the Inner Temple; James Joseph Power, of Lincoln's Inn; John Stuckburgh Risley, of the Inner Temple; Abdula Rahimtula Sayani, of the Inner Temple; Ahmed Rahimtula Sayani, of the Inner Temple; Edward Peter Schjott, of the Middle Temple; Courtenay Chaworth Shippard, of the Inner Temple; Herbert John Simmonds, of Lincoln's Inn; John Parker Slagg, of the Inner Temple; George Joseph Stokes, of Lincoln's Inn; Frederick George Storey, of the Middle Temple; and Mohammed Majid Ullah, of the Middle Temple.

By Order of the Council,
(Signed) J. NAPIER HIGGINS,
Vice-Chairman.

Council Chambers, Lincoln's Inn:
May 26, 1891.

## LAW AND PROFESSIONAL NOTES.

By T. F. UTTLEY, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### THE AMERICAN COPYRIGHT ACT.

REFERENCE has been made in these columns before to the American Copyright Act. Briefly stated, the American Copyright Act, while it will benefit the popular British author whose works command a sale in the United States, will only do so at the expense of the British printing and kindred trades, which will suffer a serious loss. This arises as the consequence of a provision in the American Copyright Act that copyright shall only be granted to British authors on the condition that before publication copies of the book *set up in type and printed in the United States* have been deposited in the library of the Congress. This rule applies also to chromos, lithographs, and photographs, which must be produced from plates, negatives, or drawings on stone made within the limits of the United States before any copyright can be had in them. 'We have,' states a labour contemporary, 'only to recite these particulars to suggest the obvious counter-stroke, which is, that there shall be no copyright within the British dominions for any author, whether native or alien, unless his book has been printed from type set within a country belonging to the International Copyright Union. This would place the successful author between two bundles of hay, and he would have to choose either the British or the American market. The London Chamber of Commerce has, it appears, moved in the matter, and drawn out a retaliatory scheme in regard to the American Act. The preamble of the bill points out that among those who will be materially injured by the American measure are compositors, proof-readers, pressmen, printing-machine managers, and their helps, printers' warehousemen, electrotypers and stereotypers, paper makers, typefounders, ink makers, printing-machine makers, manufacturers of printing materials, bookbinders, photographers, and lithographers. The Chamber of Commerce propose to introduce a bill into Parliament providing that British copyright is not to be granted to any books not set up in type and printed in the British dominions or in some country within the Berne Convention. The following is the draft of the English measure: 'Scheme of a bill to amend the Copyright Act (5 & 6 Vict. c. 45). To obtain copyright in any book within the British dominions, it shall not be necessary for the author, whether native or alien, to reside therein. Any person shall be entitled by the Copyright Act (5 & 6 Vict. c. 45) to copyright in any book in the English language, photograph, chromo, or lithograph, if it is first published in the British dominions, and printed from type set within a country belonging to the International Copyright Union, or from plates made therefrom, or from negatives or drawings on stone made therein, or from transfers made therefrom, but not otherwise. This Act and the Copyright Act (5 & 6 Vict. c. 45) shall be construed together. This Act may be cited as the 'Copyright Amendment Act, 1891.'

### A LIQUIDATOR IS NOT A TRUSTEE.

Our contemporary, the *Accountant*, recently commented on a liquidator's responsibilities in connection with the case of *The Leeds Forge Company*, where an important point was settled as to the liability of the liquidator of a limited company—namely, whether or not he is a trustee—that is, an officer who holds the assets of a company in strict trust. The original Leeds Forge Company was voluntarily wound up and a new company formed, taking over the property of the old company in consideration of a cash payment and transfer of fully-paid shares in the new. A certain original shareholder in that capacity was entitled to 400 fully-paid ordinary shares in the new company and also to a cash bonus of 6*l.* per share. On the other hand, the liquidator stated that 200 out of the 400 shares and the bonus were the subject of litigation between this shareholder and another person who was also interested in the company, and therefore he could not be expected to deal with them piecemeal, and although an indemnity was offered, he still refused to transfer any of the shares or pay over the bonus. The shareholder then brought an action against the liquidator claiming that the latter was a trustee for him of 200 shares and also bonus of 1,200*l.* However, before the action came on for trial, the defendant liquidator complied substantially with the claim. It was settled by Mr. Justice Romer that the liquidator was not strictly a trustee, and he pointed out that in fact, 'if a liquidator were held to be a trustee for each creditor, his liability would indeed be onerous, and would render the position one which few persons would care to occupy.' The judge considered that a liquidator took office as 'an agent of the company—an agent who has, no doubt, cast upon him, by statute and otherwise, special duties.' Of course, in such a case an agent could not be sued by a third party for negligence, unless on the ground of personal misconduct or misfeasance, and therefore the delay in carrying out any part of the winding-up by, or losses through errors of judgment of, a liquidator will not render the liquidator responsible. Of course a shareholder has, to some extent, a remedy under section 138 of the Act of 1862, under which he can apply to the Court to settle any question of winding-up, and if the Court considered it beneficial an order would be made acceding to the application. Besides, under the new Winding-up Act, the liquidation may be converted into a compulsory one.

### OUR COUNTY COURTS.

Both monthlies and dailies seem just now to be in their critical moods and to have something to say about the Law Courts. One of the London papers gave its ideal of justice as that it should be speedy and cheap. It cannot be speedy when the London Courts are choked with work

that ought to be undertaken by judges in the country or by the County Courts; it cannot be cheap when witnesses have to be brought to the metropolis at great expense, and kept at hotels for days or weeks, owing to uncertainty as to the time when the case comes on. The remedy lies in the main in an extension of the jurisdiction of our County Courts. Since they were founded they have done more to bring justice home to English doors than all the rest of the judicial apparatus of the realm. Their powers have been extended, but further development is necessary. At present the Supreme Court can remit to them all cases where the claim is below a certain amount, but this limit should be raised, so that the higher Courts should, when overburdened, be able to call in the assistance of the very many able men who now sit on the local bench. If the County Court jurisdiction is extended, the solicitors of our day—men who have passed very formidable examinations—are quite able to discuss before their honours any questions that may arise, and to protect the interests of their clients. This question of reform in the administration of justice is, states a labour journal, one in which the working classes are intensely interested. 'The idea of justice is that it should be speedy and cheap.' But that is just what it is not. It is hedged in by all kinds of restrictions, and in many cases justice is absolutely outside the reach of working men. It is likely to remain so, too, so long as working men continue to send such a large number of lawyers to the House of Commons as their representatives.

### HEADNOTES ON INVOICES.

The liquidator of a spice company recently sought to recover from a grocer and drysalter the balance of account for goods supplied. The invoice which accompanied the goods bore the headnote: 'All cheques must be remitted to the head office and cheques crossed. Our agents are not authorised to give receipts on behalf of the company.' In the face of this plain intimation, however, the grocer paid the traveller of the company for the goods, and, of course, now urged that he was free from liability. The judge of the Liverpool City Court held, however, in giving judgment for the liquidator, that in view of the headnote on each invoice the only payment recognisable by the company was one direct to the office. The traveller had no authority to receive or give receipts for money on behalf of the company. This is a useful decision for commercial men, and should remind them to note more carefully what is printed on the invoices supplied to them with the goods bought. Too often, beyond noting that the price is correct, nothing else upon the bill is taken note of, though, as this decision shows, this carelessness may have to be heavily atoned for.

### THE EXCLUSION OF ALIENS FROM THE COLONIES.

In January of last year there appeared in the *Law Quarterly Review* a useful article dealing practically with the question as to the rights of aliens to enter British territory. Those who have read this article will be interested in the great Chinese case of *Ah Toy* v. *Musgrave*, decided by the Privy Council on appeal from the Supreme Court of Victoria, and overruling the decision of the latter Court. It appeared that the Supreme Court in Melbourne had held that the plaintiff, a Chinese immigrant, could not be excluded by the Government from landing in the colony, for the Government had no power *per se* to exclude aliens, as it had not the Queen's perogative in that respect. Fortunately, however, for the welfare and prosperity of the colony the Privy Council has reversed this decision, and has held that the Victorian Government has the power to exclude aliens, and had, in the present instance, exercised it correctly. It has been pointed out that, besides the usefulness of this decision as regards the restriction of undesirable immigrants into British colonies, it serves a further purpose; for there has been some suggestion made that the right of appeal to the Privy Council should be abolished, and, if that had happened in the present case, and in other instances, the colonial governments would have been unduly hampered in their efforts to promote the public welfare by being placed in such a foolish position by the decisions of their own Courts. By the decision of the Privy Council the colonial governments are now placed in a dignified position, with power to maintain it, which the Supreme Court of Melbourne would have withheld from them.

### WHO ARE A FIRST WIFE'S HEIRS?

American cases often contain novel points. Not long since a somewhat curious legal riddle was propounded at the Court of Allentown, in Pennsylvania. A gentleman married, and, his wife dying, left him all her property, merely stipulating that on his death it should revert to 'our heirs.' The gentleman subsequently married again, and then died himself, whereupon his widow claimed that she was entitled by way of dower to one-third of the property left by the first wife. The next-of-kin, however, disputed this claim, urging that they had a preferential right over a connection by marriage, and the judge supported this view, holding that the husband had only a life interest in his first wife's property, and, therefore, on his death the estate would have to pass to the relations of the first wife, to the exclusion *in toto* of the second wife.

## NOTICES FOR THE WEEK.

### ROTA OF REGISTRARS.

MONDAY, June 8.—Court of Appeal No. 2: Mr. Jackson. Mr. Justice Chitty: Mr. Lavie. Mr. Justice North: Mr. Rolt. Mr. Justice Stirling: Mr. Ward. Mr. Justice Kekewich: Mr. Pugh. Mr. Justice Romer: Mr. Godfrey.

Tuesday, June 9.—Court of Appeal No. 2: Mr. Clowes. Mr. Justice Chitty: Mr. Carrington. Mr. Justice North: Mr. Farmer. Mr. Justice Stirling: Mr. Pemberton. Mr. Justice Kekewich: Mr. Beal. Mr. Justice Romer: Mr. Leach.

Wednesday, June 10.—Court of Appeal No. 2: Mr. Jackson. Mr. Justice Chitty: Mr. Lavie. Mr. Justice North: Mr. Rolt. Mr. Justice Stirling: Mr. Ward. Mr. Justice Kekewich: Mr. Pugh. Mr. Justice Romer: Mr. Godfrey.

Thursday, June 11.—Court of Appeal No. 2: Mr. Clowes. Mr. Justice Chitty: Mr. Carrington. Mr. Justice North: Mr. Farmer. Mr. Justice Stirling: Mr. Pemberton. Mr. Justice Kekewich: Mr. Beal. Mr. Justice Romer: Mr. Leach.

Friday, June 12.—Court of Appeal No. 2: Mr. Jackson. Mr. Justice Chitty: Mr. Lavie. Mr. Justice North: Mr. Rolt. Mr. Justice Stirling: Mr. Ward. Mr. Justice Kekewich: Mr. Pugh. Mr. Justice Romer: Mr. Godfrey.

Saturday, June 13.—Court of Appeal No. 2: Mr. Clowes. Mr. Justice Chitty: Mr. Carrington. Mr. Justice North: Mr. Farmer. Mr. Justice Stirling: Mr. Pemberton. Mr. Justice Kekewich: Mr. Beal. Mr. Justice Romer: Mr. Leach.

RENTS COLLECTED AND DISTRAINTS LEVIED TO RECOVER SAME, by Messrs. HENRY C. WOOD (Surveyor to the Parish of Tooting) and HENRY KIRBY (Wood & Kirby), Certificated Brokers, 1 Great James Street, Bedford Row, W.C. No charge made to Landlords if Rent over 20*l*. Troublesome tenants got rid of. Possession also taken under Bills of Sale, Mortgages, &c. Bailiffs to the Parish of St. Dunstan in the West and City of London (Farringdon Ward). Money paid over same day received. Bankers: City Bank, Holborn Viaduct. References, if desired, to clients of many years' standing. Prompt and personal attention given.—ADVT.

## CALENDAR OF THE COUNTY COURTS.

FROM JUNE 8 TO JUNE 13.

| No. of Circuit | His Honour | June 8 | June 9 | June 10 | June 11 | June 12 | June 13 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Birkenhead | Altrincham | Warrington | Leigh | — |
| 8 | Judge Heywood | — | Salford | Salford | Salford | Salford | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | Middlesbrough | York | Thirsk | Helmsley | Knaresbro' | Ripon |
| 19 | Judge Barber | — | Alfreton | Ilkeston | Bakewell | New Mills | — |
| 22 | Judge Harington | — | Redditch | Bromsgrove | Shipston-on-Stour | Evesham | — |
| 26 | Judge Jordan | Longton | Burslem | Hanley | Tunstall | Market Drayton | Uttoxeter |
| 47 | Judge Powell | — | Lambeth | Woolwich | Lambeth | Greenwich | — |
| 54 | Judge Metcalfe | Bristol | Bristol | Bristol | Bristol | Bristol | — |
| 55 | Judge Machonochie | Shaftesbury | Wincanton | Crewkerne | Yeovil | Salisbury | — |
| 58 | Judge Edge | — | Exeter | Exeter | Exeter | Newton Abbot | Torquay |

# House of Lords Register.

THURSDAY, MAY 28.

*Berkeley Peerage Case* (counsel for the claim of Mr. Randall Mowbray Thomas Berkeley, Asquith, Q.C., and Roskill; for the claim of Lord Fitzhardinge, Sir H. Davey, Q.C., Rigby, Q.C., Danckwerts, and C. A. Francis; for the Crown, Sir R. E. Webster (Attorney-General) and H. Berham Cox).

FRIDAY, MAY 29.

*Berkeley Peerage Case.*—Further hearing.

MONDAY, JUNE 1.

*Berkeley Peerage Case.*—Further hearing.

TUESDAY, JUNE 2.

*Berkeley Peerage Case.*—Further hearing; adjourned *sine die.*

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, LOPES, L.J., and KAY, L.J.

THURSDAY, MAY 28.

*Armour* v. *Bate* (appeal of plaintiff from judgment of Wills, J., dated December 15, at trial without a jury at Lancaster).—*Armour* v. *Bate* (appeal of plaintiff from order of Wills, J., dated December 15, at Lancaster, refusing to postpone trial).—Dismissed.

*Attorney-General* v. *Sharpe and another* (Q. B. *Revenue Side*) (appeal of defendants from judgment of Stephen, J., and Charles, J., dated December 16).—Dismissed.

*F. H. Wenman* v. *Lyon & Co.* (Q. B. *Crown Side*) (appeal of defendant from judgment of Pollock, B., and Charles, J., dated January 23, affirming judgment of County Court for claimant on interpleader).—Dismissed.

*Kingsford* v. *Ovenden* (appeal of defendant from judgment of Williams, J., dated October 30, at trial without a jury in Middlesex).—Part heard.

FRIDAY, MAY 29.

*In re A. Webber, ex parte S. Slater* (appeal of S. Slater (receiver) from order of Cave, J., dated March 18, that partnership proceeds are subject to repayment of balance of testator's share).—*Cur. adv. vult.*

*In re J. Gamgee, ex parte Ward* (appeal of J. Gamgee from receiving order made by Mr. Registrar Linklater, dated April 27).—Dismissed.

MONDAY, JUNE 1.

*In re W. E. Cloete, ex parte Debtor* (appeal of debtor from receiving order made by Mr. Registrar Giffard, dated May 13).—Dismissed.

*Phillips and others* v. *J. Fowler & Co.* (*Leeds*) (*Lim.*) (appeal of defendants from order of Day, J., and Lawrance, J., dated April 17, reversing judge's order granting liberty to defend).—Allowed.

*Regina* v. *Judge of Halifax County Court and Bairstow* (Q. B. *Crown Side*) (appeal of H. Sutcliffe from order of Pollock, B., and Charles, J., dated April 22, discharging rule *nisi* to hear action in *Sutcliffe & Bairstow*).—Part heard.

TUESDAY, JUNE 2.

*Kingsford* v. *Ovenden.*—Dismissed.

*Woodfin* v. *Marston & Co.* (*Lim.*) (appeal of plaintiff from judgment of Day, J., dated January 27, at trial without a jury in Middlesex).—Dismissed.

*Braunstein* v. *Lewis and another* (appeal of plaintiff in person from judgment of Day, J., dated January 30, at trial without a jury in Middlesex).—Dismissed.

WEDNESDAY, JUNE 3.

*Hilder* v. *Hume, Webster & Co.* (appeal of defendants from judgment of Lawrance, J., dated January 23, at trial with common jury in Middlesex).—Allowed.

*School Board for London* v. *Wall Brothers* (appeal of E. H. Collins (trustee in bankruptcy) from part of judgment of Day, J., dated November 18, at trial with special jury in Middlesex, as directs appellant to pay plaintiffs' costs of action personally).—Dismissed.

*London Bank of Mexico and South America* (*Lim.*) v. *Apthorpe* (*Surveyor of Taxes*) (Q.B. *Revenue Side*) (appeal of the London Bank of Mexico from judgment of Stephen, J., and Charles, J., dated January 19).—Dismissed.

## APPEAL COURT II.

Before LINDLEY, L.J., BOWEN, L.J., and FRY, L.J.

THURSDAY, MAY 28.

*In re Bence, dec. Smith* v. *Bence* (*construction*) (appeal of defendant J. F. Bence from order of Kekewich, J., dated March 6).—*Cur. adv. vult.*

*In re T. Metcalfe, dec. Metcalfe* v. *Metcalfe* (*construction*) (appeal of plaintiff from order of Kekewich, J., dated December 4, 1889).—Dismissed.

FRIDAY, MAY 29.

No sitting.

SATURDAY, MAY 30.

No sitting.

MONDAY, JUNE 1.

*In re C. Palmer, dec. Palmer* v. *Hardwick* (appeal of defendants J. and H. Hardwick from order of Kekewich, J., dated December 15).—Dismissed.

TUESDAY, JUNE 2.

*In re W. Jones, dec. Griffin* v. *Porter* (appeal of plaintiffs from judgment of Chitty, J., dated March 23).—Allowed.

*In re J. Gouldsmith, dec. Roberts* v. *Thorne* (*construction*) (appeal of defendant Thorne from order of North, J., dated May 20).—Dismissed.

WEDNESDAY, JUNE 3.

*Mander* v. *Falcke* (appeal of defendant G. E. Hinds (sued as George Edwards) from order of Kekewich, J., dated May 8, restraining from carrying on disorderly house in breach of covenant in lease).—Dismissed.

*In re W. Briggs, dec. Earp and another* (appeal of Messrs. J. & W. Heathcote (creditors) from order of Chitty, J., dated May 1, refusing transfer of action to Derby County Court (Bankruptcy)).—Dismissed.

*In re C. E. Withall, dec. (formerly one, &c.)* (appeal of K. M. Withall (executrix) from order of North, J., dated April 29, allowing objections to taxation).—Dismissed.

*Mackenzie* v. *Macintosh* (appeal of plaintiff from judgment of Kekewich, J., dated March 4).—Part heard.

## OBITUARY.

A REUTER telegram from Montreal, dated June 1, says the HON. SIR A. A. DORION, Chief Justice of Quebec, died that morning. The deceased, who was among the most prominent of Sir John Macdonald's political opponents, was Minister of Justice in Mr. Mackenzie's Cabinet from November, 1873, to June in the following year, when he was appointed to the Chief Justiceship of Quebec.

MR. JAMES ARTHUR CRICHTON, advocate, sheriff of the Lothians and Peebles, died on Friday, May 28, at his residence in Edinburgh, at the age of sixty-seven. Mr. Crichton passed to the Scottish bar in 1847. He was for several years an advocate depute under the Administration of Lord Palmerston and Mr. Gladstone, and in 1870 he was appointed sheriff of Fife. For some years Mr. Crichton was vice-dean of the Faculty of Advocates, and on the retirement of Sheriff Davidson in 1886 he was promoted to be sheriff of the Lothians and Peebles. The deceased was greatly esteemed by the bench and the bar. A striking circumstance about his death is that his father, the oldest member of the society of solicitors before the Supreme Courts, died on Thursday, at the age of ninety-seven.

THE SUMMER CIRCUITS.—The following are the circuits chosen by the judges for the ensuing summer assizes —viz.: South-Eastern Circuit, Mr. Justice Hawkins; Home Circuit, Mr. Justice Mathew; Western Circuit, Mr. Justice Cave and Mr. Justice Mathew; Oxford Circuit, Baron Pollock; Midland Circuit, Mr. Justice Vaughan Williams. Lord Chief Justice Coleridge and Mr. Justice Wills will join the circuit at Birmingham and Stafford respectively, when Baron Pollock and Mr. Justice Williams will return to town. North Wales Circuit, Mr. Justice Lawrance; South Wales Circuit, Mr. Justice Henn Collins; Northern Circuit, Mr. Justice A. L. Smith and Mr. Justice Wright; North-Eastern Circuit, Mr. Justice Day and Mr. Justice Grantham. Both civil and criminal business will be taken at these assizes, which are expected to begin early in July.

## HONOURS AND APPOINTMENTS.

MR. WILLIAM HODGKINSON, of Corporation Street, Birmingham, has been appointed a Commissioner to Administer Oaths. Mr. Hodgkinson was admitted in 1884.

Mr. John Ingleby Jefferson, of Northallerton, has been appointed Registrar of the County Court and the Bankruptcy Court at Northallerton; also Deputy Steward and Clerk of the Halmote Courts of the Manor of Northallerton, in place of his late father, Mr. W. T. Jefferson. Mr. Jefferson was admitted in 1876.

Mr. William Arthur Cheetham, of Rochdale, has been appointed a Commissioner for Oaths. Mr. Cheetham was admitted in 1885.

Mr. Robert Dunn Proud (of the firm of J. & R. D. Proud), of Bishop Auckland, has been appointed a Commissioner for Oaths. Mr. Proud was admitted in 1885.

Mr. Francis John Woodhouse Wood, of Ipswich, has been appointed a Commissioner for Oaths. Mr. Wood was admitted in 1881.

Mr. Alan Turner (of the firm of Aldous & Turner), of Ipswich, has been appointed a Commissioner for Oaths. Mr. Turner was admitted in 1881.

Mr. Thomas Price (of the firm of Samson & Price), of Manchester, has been appointed a Commissioner for Oaths. Mr. Price was admitted in 1882.

Mr. Leathes Prior (of the firm of H. Rackham & Co., and Turner & Prior), of Norwich, has been appointed a Commissioner for Oaths. Mr. Prior was admitted in 1875.

Mr. Richard Preston, of Tonbridge, has been appointed a Commissioner for Oaths. Mr. Preston was admitted in 1882.

THE CASE OF MRS. CATHCART.—The inquiry into the condition of mind of Mrs. Cathcart, whose case created so much interest recently, has been fixed to take place before Mr. Bulwer, Q.C., M.P., one of Her Majesty's Commissioners in Lunacy, and a special jury, on Monday, June 15, at New Inn, Strand. Sir Charles Russell, Q.C., M.P., and Mr. Costelloe, will appear for Mrs. Cathcart; Sir Henry James, Q.C., M.P., and Mr. English Harrison, will represent the husband (Mr. Cathcart), and other counsel will be present on behalf of other parties concerned.

RATING OF ALLOTMENTS.—A bill, introduced by Mr. H. Cust, M.P., recites in its preamble that doubts have arisen as to whether allotments are included among the lands to which the exemptions apply under the provisions of the Public Health Act, which say that 'the occupier of any land used as arable, meadow, or pasture ground only, or as woodlands, market gardens, or nursery grounds,' shall be assessed to the general district rate in an urban district or to a separate rate levied in respect of special expenses in a rural district in the proportion of one-fourth part only of the net annual value or rateable value of such land. To relieve allotments from all liability to be assessed for sanitary purposes at a higher rate than other cultivated lands, the bill proposes to include them expressly among the lands so liable to be assessed to a fourth part only of the value. In that case an 'allotment' could be taken to mean 'any parcel of land of not more than two acres in extent, and let as an allotment and cultivated as a garden or farm, or partly as a garden and partly as a farm.'

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

THE BAR COMMITTEE.—As the result of the polling for the election of members to serve on the Bar Committee, the balloting for which ended on Saturday last, Sir Henry James, Q.C., M.P. (chairman of the committee), has declared the following gentlemen duly elected: Mr. H. M. Bompas, Q.C., Mr. E. W. Byrne, Q.C., Mr. G. Farwell, Q.C., Mr. Finlay, Q.C., M.P., Mr. Pitt-Lewis, Q.C., M.P., Mr. Renshaw, Q.C., and Messrs. E. F. Bigg, K. E. Digby, F. Evans, Ingle Joyce, W. W. Knox, O. L. Clare, B. F. Lock, F. B. Palmer, D. Sturges, and E. P. Wolstenholme.

THE JUDICATURE.—The Lord Chancellor has introduced a bill relative to the Judicature. The first proposal is to make it lawful for any ex-Lord Chancellor, if, upon the request of the Lord Chancellor, he consents so to do, to sit and act as a judge of the High Court or of the Appeal Court. While so sitting and acting he is to have all the jurisdiction, power, and authority of a judge of either of those Courts, and is to rank therein according to his precedence as a peer. The next proposal deals with the office of the President of the Probate, Divorce, and Admiralty Division. Whenever there is a vacancy in this office it is to be lawful for Her Majesty, by letters patent, to appoint to the office any barrister of fifteen years' standing or any judge of the High Court or Court of Appeal of not less than one year's standing. The person so appointed is to take precedence in Court next after the Master of the Rolls, but this provision is to be without prejudice to the rights of any judge of the Supreme Court existing at the passing of the bill. For the purpose of aiding the House of Lords in the hearing and determination of appeals in Admiralty actions, the House is, according to a third proposal, to be empowered, in any such appeal in which it may think it expedient to do so, to call in the aid of one or more assessors specially qualified, and to hear the appeal wholly or partially with the assistance of such assessors.

LIFE ASSURANCE.—The fifty-fourth annual general meeting of the Legal and General Life Assurance Society was held on March 17 last. During the past year new assurances were effected with the society, under 513 policies, for the sum of 896,690*l.*, and 830*l.* a year contingent annuities. The new premiums thereon amounted to 33,380*l.* 4*s.* 9*d.*, of which 7,059*l.* 15*s.* 2*d.* was paid away for the re-assurance with other offices of 261,624*l.*, leaving 26,320*l.* 9*s.* 7*d.* as the new premiums on 635,066*l.*, and on 830*l.* contingent annuities, the net risks retained by the society. The total net premium income amounted to 175,136*l.* 10*s.* 3*d.*, being an increase of 8,659*l.* upon that of 1889. The total claims amounted to 150,553*l.*, caused by sixty-seven deaths and one matured policy, as against 142,541*l.* in 1889, caused by seventy-seven deaths. This sum included 28,825*l.*, paid as bonus additions to policies, assuring 83,197*l.*, showing the large average increase of 34 per cent., although in many cases bonuses have been surrendered for cash or reduction of premium. The amount of interest was 97,459*l.* 15*s.* 11*d.*, an increase of 4,374*l.* upon 1889. The total assets of the society, increased during the year by the sum of 131,277*l.* 17*s.* 3*d.*, amounted at December 31 to 2,503,554*l.* 19*s.* 7*d.*, the investments thereof at that date yielding an average rate of 4*l.* 5*s.* 8*d.* per cent. over the whole amount, productive and unproductive. The above assets of the society include 1,802,860*l.*, invested on mortgages of real and personal property in the United Kingdom. Of these mortgages 79,670*l.* is upon property in Ireland, and this sum is well secured, and the interest is punctually paid. The other mortgages, which are upon property in England or Wales, have been recently investigated by the directors, and the result of such investigation is satisfactory. We call attention to the fact that, this being the bonus year, the next division of profits will take place as at December 31, 1891.

LINCOLN'S INN.—The treasurer (Mr. Napier Higgins, Q.C.) and the benchers of Lincoln's Inn entertained at dinner on June 2, being the Grand Day in Trinity Term, the Earl of Morley, the Earl of Kimberley, the Earl of Ross, the Bishop of Oxford, Sir Walter Sandall (Governor of Barbados), Sir William Whiteway, the Dean of St. Paul's, Mr. Henry Hucks Gibbs, M.P., Admiral Colomb, Mr. Robert Cunliffe (President of the Incorporated Law Society), and Mr. John Evans (Treasurer of the Royal Society). The benchers present on the occasion were Lord Grimthorpe, Mr. Osborne Morgan, Q.C., M.P., Lord Justice Fry, Sir William T. Marriott, Q.C., M.P., Sir William R. Grove, Mr. Justice Chitty, Sir Robert Stuart, Q.C., Mr. Hemming, Q.C., Mr. Graham Hastings, Q.C., Mr. Crackanthorpe, Q.C., Mr. Justice Kekewich, Mr. Horton Smith, Q.C., Lord Macnaghten, Mr. William Karslake, Q.C., Mr. Everitt, Q.C., Mr. Cecil Russell, Mr. Cozens-Hardy, Q.C., M.P., Mr. Giffard, Q.C., Sir Arthur Watson, Q.C., Mr. Elton, Q.C., M.P., Mr. Bush, Q.C., Mr. Cutler, Q.C., Mr. Wolstenholme, Mr. Buckley, Q.C., Mr. Digby, and the Rev. Dr. Wace, preacher.

MIDDLE TEMPLE.—The Duke of Clarence and Avondale, who is a bencher of the Middle Temple, dined with the treasurer (Lord Coleridge) and the other benchers of that Inn on June 2 in their hall, in celebration of the Grand Day of Trinity Term. The guests present were the Turkish Ambassador, the American Minister, the Earl of Strafford, Lord Bramwell, Lord Shand, Sir M. Grant Duff, General Sir Redvers Buller, Mr. Justice Lawrance, Sir Arthur Collins, the warden of Merton (Mr. George Brodrick), Sir Richard Harington, Sir Hussey Vivian, M.P., Captain Holford, Mr. Wells, R.A., the Rev. Canon Ainger, Mr. Ellis Yarnall, Mr. W. B. Richmond, and Mr. J. W. Waldron (the under-treasurer). The benchers present were Mr. Justice Hawkins, Sir T. Chambers, Q.C. (Recorder of London), Judge Powell, Mr. Joseph Brown, Q.C., Mr. Justice Day, Mr. Cowie, Q.C., Mr. Morgan Lloyd, Q.C., Mr. Philbrick, Q.C., Mr. Macrory, Q.C., Mr. Locock-Webb, Q.C., Mr. Underhill, Q.C., Mr. Graham, Q.C., Mr. Warmington, Q.C., M.P., Mr. Stallard, Mr. Finlason, Mr. Will, Q.C., M.P., Mr. Digby, Mr. French, Q.C., Sir F. V. Smith, Mr. Crump, Q.C., Mr. Balfour Browne, Q.C., and Mr. Francis Williams, Q.C. There was a large attendance of barristers and students.

## BIRTHS.

On May 27, at 51 Norfolk Square, Hyde Park, the wife of C. Ernest Hensley, Esq., Barrister-at-Law, of a daughter.

On May 28, at 79 Union Road, Clapham, the wife of George H. Chamberlain, LL.B., Solicitor, of a daughter.

On May 30, at 59 Priory Road, West Hampstead, the wife of Amherst D. Tyssen, D.C.L., Barrister-at-Law, of a son.

## MARRIAGES.

On March 30, at the Dilkoosh Hotel, Northdene, Natal, South Africa, Percy Evans Coakes, Solicitor, Durban, Natal, to Elisabeth Maud, eldest daughter of Charles Henry and Clarissa Chase Brereton, and granddaughter of the Rev. Canon Brereton, Rector of St. Mary's, Bedford, England.

On May 25, at Bishopstoke Parish Church, Booth Frederick Clarke, of 14 Serjeants' Inn, Fleet Street, Solicitor, to Phillis Amy Weston, daughter of Edwin Weston, of Forest Hill.

## DEATHS.

On May 24, at 8 Rue Meissonier, Paris, Amanda, widow of the late Barthélémy Colin, Judge of the Supreme Court, Mauritius, aged 89 years.

On May 25, at Summer Hill, Gainsborough, Lincolnshire, Helen Oldman, the widow of the late Thomas Hugh Oldman, Solicitor, aged 56 years.

On May 29, at 10 Westbourne Terrace, Kelvinside, Glasgow, David Barr, Solicitor, Glasgow, in his 69th year.

On May 29, at Springfield House, Peterborough, Frederick Viel Jacques, of Durdham Park, Bristol, Solicitor, aged 72 years.

On May 30, at 23 Tavistock Road, W., Mary Ann, widow of John William Bittleston, Esq., of the Middle Temple, Barrister-at-Law.

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# The Law Journal.

*SATURDAY, JUNE* 13, 1891.


## 'OBITER DICTA.'

THE judges of Court of Appeal No. 1 had to face a rather severe task at the beginning of the present sittings. Of the 156 appeals entered for hearing up to May 16, no less than 119 will, in the ordinary course, have to be dealt with by that division of the Court. These consist of seventy-four final and eighteen interlocutory appeals from the Queen's Bench Division, seven Admiralty, and six Bankruptcy appeals, and the new trial paper, which contains fourteen cases. The Court has up to the present disposed of some twenty final appeals as well as a few cases in the interlocutory and bankruptcy lists, and a portion of the new trial paper, but it is evident that a great deal remains for the Court to dispose of during the two months that remain before the Long Vacation, even if appeals entered subsequent to May 16 are disregarded. We can hardly suppose, however, that it is intended to let the whole of such appeals stand over until the end of October, and it seems pretty clear, therefore, that it will be necessary to invoke the assistance of the other division of the Court, in which the lists are, fortunately, very light.

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THE annual meeting of the Incorporated Law Society is to be held on July 10, when a president, vice-president, and ten members of the council are to be elected. The ten outgoing members—all well-known men—offer themselves for re-election, with the exception of Mr. Jevons, of Liverpool. In these days of constant change and experimental legislation it is essential that the interests of the profession should be jealously watched and guarded by a strong and influential council. Every solicitor has, therefore, a personal interest in the coming election. At this meeting the balance-sheet of the Incorporated Law Society for the year 1890 will be presented, and also the accounts of the various trust funds which it administers. The figures disclose, as may be expected, a solvent and prosperous pecuniary condition; but some of the items afford openings for criticism, or at least for remark. As an instance, the outlay for 'entertainments after each examination and council luncheons for the year' was 792*l.* 0*s.* 4*d.*, while the money expended on the library (purchase of books, binding, newspapers, and periodicals) for the same period was 706*l.* 4*s.* 7*d.* Hospitality and good living are indeed traditional among lawyers, and the chief law society does not seem to have forgotten its duties in this respect. The provincial meeting of the Incorporated Law Society for the present year is to take place at Plymouth on August 25 and 26, and quite a new feature in the arrangements is the date which has been fixed. The end of August falls within the vacation enjoyed by the most hardworking solicitors, while the period usually chosen for these meetings—the middle of October—is by no means convenient to the majority of solicitors, who have by that time settled down once more to hard work. The usual happy combination of work and play is being arranged, and full particulars will be announced in due course.

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As the Lord Chief Justice pointed out at the beginning of his summing-up, the slander for which the plaintiff sued in *Cumming* v. *Wilson* would not have been actionable had it not been that it charged an indictable offence. By 8 & 9 Vict. c. 109, s. 17, 'Every person who by any fraud or unlawful device or ill practice in playing at cards' wins from any other person any sum of money is deemed guilty of obtaining such money from such other person by a false pretence with intent to cheat, and, 'being convicted thereof, shall be punished accordingly,' the maximum punishment being, as it seems on reference to 24 & 25 Vict. c. 96, s. 88, as amended by the Penal Servitude Act, 1864, five years' penal servitude.

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BY common consent, Sir Edward Clarke's reply is regarded as one of the greatest and most successful forensic efforts of recent times. Ingenious, daring, and exhaustive, delivered in a voice and with a manner from which all the arts of rhetoric (except that of concealing them) were conspicuously absent, this speech delighted all who heard it, and, what is not a little surprising, will well repay perusal in print. So great was the effect created that, if a less interval had elapsed between

the speech and the verdict, it is just possible to imagine that the jury might have disagreed; and it even made a great impression on those who read it in the evening newspapers.

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THE claim of one of the witnesses for 'protection' on the ground of some of the Solicitor-General's remarks could not, of course, be listened to. The Court of Appeal, in *Munster* v. *Lamb*, 52 Law J. Rep. Q. B. 726, has recently put the privilege of advocates on the highest possible ground. 'A counsel's position,' observed the Master of the Rolls in that case, 'is one of the utmost difficulty. He is to speak of that which he knows; he is not called upon to consider whether the facts with which he is dealing are true or false. What he has to do is to argue as best he can without degrading himself, in order to maintain the proposition which will carry with it either the protection or the remedy which he desires for his client. If, amidst the difficulties of his position, he were to be called upon during the heat of his argument to consider whether what he says is true or false, or whether what he says is relevant or irrevelant, he would have his mind so embarrassed that he could not do the duty which he is called upon to perform. More than a judge, infinitely more than a witness, he wants *protection* on the ground of benefit to the public.'

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THE case was very remarkable for the absence of technical objections on the ground of this or that testimony, or this or that document not being 'evidence.' A striking instance of this was afforded by a *précis* of events and statements drawn up by two of the witnesses. This *précis*, though a very convenient narrative to work upon, was, of course, not evidence against anybody except its authors. Yet other witnesses, who had been no parties to it, were, without objection, freely cross-examined for the purpose of showing that their statements were not perfectly reconcilable with it. The summing-up was remarkably forcible in the setting forth the extraordinary weakness of the plaintiff's case and the extraordinary strength of that of the defendants. Some may say that it was too one-sided. Such persons may well be reminded of a remark made by the late Lord Chief Justice in summing up the Tichborne case, to the effect that he knew his summing-up was open to the criticism of being one-sided, but he could not help that, as if the 'claimant's' case happened to be a weak one, it was the claimant's fault, and not his.

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MR. M'VANE formally applied to the Lord Chief Justice of England for a ticket of admission to his Court, on the ground that, though a judge is 'absolute emperor over his Court, yet his power does not extend to the selection of what body of people shall represent the public in cases which are not heard in camerâ,' and that, if it be necessary to establish a system of admittance by ticket only, that tickets should be distributed impartially to all applicants. The applicant also maintained that 'if there is room in the well of the Court, any member of one of the Inns of Court has a prior right to a seat therein over an ordinary member of the public, whether provided with tickets from the judge or not.' The Lord Chief Justice pointed out that the majority of persons on the bench have been unknown to him, but have been persons to whom for one reason or another it seemed proper to grant the privilege of admission, and that exactly the same observations apply to his own small gallery and to a portion of the gallery opposite the bench. 'The rest of that gallery,' added his lordship, 'and the whole of the body of the Court has been absolutely free, but I have given strict orders to prevent overcrowding, with the further directions that the utmost available space shall be given to members of the bar in costume, and that the reporters for the press shall be able to perform their important duty, as far as possible, in ease and comfort. . . . I can make no alteration in your favour. As the person you refer to as a Templar and yourself may perhaps repeat your mistakes, I shall send your letter and my answer to the newspapers.' The point raised by this correspondence is, we believe, quite new. The general right of the public to be present at any trial, so long as there is room, is, of course, undoubted, but the extent to which a judge may go in restricting that right in favour of particular individuals has never, so far as we know, been defined. Nor do we believe that members of the Inns of Court, except after their call to the bar, have any priority over the general public. Perhaps all that can be laid down with certainty is that, if any member of the general public can obtain admission to any part of the Court not allotted to the bench or the bar, no ticket-holder whatever can by right of his ticket eject such member of the public from his place.

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IN the recent case of *Bowers* v. *Harding* Baron Pollock and Mr. Justice Charles had to deal with several important questions in regard to the assessment of income-tax. The respondent and his wife had been appointed master and mistress of a national school at a joint salary, and the Court held that such salary was derived from 'a public office or employment' within the meaning of section 51 of the Income-tax Act, 1853, but that the respondent was not entitled to a deduction in respect of the board and wages of a servant whom it was necessary for him to employ in order that the duties of his household might be carried on whilst his wife was engaged at the school, inasmuch as it was not money expended 'wholly, exclusively, and necessarily in the performance of the duties of his office.' The Court were also of opinion that the salary, though paid to the respondent for the services of himself and his wife, was properly charged in the name of the respondent alone.

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IN the same case an important question was raised as to costs. It was contended that as it was an appeal by the Crown, and the respondent had merely appeared to support the decision of the Income Tax Commissioners, costs could not be given against him, although the appeal was allowed; and the case of *Sowry* v. *The Harbour Mooring Commissioners of King's Lynn* (2 Rep. of Tax Cases, 201) was strongly relied upon in support of that proposition, but the Court declined to adopt the argument, and, although they did not give costs against the respondent in the particular case, they held that there was no general rule against giving them in such cases where the Crown was successful on appeal. In future, therefore, where a person appears to support a decision of Income Tax Commissioners in his favour, he will do so at the risk of being mulcted in costs.

The decision of Mr. Justice Kekewich in *In re Davies, Davies* v. *Jenkins* (Notes of Cases, p. 91) has fortunately come to the rescue of the efficiency of representation orders. It is provided by Order XVI., rule 32, that where the rights of a class depend upon the construction which the Court or a judge may put on an instrument, in order to save expense or for some other reason, 'the Court or judge may appoint some one or more persons to represent' the class. Three classes of issue were interested under a will, and representation orders had been made. So far so good, but the difficulty arose when the question had to be answered how the costs were to be paid. 'The costs' hold the key of many a case, and it is well to see that his lordship has decided that solicitor and client costs can be paid, when the Court so orders, by the persons included in the representation orders, who for all purposes and argument are treated as being before the Court.

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The Lord Chancellor's bill as to Evidence in Criminal Cases needs amendment in one important respect. Difficulties daily arise in bigamy cases as to proving the first marriage, owing to the well-settled rule (Archbold, pp. 321, 1015) that the first husband or wife is not a competent witness in a bigamy prosecution to prove the existence of the civil status of marriage, although in a suit for divorce on the ground of bigamy and adultery the petitioner would be an admissible, if not a necessary, witness. This rule as it now stands is absolutely illogical, for the objection to the wife's competence as a witness to prove *that she is the wife* is in substance based upon an admission that she is what she claims to be — the wife of the accused person, and the first fact at issue upon the trial is whether the alleged first marriage took place. In ordinary criminal cases no such point arises, for the offences there in question do not depend, as in the case of bigamy, upon the existence of the marriage tie, and, if the defendant objected to a witness on the ground that she was his wife, he would have to prove the fact to give colour to his objection. The result of the present rule is that it often happens that all the witnesses to a marriage, but the husband or wife, being dead or having disappeared, a bigamist sails off clear for want of evidence of the first marriage, and the real wife retires from the Court under the not unnatural impression that it has been held that she was never married at all and might apparently on the next day get a divorce in respect of the bigamy which she could not prove in the criminal Court. The bill as it stands enhances the absurdity of the present law. The first husband or wife is to be an admissible but not a compellable witness in bigamy as in other cases. He or she therefore, if willing, may be tendered as a witness. Thereupon the defendant says: 'I refuse my consent.' This refusal must be based on the existence of the relation in dispute. She must, in fact, be his wife to justify his objection, whereas under the present law her assertion that she is his wife may be enough to disqualify her. Yet it is doubtful whether the refusal of consent is in a criminal case equivalent to an admission of the first marriage, or could be taken as evidence against the accused person as to the matter which the wife is tendered to prove. The bill ought, therefore, to be amended by the insertion of a proviso somewhat to the following effect: 'Provided that where criminal proceedings are instituted against any person for bigamy the husband or wife of the person charged shall be an admissible witness to prove the first marriage even without the consent of the person charged, *but shall not be compellable to give evidence.*' With reference to the words italicised it may indeed be plausibly argued that in cases of bigamy the first husband or wife should be a compellable witness in the interests of justice so as to prevent a bigamist from escaping punishment for the wrong done to the second wife, by the suppression of evidence of the marriage through the forgivingness of the first.

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The case of *Tomkinson* v. *The Balkis Consolidated Company*, decided by the Court of Appeal last week, forms a fitting supplement to that of *Bishop* v. *The Balkis Consolidated Company*, reported in 59 Law J. Rep. Q. B. 565. The plaintiffs in both these cases were the victims of the fraud of an ingenious person, who, being at one time possessed of shares in the defendant company, succeeded in selling them four or five times over; but their fortunes were different, since Bishop, who paid the price of his shares upon the faith of a transfer endorsed by the company's secretary with the words 'certificate lodged,' although no certificate had in fact been lodged, failed to recover; while Tomkinson, who obtained from the company a certificate in the usual form, certifying that he was the registered shareholder of particular shares specified, obtained a judgment against the company for the amount of loss he sustained by being compelled to purchase other shares to meet his engagements. Both cases turned upon the doctrine of estoppel. In the case of a 'certification' on endorsement of the lodgment of a certificate upon a transfer, the officer of a company 'has no means of ascertaining and no time to inquire whether the documents produced to him are genuine or not, nor whether the various transfers are valid or invalid in point of law. He acts upon what he sees, and there is no pretence for saying that he does more, or is understood by business men to do more.' If, therefore, the title of the transferor afterwards appears defective by reason of the invalidity of one of the documents lodged, the company is not estopped from denying the validity of his title. This is the effect of *Bishop* v. *The Balkis Consolidated Company*. But a 'certification' and a 'certificate' are totally different things. The 'power of granting certificates is to give the shareholders the opportunity of more easily dealing with their shares in the market, and to afford facilities to them of selling their shares by at once showing a marketable title. It is a declaration by the company to all the world that the person in whose name the certificate is made out, and to whom it is given, is a shareholder in the company, and it is given by the company with the intention that it shall be so used by the person to whom it is given, and acted upon in the sale and transfer of shares' (*In re The Bahia and San Francisco Railway Company*, 37 Law J. Rep. Q. B. 176). The company are, therefore, estopped from denying the truth of that which they represent to be the fact. This was the doctrine reaffirmed in the case of *Tomkinson* v. *The Balkis Consolidated Company*. The case of *Simm* v. *The Anglo-American Telegraph Company*, 49 Law J. Rep. Q. B. 392, presents a further refinement. There a certificate was issued on the strength of a forged transfer, but it was held that the company were entitled to contest the title of the holders of the certificate, since they had merely accepted their invitation to register a

forged document, and were not estopped from denying that the transferor transferred the stock. But in that case it seems to have been admitted that a buyer of the stock in the open market, who had paid the price upon the faith of the certificate of registration issued by the company, would have been entitled to succeed.

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ONE more of the difficult conundrums with which the Local Government Act, 1888, bristles has just been solved by the Court of Appeal in *Howlett* v. *The Mayor, &c. of Maidstone* (Notes of Cases, p. 90). Before that Act a borough within the geographical limits of a county was under no obligation to have recourse to the county asylum for the maintenance of its pauper lunatics. Under the provisions of the Lunatic Asylums Act, 1853, and the Amendment Act of 1862, it might either build an asylum of its own or resort to any county asylum in England which was willing to receive its lunatics. These asylums were empowered to make an additional charge in respect of foreign lunatics in consideration of the fact that the place of their settlement had taken no share in the building and furnishing of the asylum, and in theory, if not to any extent in practice, the asylum which made the smallest charge did the best trade, and the system, at any rate, prevented an exorbitant charge being levied in any particular instance. When and only when a contract was made mutual liabilities to maintain and to pay for maintenance arose. But by the Local Government Act, 1888, all this was altered. The borough was deprived of its power to build an asylum and of its freedom to contract. Instead, it was bound to send its lunatics to the county asylum, and (section 86, subsection 4) 'subject to the enactments providing for an additional charge for the maintenance of lunatics in cases where no contribution has been made towards the cost of building and furnishing an asylum, shall be liable to contribute to the county rate in respect of such lunatic asylum.' The language of the clause is not accurate, because it implies that the enactments created a liability, whereas in fact they only gave a power to contract, which power the Act takes away. But the real meaning of the section is not difficult to gather. Its object is obviously to create a statutory liability on the part of the borough to pay the additional sum which represents its share of the cost of the building in lieu of the contractual liability which previously existed. The real difficulty arises when we come to consider how the amount is to be estimated. The borough is now compelled to purchase the commodity it requires at a particular shop. Is the shopkeeper still to fix the price? The Court of Appeal decided in the negative. In their opinion the power of the committee of visitors under the 54th section of the Lunatic Asylums Act, 1853, to fix the amount perished with the power to contract of which it was only a part, and to arrive at the conclusion that the power survived would be to construe the words not as continuing an existing power for an existing but for a novel purpose, and so as to expose a borough to the possibility of an injustice against which it had lost the power of protecting itself by being denuded of its freedom to contract with any county asylum it chose. The matter was, therefore, declared to be one requiring adjustment at the hands of an arbitrator in accordance with the provisions of the 62nd section of the Act.

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SIR ALBERT ROLLIT'S bill to amend the Commissioners for Oaths Act, 1889 (which is also backed by Mr. Henry Fowler, Mr. Whitley, Mr. Haldane, Mr. Winterbotham, Mr. Chance, and Mr. Rowntree), has passed the House of Commons, and may be expected before long to become law. It contains one enacting clause only, to the effect that where any oath or affidavit must or may now be taken or made before any particular person (*e.g.* a justice of the peace) or officer, 'such oath or affidavit may be taken or made before a commissioner for oaths at any place, and shall be as effectual to all intents and purposes as if taken or made before such person or officer.' Will this enactment apply to the attestation of recruits on enlistment under section 80 of the Army Act, 1881? By that section a justice of the peace, after cautioning the recruit that if he makes any false answer to the questions read to him he will be liable to be punished as provided by the Act, 'shall read to him the questions set forth in the attestation-paper for the time being authorised by a Secretary of State,' and shall take care that he understands the questions, and shall require the recruit to make a declaration of the truth of the answers, and administer to him the oath of allegiance. We can see no reason why the bill should not apply to this case, but whether that is the intention of its authors we cannot say. Then, how about the fee? It is provided by the Army Act that 'the fee for the attestation of a recruit, and for all acts and things incidental thereto, shall be one shilling and no more, and shall be paid to the clerk of the justice.' If it be intended that the new bill shall apply to the attestation of recruits, this enactment will have to be altered; while, if it be not so intended, it would be desirable specially to exclude the Army Act from the operation of the bill. It may also be suggested that some special provision as to the payment of fees should be made. The Act of 1889, which is a consolidating Act, is strangely silent about fees, though it repeals 22 Vict. c. 16 and 16 & 17 Vict. c. 78, which gave a commissioner for oaths the right to the eighteenpenny fee, now dependent, we believe, entirely on the Order as to Supreme Court Fees, 1884, which does not seem sufficiently comprehensive in its terms to include all fees in connection with non-contentious business.

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THE difficulties of the Tithe Act, which received the royal assent on March 26 last, are now beginning to be felt in earnest, inasmuch as the three months limited by section 2, subsection 1, of the Act will now shortly expire. By this 'enactment,' where any sum due on account of tithe rent-charge is in arrear *for not less than three months*, the person entitled to such sum may apply 'to the County Court, which Court may make a receiving order or other order as therein mentioned, for the recovery of the tithe'; and by subsection 6 of the same section, where the occupier is liable under any contract made before the Act to pay the tithe, and consequently to pay the owner the amount of it, 'the owner of the lands shall serve notice of such liability on the owner of the tithe rent-charge, and thereupon, before an order under this section is made, there shall be such service on the occupier as may be prescribed' (see rule 3), 'and a hearing of such occupier if he appears and desires to be heard.' There follows a quasi-penal provision on which we have already commented (see *ante*, p. 248) to the effect that an owner who fails to serve the 'occupier's liability notice,' as it is termed, may not recover from the occupier any sum which he has paid on account of tithe rent-charge, unless he can obtain from the County

Court a certificate that there was good cause for the failure to give such notice. No time for serving the occupier's liability notice is directly limited by the Act or Rules. Can the three months specified in section 2, subsection 1, be considered to be indirectly limited for the service of this notice? There must be three months' arrears, after the passing of the Act—so we read subsection 1—before an order under that subsection can be made, so that it is not a very unreasonable construction of the Act that three months at least may be allowed to elapse before the occupier's liability notice must of necessity be served. We do not think that this is the true construction of the Act, but, looking to the difficulty of the subject-matter, we think that it is a construction which will be put upon the Act by a great number of practitioners, and which will not be unfavourably looked upon by County Court judges.

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LAST week (see *ante*, p. 388) we printed two letters on the subject of the Act. 'C.' asks who is to give the occupier's liability notice where a landowner has let the land for ninety-nine years on an improving lease. The answer depends on the true construction of section 9 of the Act of 1891 as read with section 12 of the Act of 1836. By section 9 of the Act of 1891 a reference to the 'owner' of lands means the same officers or persons as are mentioned in the Tithe Act, 1836. By section 12 of the Act of 1836 the term 'owner' means the person in actual possession of the rents or profits, except (*inter alia*) any tenant on a lease at not less than two-thirds of the annual value of the demised premises; and it is also provided that where land is let on a more than fourteen years' lease at a rent less than two-thirds of the annual value, the person in actual receipt of the rent under such lease 'shall jointly with the person who shall be liable to the payment of such rent be deemed for the purposes of this Act to be owners.' It seems to follow that in the case put by 'C' the lessor and lessee must give a joint 'occupier's' liability notice to the occupier in the ordinary case where the lessee has contracted with the lessor, and the occupier has contracted with the lessee, for payment of tithe.

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'SUBSCRIBER' asks whether he can recover unpaid tithe from a tenant who has quitted without paying it, 'though by his lease he expressly covenanted to pay it,' and refers to 14 & 15 Vict. c. 25, s. 4 as a possible means of helping it. We think that the enactment referred to will not apply. It provides that where a tenant quits, leaving tithe unpaid which he was legally bound to pay and the tithe-owner shall give or have given notice of proceeding, by distress upon the land, for the recovery thereof, either the landlord or the succeeding occupier may pay the tithe and recover the amount from the outgone occupier as a simple contract debt. This enactment appears only to apply where a distress is threatened by the tithe-owner, and as the tithe spoken of by 'Subscriber' was not due till April 1—*i.e.* after the passing of the Act—the tithe-owner cannot distrain, and the Act 14 & 15 Vict. c. 25, does not apply. We incline to think that an action can be maintained on the covenant.

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THE recent decision of the Court of Appeal in *Braunstein* v. *Lewis* was probably an inevitable result of the previous decisions in *Palliser* v. *Gurney*, 56 Law J. Rep. Q. B. 546, and *Stogdon* v. *Lee*, L. R. (1891) 1 Q. B. Div. 661. Having once determined that a married woman cannot contract so as to bind her separate estate under the Married Women's Property Act unless at the time of contracting she has property not subject to a restraint on anticipation, the Court would have stultified itself had it held the possession of 3*l.* or 4*l.* sufficient to support a covenant to pay 400*l.* It would, say Lord Esher and Lord Justice Kay, be absurd to suppose that in such a case a married woman intended to contract with reference to that property. That it would be absurd to suppose she intended to contract with reference only to that property we fully agree; but there can, we should think, be no doubt that both she and the plaintiff intended to contract with respect to and to bind her then existing and any future separate property, or, in other words, all property which she had capacity to bind. The real absurdity is to be found in the cases which have for the present established that the existence of separate property at the time is a necessary condition to the validity of a contract which, if valid, binds future property. We cannot see that this construction of the statute is warranted by its language. If subsection 4 of section 1 had been omitted there might perhaps have been ground for contending that 'separate property' in subsection 2 meant property existing at the time of the contract, but subsection 4 to our mind clearly indicates that the words ought not to be so restricted. For how is it possible, in view of subsection 4, to read subsection 2 as giving capacity to contract only 'to the extent of' existing separate property? This is, in effect, to insert into the earlier clause a restriction which makes it inconsistent with the later, unless, indeed, some peculiar meaning is to be given to the words 'to the extent of.' It is surely about time that this important question was submitted to the House of Lords.

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## MAINTENANCE OUT OF RESIDUE.

IN last month's number of the 'Law Reports' a case is reported which must have startled conveyancers who have been in the habit of relying on the maintenance clause in the Conveyancing Act, 1881; we refer to the case of *In re Jeffery; Burt* v. *Arnold* (1891), L. R. 1 Chanc. Div. 671, in which Mr. Justice North felt himself bound by authority to hold that maintenance could not be allowed under section 43 of the Act in respect of residuary real and personal estate given to the testator's present and future-born grandchildren contingently on attaining twenty-one, but that those of the class who had for the time being attained that age were entitled to the whole income to the exclusion of those still under age. It is to be observed that, although in the argument against maintenance some stress was laid on the fact that the class was liable to increase, the learned judge appears not to have attached much importance to that fact, the reasoning of the judgment being apparently as follows: No maintenance can be allowed under the Conveyancing Act unless the infant would on attaining twenty-one be entitled to past income. According to the authorities, a gift to a class contingently on attaining twenty-one does not entitle members attaining that age to past income; therefore, no maintenance can be given under the Act to the infant members of such a class.

The logical conclusion to be drawn from the decision seems to be that maintenance cannot be allowed under

the Act in the ordinary case of residuary personal estate bequeathed by a testator upon trust for his grandchildren who shall attain twenty-one; and as we believe it has been common practice to omit the maintenance clause in such a case, in reliance on the Act, it seems desirable to consider the authorities on which the decision is based.

The rule is, no doubt, settled that section 43 of the Conveyancing Act does not allow maintenance where, apart from the Act, the infant on attaining twenty-one would only be entitled to the property without the past income; but the cases of *In re Judkin*, 53 Law J. Rep. Chanc. 496; L. R. 25 Chanc. Div. 743, and *In re Dickson*, 54 Law J. Rep. Chanc. 510; L. R. 29 Chanc. Div. 331, which settled this rule, were cases of contingent legacies, not contingent gifts of residue; and it must be borne in mind that, although a contingent legacy does not in general carry intermediate income, a contingent gift of personal or mixed residue does (see *Genery* v. *Fitzgerald*, Jac. 468; *In re Dumble, Williams* v. *Murrell*, 52 Law J. Rep. Chanc. 631; L. R. 23 Chanc. Div. 360). This distinction does not appear to have been adverted to in the case before Mr. Justice North, nor was the case of *In re Cotton*, 45 Law J. Rep. Chanc. 201; L. R. 1 Chanc. Div. 232, cited, where Sir George Jessel held that maintenance was allowable under section 26 of Lord Cranworth's Act (which corresponds with section 43 of the Conveyancing Act) in respect of a gift of residue contingent on attaining twenty-one, because the infant on attaining that age would get both the property and the past income. Moreover, if the cases cited in *In re Jeffery* are carefully examined we think it will be found that only one bears out the proposition for which they were cited, and that was a case of a contingent legacy, and therefore it is conceived, for the reasons above mentioned, not in point.

In *Shepherd* v. *Ingram*, Amb. 448, there was a gift of mixed residue to the children of an unmarried lady equally, with a gift over if she should die without leaving issue. After the testator's death she married, and it was held that her children as they were born took the accruing income equally. No doubt in this case vesting was coincident with birth; but it is difficult to see how it can be any authority for the proposition that the children for the time being having vested interests are entitled to the whole income to the exclusion of other children in existence who have not attained vested interests.

Again, in *Mills* v. *Norris*, 5 Ves. 335, residuary personalty was given equally between the children of several living persons in such a manner that each child's share seems to have vested at twenty-one, subject to being partially divested by the birth of other children. An order had been made that the income of their shares should be paid to such as were of age, and the master had found by his report that two children had attained twenty-one while four other children were living, and that one had received his share of income since attaining twenty-one, but that a seventh child having been born the other six must abate. Thereupon the Court allowed an exception to the report on the ground that the after-born child could not claim bygone income, but no question was raised as to the income accruing after his birth. This case therefore seems only to negative the right of members of the class to income accruing before they come into existence.

In *Scott* v. *The Earl of Scarborough*, 1 Beav. 154, a fund was directed to be set apart in trust for the existing and after-born children of several living persons, contingently on their attaining twenty-one; so that the gift carried the intermediate income (see *In re Medlock*; *Ruffle* v. *Medlock*, 55 Law J. Rep. Chanc. 738); and it was held that the existing members of the class (who had all attained twenty-one) took vested interests in their shares subject to being partially divested in the event of there being other children who should attain twenty-one, and that in the meantime the income was payable to the existing members of the class in equal shares. It is, however, to be noticed that, as there were no other children in existence, the order made does not seem inconsistent with the right of after-born children to participate in income arising subsequently to their birth.

*Mainwaring* v. *Beevor*, 8 Ha. 44, came before the Court on an application by children who had attained twenty-one, for payment of their shares of personal residue given to them and all the other children of certain living persons who should attain twenty-one. The Court refused the application on the ground that after-born children might become entitled, but ordered the income to be paid to the applicants until another child should be born. As, however, the applicants were the only children then in existence, this case does not seem to be an authority against the right of infant members of the class to share in income accruing after their birth.

*Furneaux* v. *Rucker*, W. N. (1879) 135, appears to have been a case of a contingent legacy to a fixed class, and not a contingent gift of residue; and, therefore, no member of the class could become entitled to any income until he attained a vested interest. Accordingly, the income accruing before the first child attained twenty-one fell into residue, but when he attained that age his interest vested, and the rights of the residuary legatee ceased (see *Stone* v. *Harrison*, 2 Coll. 715), so that the child who had attained twenty-one was thenceforth the only person who could take the income until another child attained a vested interest. Having regard, however, to the distinction between a contingent legacy and a contingent gift of residue above referred to, this case seems inapplicable when the question relates to a gift of residue.

*Ellis* v. *Maxwell*, 12 Beav. 104, no doubt shows that a contingent gift of residue does not carry with it income accruing after the period limited for accumulations by the Thellusson Act; but with this exception, the authorities cited in *In re Jeffery* appear not in any way to conflict with the rule that a gift of personal or mixed residue contingent on attaining twenty-one carries the intermediate income.

If, then, an individual to whom residuary personalty is given contingently on attaining twenty-one is entitled to the past income, it seems to follow that in the case of a similar gift to a fixed class each member must have an equal right to the past income of the share to which he becomes entitled; and there seems to be no justification for giving the whole income to those members who have attained vested interests to the exclusion of other existing members who have not; nor does there seem to be any reason why section 43 of the Conveyancing Act should not apply; indeed, it is difficult to see what effect could be given to the words 'contingently on his attaining the age of twenty-one years,' if the section did not apply to such a case. There may be a difficulty in applying the Act where the class is liable to increase by reason of the share to which the infant is

contingently entitled being unascertainable, although Mr. Justice North seems not to have considered this difficulty insuperable; but, however that may be, there seems to be no reason why a member of such a class who has attained a vested interest should seize the whole income to the exclusion of other existing members who have not.

We do not know whether there is to be an appeal in *In re Jeffery*, but it is to be hoped that the doubt thrown on the right of members of a fixed class to maintenance out of the income of residue to which they are contingently entitled on attaining twenty-one may soon be resolved.

## JUDICIAL REFORM.

In another column will be found the Lord Chancellor's brilliant contribution to the solution of the question which has been agitated for so long in the columns of the *Times*, and which has been so frequently discussed in this journal. The cry of arrears in Chancery is always with us, and for years past the Government have been incessantly urged to appoint another judge in the Chancery Division. That there is always a very long list of witness actions awaiting trial in the Chancery Division is matter of common knowledge. It is equally true that the other divisions sometimes fail to despatch speedily the business set down for them to dispose of. Some writers even assert that suitors so despair of the prompt and efficient administration of justice that they are willing to make any sacrifice rather than go to law. Some of the existing evils are, doubtless, due to deficiencies of procedure, the multiplication of interlocutory applications, the interposition of preliminary questions between the writ and the adjudication of the real issues. But it is best to take one step at a time, and to consider whether, without any alteration in the existing system, the judicial forces at the disposal of the country are distributed to the greatest advantage.

What does the Lord Chancellor propose in the Judicature Acts Amendment Bill, which he introduced into the House of Lords the other day? The bill contains three operative sections. The first enables an Ex-Lord Chancellor, at the request of the Chancellor, if he is willing to do so, to act as a Judge of the Court of Appeal or a Judge of the High Court. The second and longest section, out of tender regard for the susceptibilities of some future President of the Probate Division, provides that the future President shall be next in precedence to the Master of the Rolls. The third empowers the House of Lords to call in the aid of specially qualified assessors in Admiralty Appeals. What do the public care about judicial precedence? We should imagine that no masculine-minded judge who should be appointed to sit in the seat of Lord Hannen would trouble his head about the question whether he was to rank before or after or with the Lords Justices. Suitors want their cases decided expeditiously and economically, and the judges are paid servants of the public. They do not want to rely on the voluntary help of an ex-Chancellor as an extra hand when pressure arises. Ex-Lord Chancellors have not always shown great zeal in sharing the dignified duties of the gilded chamber. Lord Herschell, who is still in the bloom of youth, is a laudable exception, and does much admirable work in the House of Lords and the Privy Council. But it is doubtful whether even he would care to exchange the serenity of Westminster and Whitehall for the turmoil of the Royal Courts.

There are in all about forty judges. For service in this tribunal of final appeal there are available some thirteen or fourteen noble lords, all of whom may sit in the Privy Council, in which also is rendered the gratuitous assistance of Lord Hobhouse, Sir Richard Couch, and Lord Shand. The judges in the Royal Courts sit about 200 days in the year. The House of Lords barely exceeds an average record of 100. The Lord Chancellor has important political duties, and he also occasionally sits in the Court of Appeal. But surely the country has a right to expect something more than 100 days' work in the year from the four Lords of Appeal in Ordinary, to whom are paid salaries of 6,000*l.* a year apiece. If a return were made of the number of times each of these noble and learned lords sat in a given year in the House and in the Privy Council the disclosure would be of great public interest. The two final Courts are from time to time very variously constituted, and it would be surprising to find that any one of them had sat many more than 100 days. Lord Bramwell, who might after thirty-five years of continuous judicial service, reasonably enjoy a well-earned retirement, is as assiduous in his attendance and as valuable as any of their lordships. If the Lord Chancellor had included the four Lords of Appeal in Ordinary in his second clause, and changed the permissive for the imperative form, his bill would have been of real value for the despatch of business. The judicial qualities of noble lords would be improved by occasional variations in the duties which they are called upon to discharge, and if the four lords were to sit, say fifty more days in the year in the less august tribunals there would be ample judicial strength to cope with arrears when and as they should arise, whether in the Court of Appeal or in the High Court. The bungling and piecemeal character of our legislation with respect to the Courts is strikingly shown in the Appellate Jurisdiction Act, 1876, and the Amending Act, 1887. In the former no provision was made to enable a retired Lord of Appeal in Ordinary to sit and vote in the Legislative Chamber after his retirement. This was remedied by the Act of 1887; but it was again forgotten to insert a power for the retired judge to sit, if he chose, in the House in a judicial capacity. A judge who might not be willing to sit continuously might in many instances be willing on occasion to strengthen the final Court. There is no reason either why a retired Lord of Appeal as well as an ex-Lord Chancellor should not be competent to take part in the labours of the Court of Appeal or the High Court. In fact, as has before been urged in these columns, it ought to be made competent for the holders of the superior judicial office generally to do the work of the inferior tribunals. The highest Courts are, as to their *personnel*, of a much more floating character than the High Court or the Court of Appeal. It is desirable to make them numerically and judicially as strong as possible. We venture, therefore, to suggest another method of strengthening them. Now that the principle of life-peerages is fairly established, why should it not be the custom for judges, on their retirement from the Court of Appeal or High Court, to be raised to the Upper House for life? Judges of the High Court on retirement are usually made Privy Councillors, and before now have done good work in the Privy Council. If they were made life-peers the country would have a useful judicial reserve, and the position of a judge of the High Court would be made more attractive to the best men than it is at present.

## LEGISLATIVE PROGRESS.

IN the House of Lords.

Bills read a third time and passed:—

Seal Fishery (Behring Sea) Bill.
Intermediate Schools, &c. (Sites) Bill.
Betting and Loans (Infants') Bill.
Savings Banks Bill.
Evidence in Criminal Cases Bill.
Herring Branding (Northumberland) Bill.

Bills beyond second reading:—

The report of amendments to the Presumption of Life Limitation (Scotland) Bill was received; and the Museums and Gymnasiums Bill and Reformatory and Industrial Schools Children Bill passed through committee.

In the House of Commons.

Third readings:—

Seal Fishery (Behring Sea) Bill (Lords' amendments agreed to).
Forged Transfers (No. 2) Bill.
Tramways (Ireland) Act (1860) Amendment Bill.
Roads and Streets in Police Burghs (Scotland) Bill.
Local Authorities (Scotland) Loans Bill.
Bills of Sale Act (1890) Amendment Bill.

Bills through Committee:—

Public Accounts and Charges Bill.

Second readings:—

Salmon Fisheries (Ireland) Acts Amendment Bill.
Allotments Rating Exemption Bill.

New bills:—

To Amend the Markets and Fairs (Weighing of Cattle) Act, 1887.

To make Provision for Paying off the British Portion of the Russian-Dutch Loan.

For the Better Prevention of Frauds in the Manufacture and Sale of Artificial Manures and Feeding Stuffs.

To Amend the Law relating to Allotments for Labourers in Ireland.

Free Education Bill.

To Accelerate the Proceedings of Burgesses in the Boroughs of Dublin and Belfast, and to Alter certain Dates and Periods connected therewith.

To Amend the Local Government (Scotland) Act, 1889.

Bills withdrawn:—

Intoxicating Liquors Local Veto (Ireland) Bill.
Artificial Manures, &c., Adulteration Bill.
Liquor Laws (Scotland) Bill.
Sunday Closing (Wales) Act, 1881, Amendment Bill.

## CALLS TO THE BAR.

THE undermentioned gentlemen were called to the bar on June 10:—

*By the Honourable Society of Lincoln's Inn.*

Francis John Bryant, Wadham College, Oxford.
Frederick Mitchell Elliot, B.A., Cambridge.
Bertram Cardew Gardiner.
Francis Thomas Dove, University College, London.
Francis Statham, LL.B., Cambridge.
Frederick Trevor Galsworthy, B.A., Cambridge.
William Freshfield Burnett, M.A., Oxford.
Henry D'Arcy Hart, B.A., Oxford.
Thomas Loffill Dutton Dickinson, B.A., Oxford.
William Hebard Hudson, M.A., Oxford.
William Egelric Bigge, B.A., Oxford.

*By the Honourable Society of the Inner Temple.*

Clement Young Sturge, M.A., Oxford.
James Dundas White, B.A., LL.B., Cambridge.
William Gilbert à Beckett, Cambridge.
Oscar Welwyn Rayner, B.A., Cambridge.
Zahid Ali Khan.
Frank Ashby Pritt, B.A., Cambridge.
Charles Frederick Lloyd, B.A., Cambridge.
William John Turner Clarke, B.A., Oxford.
Edward Tilley Slater, B.A., Oxford.
James Henry Monk, B.A., Cambridge.
Julian Charles Gaisford.
Arthur Emil Hayton, B.A., Cambridge.
Arnold Glover, B.A., LL.B., Cambridge.
George Dodson, B.A., LL.B., Cambridge.
Charles Stuart Allison, LL.B., London.
Austin Guy Wrigley, Cambridge.
Matthew Stewart Prichard, B.A., Oxford.
Samuel Mumford Everard, B.A., LL.B., Cambridge.
Marcus Warre Slade, B.A., Oxford.
Thomas Edmett Haydon, B.A., Cambridge.
Percy Scott Hill Scott-Crickitt, B.A., Oxford.
Lionel Charles Whitehead Phillips, B.A., Cambridge.
William Harold Tingey, B.A., Cambridge.
Wyndham Neave Slade, B.A., Oxford.
John Ashburner Nix, B.A., Cambridge.
Arthur George Du Cane, B.A., Oxford.
Daniel Chamier.
Arthur Moore.
Jehangir Peerozshaw, B.A., Bombay.
Walter M'Lachlan Money, B.A., Oxford.
The Hon. Edward Evan Charteris, Oxford.
Horace George Calthrop, B.A., Cambridge (holder of a Scholarship in Common Law, awarded February, 1890).
George Robert Harris, Calcutta.
Cecil Bertie Gedge, B.A., Cambridge (holder of a Scholarship in Real Property Law, awarded February, 1890).
Frederick William Gilks, B.A., London.
Daniel Henry Conner, B.A., Oxford.
James Smith, B.A., LL.D., Cambridge.
Diwan Ram Prashad, Cambridge.
Diwan Shadi Ram, Cambridge.
Thomas Cecil Pakenham, B.A., Oxford.
Mohandass Karamchand Gandhi.
Horacio Prudencio Parodi, London.
Watkin James Yuille Strang Watkins, B.A., Cambridge.
Wilfred Bruno Colbeck, Cambridge.
Nicolas Gilbert Louis Child, B.A., Oxford.
George Frederick Lloyd Mortimer, B.A., Oxford.
Herbert Tremenheere Hewett, B.A., Oxford.
Bernard Edward Spencer Brodhurst, B.A., Oxford (holder of a Scholarship in Equity, awarded February, 1891).
Malcolm Edward Horne Martin.
Reginald George Gallop.
Henry Price Chapman.
Edward James Jacob.
Reginald Houblon Calvert, B.A., Cambridge.

*By the Honourable Society of the Middle Temple.*

Frederick William Washington Kingdon, LL.D., London University (Lecture Prize in Roman Law, Studentship Roman Law, Lecture Prize Real and Personal Property).
Abdul Majid, B.A., Christ's College, Cambridge (Calcutta University, India Government Scholar, Tagore Scholar, Presidency College, Calcutta, Inns of Courts Studentship, 1891).

William Jethro Brown, B.A., LL.B., St. John's College, Cambridge (Inns of Court Studentship and Middle Temple Common Law Scholar).
William Edward Heathcote, M.A., Fellow TrinityCollege, Cambridge.
Mohamed Abdul Alim.
Arthur Raymond Yates, B.A., Jesus College, Cambridge.
Nai Plüm.
Arthur Harington Graham, B.A., Magdalen College, Oxford.
Egerton Milne Cumming Macdona, B.A., Oxford.
Cecil Grenville Wilbraham, B.A., Merton College, Oxford.
Mohamed Ismail Khan.
Henry Beaumont.
Gabriel Hugh Savage.
Robert Morris.
Alexander Maclean, B.A., Christ Church, Oxford.
Arthur Gaved Phillips.
Framrose Pestonjee Doctor, B.A., Bombay University.
Herbert Edward Chorley.
Raj Narayan.
Alexander Leeper (Lieutenant R.N.).
George Mitchell Weekley, King's College, London.
Albert Parsons.
George Grenville Phillimore, B.A., Oxford.
Buch Tranbuchray Tricamray Majamdar.
Mazhar Ul Hague.
James Murray, University of London.
Alfred Radford.
Sidney Percy Leggett.
James Sands Henderson.
Percy Gladstone Thompson.
Ram Gopal (Kayestha), Calcutta University.
Jagdish Sankar Misra, St. John's College, Cambridge.
Henry Walter Reece, University of London.
Samuel Edgar Wills.
William Charles Godwin.
Harry Stanley Scrivener, B.A., Magdalen College, Oxford.
Hemendra Nath Mitra, Doveton College, Calcutta.
Samuel Thomas Evans, M.P., London University.

*By the Honourable Society of Gray's Inn.*

Thomas Bailey Clegg, Holt Scholar, Gray's Inn, 1889, Lee Prizeman, 1890 and 1891.
Harold Hardy, B.A., Oxford.
Anthony Gordon Damian, University of London.
Thomas Cutter.
Fullarton James, B.A., Cambridge.
Claudius Ernest Wright, B.A., B.C.L., Durham University.

## JUDICATURE ACTS AMENDMENT.

A BILL intituled an Act to amend the Supreme Court of Judicature Acts.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. It shall be lawful for any person who has held the office of Lord Chancellor, if upon the request of the Lord Chancellor he consents so to do, to sit and act as a judge of the High Court or of the Court of Appeal, and while so sitting and acting he shall have all the jurisdiction, power, and authority of a judge of either of those Courts, and shall rank therein according to his precedence as a peer.

2. Whenever there is a vacancy in the office of a judge of the High Court who is president of the Probate, Divorce, and Admiralty Division thereof, it shall be lawful for Her Majesty, by letters patent, to appoint to that office as president of the said division any person who is a barrister of not less than fifteen years' standing, or who is a judge of the High Court or Court of Appeal of not less than one year's standing; and the person so appointed shall, without prejudice to the rights of any judge of the Supreme Court existing at the passing of this Act, take precedence in Court next after the Master of the Rolls.

3. For the purpose of aiding the House of Lords in the hearing and determination of appeals in Admiralty actions, the House may in any special appeal in which it may think it expedient to do so call in the aid of one or more assessors specially qualified, and hear such appeal wholly or partially with the assistance of such assessors.

4. This Act may be cited as the Supreme Court of Judicature Act, 1891, and shall be construed as one with the Supreme Court of Judicature Acts, 1873 to 1890, which Acts, with this Act, may be cited together as the Judicature Acts, 1873 to 1891.

## THE ADMISSION OF THE PUBLIC TO THE LAW COURTS.

THE following correspondence has appeared in the *Times*:—

Sir,—I shall be obliged if you can find room for these letters in your Monday paper.

Your obedient Servant,
COLERIDGE.

1 Sussex Square, Hyde Park, W: June 6.

37 Temple, E.C.: June 5, 1891.

My Lord,—Since it appears there is little or no chance of gaining admittance into your Court without a ticket, I now formally apply for one. I base my application on the ground that although a judge is indeed absolute emperor over his Court, yet his power does not extend to the selection of what body of people shall represent the 'public' in cases which are not heard *in camera*. Although a judge has the undoubted right to take such measures as to insure the convenience of those having business in the Court, even to the exclusive issuing of tickets of admission, yet such tickets should be distributed impartially to all applicants. I have no personal knowledge that such has not been actually the case. This I know, that I have been told that Lady Coleridge has distributed most of the tickets among her friends. I say this, not because I in any way wish to be insulting or disrespectful to a lady, but simply as a statement of fact as to what I heard a Templar say. I also say it in order to call attention to a fact I am sure your lordship will admit to be true, and that is, your lordship's personal friends have no more right to represent the public than the friends of John Smith. It would seem that this ticket-issuing, or rather its distribution, has practically resulted in the above-mentioned undesirable outcome. I also maintain that if there is room in the well of the Court, any member of one of the Inns of Court has a prior right to a seat therein over an ordinary member of the public—whether provided with tickets from the judge or not. This system of admittance by tickets only, if tolerated, will practically confer on the judge the power of selecting his audience—a right which up to now, I labour under the impression, has not been conferred on them either by statute or any other law. It is not within my province to find fault with your lordship for taking the best means in your opinion to insure the comfort of those who are bound to be in your Court, any more than to do so with reference to the degrading of the bench to the level of a grand stand; but I consider that no one, by virtue of holding a ticket of admission, has the right to take precedence of those who are standing much nearer to the door than he is—in other words, no member of the public having no *locus standi* in your

Court has the right to have the seat kept reserved for him, the first seventy-two members of the public who present themselves at the public gallery have the right to be admitted. I say seventy-two, because I believe that is the number which can be accommodated in the public gallery of your lordship's Court. I believe I am not wrong in saying that there is no denying my assertion. The Court, so far as I know, takes no notice of the difference between peer and pauper in the question of admittance therein. If John Smith, labourer, is in front of Lord Knows Who, and there is only one seat vacant in the public gallery, the peer has no prior right to occupy that seat. Your lordship probably knows all this better than I do, yet, in the face of recent events, it is well to mention all that I have. I respectfully propose to your lordship that orders be given to the officials at the door to admit members of the Inns of Court (on presentation of their cards of membership, or on their otherwise satisfying them of the person being such), giving them precedence over members of the public possessing a ticket which, strictly speaking, gives them no more right to be admitted than a piece of wastepaper. If the tickets only admit by 'courtesy' and not by 'right,' then I claim, my lord, that such courtesy should be extended first to members of the Inns of Court.

Be that as it may, but since admission to the Court has been by ticket, I think I may safely conclude that as many tickets as there are seats have been already distributed. If that is so, in order to show such distribution did not practically amount to a selection of the 'public' among your lordship's friends and acquaintances, one or other of my alternatives should be acted upon. Either the members of the Inns of Court should be admitted by virtue of their membership, or a ticket should be sent to one who has not the honour of being a friend or acquaintance of your lordship's—to wit, to me. As I have said before, I deny the right of anyone to 'reserved' seats in a Court of Justice. A member of my inn, in palliation, said that the tickets were not sold, but granted gratis to all applicants. I hope that is so. Armed with a ticket of admittance I hope to be able to gain an entry, taking my chance with others similarly armed. Supposing the possessor of a ticket issued before the trial commenced is absent, his seat should be kept vacant. If he is late, an earlier ticketholder should occupy the space allotted to him when present. On these grounds I respectfully ask your lordship to issue tickets over and above those already issued, so that there should be no appearance of the Court being reserved for a few personal friends.

Your obedient Servant,
L. TALLIEN A. M'VANE.

To the Right Hon. J. D. Lord Coleridge.

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1 Sussex Square, W.: June 6, 1891.

Sir,—I have hesitated whether to take any notice of your letter; but it has become the custom to assume that anyone has a right to accuse any other person of anything, and that if that other is not at the trouble of replying to the accusation he must be taken to admit its truth. It is very inconvenient just now to spend valuable time in replying to you; but in such a matter as the public administration of justice it is perhaps better to submit to the inconvenience.

No one except the sovereign and the judges has any right upon the bench; but it has been the immemorial custom for the judges to extend the courtesy of a seat there to peers, Privy Councillors, and any other persons whom they may choose to invite. I speak from a personal recollection of more than fifty years. It is a discretion I shall exercise as my illustrious predecessors have exercised it, when and as I think fit, and with which, except by Parliament, I shall permit no interference.

The statement as to my wife, which you profess to have heard from 'a Templar,' is absolutely untrue. It seems that some Templars can be like other men—inaccurate—and that other Templars can forget what is usually considered due to a lady. It is equally untrue that the bench has been filled by my personal friends. My wife has had at her disposal three seats, and three seats only, including her own. The majority of persons on the bench have been unknown to me, even by sight, but they have been persons to whom, for one reason or another, it seemed proper to grant the privilege. Exactly the same observations apply to my own small gallery and to a portion of the gallery opposite the bench. The rest of that gallery and the whole of the body of the Court has been absolutely free, but I have given strict orders to prevent overcrowding, so that the quiet and orderly trial of the cause shall be secured; with the further directions that the utmost available space shall be given to members of the bar in costume; and that the reporters for the press, who keep the public informed of the proceedings in Court, shall be able to perform their important duty, as far as possible, in ease and comfort.

I believe that my orders have not been wholly ineffectual, and they will certainly be continued. When the Court is full my orders are to exclude everyone. There are thousands, I daresay, who would like to hear the trial of an interesting cause, but it is, in my opinion, far more important that those who do hear it should be comfortable (so far as comfort is possible in the Royal Courts of Justice), and therefore quiet and orderly, than that a few more persons—it may be 100—should hear it at the expense of the comfort, the quiet, and the order of the whole audience. I have acted before now on these views; and shall certainly act on them now and whenever it may be my fate to preside at the trial of a case which excites public interest. I can make no alteration in your favour.

As the person you refer to as 'a Templar' and yourself may perhaps repeat your mistakes, I shall send your letter and my answer to the newspapers.

I am, Sir,
Your obedient, humble Servant,
L. T. A. M'Vane, Esq. COLERIDGE.

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## COUNCIL OF LEGAL EDUCATION.

### MICHAELMAS EXAMINATION, 1891.

*Examination of Candidates for Pass Certificates.*

THE attention of students is requested to the following rules:—

No student shall receive from the council the certificate of fitness for call to the bar required by the four Inns of Court unless he shall have passed a satisfactory examination in the following subjects—viz. (1) Roman law; (2) the law of real and personal property; (3) common law; and (4) equity.

No student (except such as come under the next stated rule) shall be examined for call to the bar until he shall have kept nine terms; but students shall have the option of passing the examination in Roman law at any time after having kept four terms.

A student who, previously to his admission at an Inn of Court, was a solicitor in practice for not less than five years, may be examined for call to the bar without keeping any terms.

An examination will be held in October next, to which a student of any of the Inns of Court, who is desirous of becoming a candidate for a certificate of fitness for being called to the bar, will be admissible.

Each student proposing to submit himself for examination will be required to enter his name, in full, personally or by letter, at the treasurer's or steward's office of the Inn of Court to which he belongs, on or before Monday, October 5 next; and he will further be required to state

in writing whether his object in offering himself for examination is to obtain a certificate preliminary to a call to the bar, or whether he is merely desirous of passing the examination in Roman law under the above-stated rule.

The examination will take place in the Hall of Lincoln's Inn, and the doors will be closed ten minutes after the time appointed for the commencement of the examination.

The examination by printed questions will be conducted in the following order: Tuesday morning, October 13, at ten, on the law of real and personal property; Wednesday morning, October 14, at ten, on common law; Thursday morning, October 15, at ten, on equity; Friday morning, October 16, at ten, on Roman law.

The oral examination will be conducted on the same days, and on the same subjects, as above appointed for the examination by printed questions.

The examiner in the law of real and personal property will examine in the following subjects: The elementary principles of the law of real and personal property, including the provisions of the Conveyancing and Settled Land Acts, with reference chiefly to the following treatises on those subjects—viz. Williams's 'Principles of the Law of Real Property;' Williams's 'Principles of the Law of Personal Property;' Goodeve's 'Modern Law of Real Property;' Goodeve's 'Modern Law of Personal Property;' Edwards's 'Compendium of the Law of Property in Land.'

The examiner in common law will examine in the following subjects: The elementary principles of (1) The law of contracts; (2) the law of torts; and (3) the criminal law—with reference chiefly to Mr. Broom's 'Commentaries,' eighth edition, 1888; (4) the procedure in the Queen's Bench Division of the High Court of Justice—with reference to Book I. of the same work; and (5) Foulke's 'Elementary View of the Proceedings in an Action at Law,' third edition (founded on Smith's 'Action at Law').

The examiner in equity will examine in the following subjects as discussed in White and Tudor's 'Leading Cases,' or as affected by later statutes and decisions: (1) Implied trusts conversion (*Heve* v. *Lord Dartmouth*); (2) ademption and satisfaction; (3) injunctions in cases of waste, riparian rights, and nuisance; (4) marshalling; (5) defences to action for specific performance on grounds of (*a*) mistake, surprise, or unreasonableness in contract; (*b*) want of mutuality in contract; (6) married women's property.

The examiners in Roman law will examine in the 'Institutes of Justinian,' Books I. and II.; Book III., title 13, to the end of the book; Book IV., titles 1 to 5 inclusive.

## HILARY EXAMINATION, 1892.

### *Examination of Candidates for Studentships and Pass Certificates.*

The attention of students is requested to the following rules:—

As an encouragement to students to study jurisprudence and Roman civil law, twelve studentships of one hundred guineas each shall be established and divided equally into two classes; one class of such studentships to continue for two years, and to be open for competition to any student as to whom not more than four terms shall have elapsed since he kept his first term; and another class to continue for one year only, and to be open for competition to any student, not then already entitled to a studentship, as to whom not less than four and not more than eight terms shall have elapsed since he kept his first term; two of each class of such studentships to be awarded by the council, on the recommendation of the committee, after every examination before Hilary and Trinity Terms respectively, to the two students of each set of competitors who shall have passed the best examination in both jurisprudence and Roman civil law. But the committee shall not be obliged to recommend any studentship to be awarded if the result of the examination be such as in their opinion not to justify such recommendation. Where any candidates appear to be equal or nearly equal in merit, the council may, if they think fit, divide the studentship between them equally, or in such proportions as they consider just. Where in any year a studentship in either class is not awarded by reason of the candidates not appearing to deserve it, the council may, if they think fit, appropriate it, or a portion of it, for that year to the other class, or may offer it for competition in some other subject.

No student shall receive from the council the certificate of fitness for call to the bar required by the four Inns of Court unless he shall have passed a satisfactory examination in the following subjects—viz. (1) Roman law, (2) the law of real and personal property, (3) common law, and (4) equity.

No student (except such as come under the next-stated rule) shall be examined for call to the bar until he shall have kept nine terms; but students shall have the option of passing the examination in Roman law at any time after having kept four terms.

A student who, previously to his admission at an Inn of Court, was a solicitor in practice for not less than five years, may be examined for call to the bar without keeping any terms.

An examination will be held in December next to which a student of any of the Inns of Court who is desirous of becoming a candidate for a studentship or of obtaining a certificate of fitness for being called to the bar, or of passing the examination in Roman law only, will be admissible.

Each student proposing to submit himself for examination will be required to enter his name in full, personally or by letter, at the treasurer's or steward's office of the Inn of Court to which he belongs, on or before Friday, December 4 next; and he will further be required to state in writing whether his object in offering himself for examination is to compete for a studentship or to obtain a certificate preliminary to a call to the bar, or whether he is merely desirous of passing the examination in Roman law under the above-stated rule.

The examination will take place in the Hall of Lincoln's Inn, and the doors will be closed ten minutes after the time appointed for the commencement of the examination.

The examination by printed questions will be conducted in the following order: Monday and Tuesday, December 14 and 15, at ten until one, and from two until five on each day, the examination of candidates for studentships in jurisprudence and Roman law.

The examination of candidates for pass certificates, and for pass in Roman law only, will take place as follows:—

Wednesday morning, December 16, at ten, on the law of real and personal property.

Thursday morning, December 17, at ten, on common law.

Friday morning, December 18, at ten, on equity.

Saturday morning, December 19, at ten, on Roman law.

The oral examination will be conducted on the same days, and on the same subjects, as above appointed for the examination by printed questions.

### *Jurisprudence, International Law, and Roman Law.*

Candidates for the studentships will be examined in all the following subjects:—

I. 'Institutes of Gaius' and 'Institutes of Justinian.'

II. 'Digest,' book 18, title 1, 'De Contrahenda Emptione;' book 17, title 2, 'Pro Socio.'
III. History of Roman law.
IV. Principles of jurisprudence, with special reference to the writings of Bentham, Austin, and Maine.
V. Elements of international law.
VI. Principles of private international law.

Candidates for a pass certificate will be examined in the 'Institutes of Justinian,' books I. and II.; book III., title 13, to the end of the book; book IV., titles 1 to 5 inclusive.

The examiner in the law of real and personal property will examine in the following subjects: The elementary principles of the law of real and personal property, including the provisions of the Conveyancing and Settled Land Acts, with reference chiefly to the following treatises on those subjects—viz. Williams's 'Principles of the Law of Real Property;' Williams's 'Principles of the Law of Personal Property;' Goodeve's 'Modern Law of Real Property;' Goodeve's 'Modern Law of Personal Property;' Edwards's 'Compendium of the Law of Property in Land.'

The examiner in common law will examine in the following subjects: The elementary principles of (1) the law of contracts; (2) the law of torts, and (3) the criminal law—with reference chiefly to Mr. Broom's 'Commentaries,' eight edition, 1888; (4) the procedure in the Queen's Bench Division of the High Court of Justice—with reference to Book I. of the same work; and (5) Foulke's 'Elementary View of the Proceedings in an Action at Law,' third edition (founded on Smith's 'Action at Law').

The examiner in equity will examine in the following subjects as discussed in White and Tudor's 'Leading Cases,' or as affected by later statutes and decisions: (1) Implied trusts, conversion (*Howe* v. *Lord Dartmouth*); (2) ademption and satisfaction; (3) injunctions in cases of waste, riparian rights, and nuisance; (4) marshalling; (5) defences to action for specific performance on grounds of (*a*) mistake, surprise, or unreasonableness in contract; (*b*) want of mutuality in contract; (6) married woman's property.

By order of the Council,
(Signed) A. G. MARTEN,
Chairman (*pro tem.*).

Council Chamber, Lincoln's Inn Hall:
May 4, 1891.

## OBITUARY.

JUDGE BARRON, County Court judge of Monaghan and chairman of quarter sessions, died on Wednesday, June 3. He was the youngest son of the late Mr. Pierce Barron, of Ballyneale House, county Waterford, where he was born in the year 1805. His eldest brother, the late Sir Henry Winston Barron, represented the city of Waterford in Parliament for many years; and his nephew, the present baronet, is in the diplomatic service. He was educated in Paris, and at Trinity College, Dublin, and was called to the bar in 1830.

MR. WILLIAM THOMAS SHAVE DANIEL, Q.C., died at Leamington on June 9 in his 86th year. His name stands third in point of seniority among Queen's Counsel in this year's 'Law List,' and, owing to the death of Mr. Frederick Calvert, which was recently recorded, there remained only one name, that of the Right Hon. S. H. Walpole, above Mr. Daniel's. Mr. Daniel was made a Queen's Counsel forty years ago, and for many years he was a judge of County Courts and vice-chairman of the Council of Law Reporting. He was well known as the author of 'The History and Origin of the Law Reports' (1884), which he dedicated to Lord Selborne. No regular method of law reporting was pursued until the year 1865, when Lord Selborne (then Sir Roundell Palmer, Attorney-General) did a great deal to establish the present system. Mr. Daniel's book is the recognised authority on the subject.

SIR ANDREW STUART, ex-Chief Justice of the Quebec Superior Court, died, says a Reuter telegram, at Quebec suddenly on Tuesday, June 9, aged 79. He recently embraced the Roman Catholic faith, having formerly been a member of the Church of England.

MR. CHARLES KAYE FRESHFIELD, whose death took place at his residence in Brighton, on Saturday, June 6, in his eighty-fourth year, was the son of the late Mr. James William Freshfield. He received his education at the Charterhouse. He was admitted as a solicitor in 1831, and was a partner in the firm of Messrs. Freshfield from that time till 1870. Like his father, he was for many years solicitor to the Bank of England. On his retirement from the firm in 1870 he was elected a director of the East Indian Railway Company, with which he had been professionally connected since its formation. Mr. Freshfield represented Dover in the House of Commons from 1865 to 1868, and again from 1874 to 1885.

## NOTICES FOR THE WEEK.

### ROTA OF REGISTRARS.

MONDAY, June 15.—Court of Appeal No. 2: Mr. Lavie. Mr. Justice Chitty: Mr. Beal. Mr. Justice North: Mr. Pemberton. Mr. Justice Stirling: Mr. Clowes. Mr. Justice Kekewich: Mr. Leach. Mr. Justice Romer: Mr. Farmer.

Tuesday, June 16.—Court of Appeal No. 2: Mr. Carrington. Mr. Justice Chitty: Mr. Pugh. Mr. Justice North: Mr. Ward. Mr. Justice Stirling: Mr. Jackson. Mr. Justice Kekewich: Mr. Godfrey. Mr. Justice Romer: Mr. Rolt.

Wednesday, June 17.—Court of Appeal No. 2: Mr. Lavie. Mr. Justice Chitty: Mr. Beal. Mr. Justice North: Mr. Pemberton. Mr. Justice Stirling: Mr. Clowes. Mr. Justice Kekewich: Mr. Leach. Mr. Justice Romer: Mr. Farmer.

Thursday, June 18.—Court of Appeal No. 2: Mr. Carrington. Mr. Justice Chitty: Mr. Pugh. Mr. Justice North: Mr. Ward. Mr. Justice Stirling: Mr. Jackson. Mr. Justice Kekewich: Mr. Godfrey. Mr. Justice Romer: Mr. Rolt.

Friday, June 19.—Court of Appeal No. 2: Mr. Lavie. Mr. Justice Chitty: Mr. Beal. Mr. Justice North: Mr. Pemberton. Mr. Justice Stirling: Mr. Clowes. Mr. Justice Kekewich: Mr. Leach. Mr. Justice Romer: Mr. Farmer.

Saturday, June 20.—Court of Appeal No. 2: Mr. Carrington. Mr. Justice Chitty: Mr. Pugh. Mr. Justice North: Mr. Ward. Mr. Justice Stirling: Mr. Jackson. Mr. Justice Kekewich: Mr. Godfrey. Mr. Justice Romer: Mr. Rolt.

THE MIDDLE TEMPLE.—The following scholarships awarded by the treasurer and masters of the bench to students of the Honourable Society of the Middle Temple were announced in hall on June 10: Real and Personal Property—W. Bowstead, 100 guineas; N. N. Burjorjee, 30 guineas. Common and Criminal Law—H. M. Rose, 100 guineas; L. Smith, 30 guineas; H. W. H. Knott, the Campbell Foster prize. Equity—F. W. Bartlett, 100 guineas; G. S. Henderson, 30 guineas. International and Constitutional Law—C. A. M. Barlow, 100 guineas; G. A. Kock, 30 guineas.

## CIRCUITS OF THE JUDGES.

**Mr. Justice Denman and Mr Justice Charles will remain in town.**

NOTICE.—In cases where no note is appended to the Names of the Circuit Towns both Civil and Criminal Business must be ready to be taken on the first working day; in other cases the note appended to the name of the Circuit Town indicates the day before which Civil Business will not be taken. In the case of Circuit Towns to which two Judges go there will be no alteration in the old practice.

| Summer Assizes, 1891 | Midland | Oxford | South-Eastern | Home | Western | North-Eastern | Northern | North Wales, Chester, and Glamorgan | South Wales and Chester |
|---|---|---|---|---|---|---|---|---|---|
| Commission days | Ld. Coleridge, L.C.J. of England. Wills, J. Williams, J. | Pollock, B. Wills, J. | Hawkins, J. | Mathew, J. | Mathew, J. Cave, J. | Day, J. Grantham, J. | Smith, J. Wright, J. | Lawrance, J. | Collins, J. |
| *June* | | | | | | | | | |
| Tuesday . 23 | — | Reading | — | — | — | — | — | — | — |
| Wednesday . 24 | Aylesbury | — | — | — | — | — | — | — | — |
| Friday . 26 | Bedford | — | — | — | — | — | — | — | — |
| Saturday . 27 | — | Oxford | — | — | — | — | — | — | — |
| Monday . 29 | Northampton | — | — | — | — | — | — | — | — |
| *July* | | | | | | | | | |
| Wednesday . 1 | — | Worcester | — | — | — | — | Appleby | — | — |
| Thursday . 2 | — | Saturday 4 | — | — | — | Newcastle | — | — | — |
| Friday . 3 | Leicester | — | — | — | — | — | Carlisle | — | — |
| Saturday . 4 | — | — | Huntingdon | — | — | — | — | — | — |
| Monday . 6 | — | — | — | Maidstone | — | — | — | — | — |
| Tuesday . 7 | — | Gloucester | Cambridge | Thursday 9 | — | — | — | — | — |
| Wednesday . 8 | Oakham | Friday 10 | — | — | — | — | Lancaster | Newtown | — |
| Thursday . 9 | Lincoln | — | — | — | — | — | — | — | — |
| Friday . 10 | — | — | Bury St. Edmunds | — | Salisbury | — | — | Dolgelly | Haverfdw. |
| Saturday . 11 | — | — | — | — | — | Durham | — | — | — |
| Monday . 13 | — | Monmouth | — | — | — | — | Manchester (2) | Carnarvon | Lampeter |
| Tuesday . 14 | — | Wednesday 15 | — | — | Dorchester | — | — | — | — |
| Wednesday . 15 | Derby | — | — | Guildford | — | — | — | — | Carmrthen |
| Friday . 17 | — | Hereford | — | Saturday 18 | Wells | — | — | Beaumaris | — |
| Saturday . 18 | — | — | Norwich | — | Monday 20 | York | — | — | — |
| Monday . 20 | — | — | — | — | — | — | — | — | Brecon |
| Tuesday . 21 | Nottingham | Shrewsbury | — | — | — | — | — | Ruthin | — |
| Wednesday . 22 | (2) | (2) | — | — | Bodmin | — | — | — | — |
| Thursday . 23 | — | — | — | — | — | — | — | Mold | Presteign |
| Friday . 24 | — | Stafford | — | — | — | Leeds | — | — | — |
| Saturday . 25 | Warwick | (2) | Chelmsford | Exeter 2 | — | — | Liverpool (2) | Chester (2) | — |
| Wednesday . 29 | Birmingham | | — | — | — | — | — | — | — |
| Thursday . 30 | | (2) | Hertford | Winchester 2 | — | — | — | — | — |
| *Aug.* | | | | | | | | | |
| Saturday . 1 | — | — | — | — | — | — | — | Swansea (2) | |
| Tuesday . 4 | — | — | Lewes | — | — | — | — | — | — |
| Wednesday . 5 | — | — | — | Bristol 2 | — | — | — | — | — |

THE HANDWRITING OF MAGISTRATES' CLERKS.—The Home Office has just issued the following circular to magistrates' clerks: 'I am directed by the Secretary of State to inform you that complaints have been made to him by her Majesty's judges that the depositions which are delivered to the clerks of assize in connection with indictable cases are too often taken down in writing which cannot be read without constant effort and annoyance and great loss of valuable time. Another matter which has excited comment on the part of the judges is the occasional failure to send with the depositions, when lodged with the clerk of assize, the original exhibits, or copies of them, without which the depositions, themselves are frequently unintelligible. Mr. Secretary Matthews desires me, therefore, to request that in future special pains may be taken (1) to record the statements of witnesses in all cases in plain and easily legible writing, and (2) to deliver such deposition in indictable cases, together with the representative exhibits (if any), to the clerk of assize, clerk of the peace, or proper officer of the Court before which the trial of the person to whose case the depositions refer is to be had, in as complete a form as possible, and in such time as to enable the judge, recorder, chairman of quarter sessions, or other presiding justice, to read and master their contents, if he wishes to do so, before he charges the grand jury.'

THE ROBBERIES IN THE TEMPLE.—In consequence of the number of robberies recently effected in the Temple, the authorities of the Inner Temple are having the outside doors of all the chambers occupied by their tenants protected with a massive iron plate in proximity to the lock in order to protect them in some measure against future depredators.

THE PARCEL POST.—The *London Gazette* of May 29 contains a Treasury Warrant, stating that on and after July 1 next the Postmaster-General will be empowered to pay compensation, not exceeding 50*l.* in each instance, in the event of any article of value forming part of a parcel being lost or damaged whilst in transit to any of the following places: India (including the whole continent of India, Burmah, Aden, and Zanzibar), Ascension, Bahamas, Barbados, British Honduras, British North Borneo, Cyprus, Falkland Islands, Gambia, Gibraltar, Grenada, Hongkong, Labuan, Leeward Islands, Newfoundland, St. Helena, St. Lucia, St. Vincent, Straits Settlements, Tobago, and Trinidad.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## CALENDAR OF THE COUNTY COURTS.

FROM JUNE 15 TO JUNE 20.

| No. of Circuit | His Honour | June 15 | June 16 | June 17 | June 18 | June 19 | June 20 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Moulkes | — | — | — | Warrington | Birkenhead | — |
| 8 | Judge Heywood | — | Manchester | Manchester | Salford | Salford | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | Barnard Castle | Stockton-on-Tees | Darlington | Richmond | Guisborough | Northallerton |
| 19 | Judge Barber | — | Ashbourne | Wirksworth | Derby | — | — |
| 22 | Judge Harington | Stratford-on-Avon | Coventry | Warwick | Rugby | Bromyard | — |
| 26 | Judge Jordan | Atherstone | — | — | — | — | — |
| 47 | Judge Powell | — | Lambeth | Greenwich | Lambeth | Lambeth | — |
| 54 | Judge Metcalfe | Weston-supr-Mare | Wells | Axbridge | — | — | — |
| 55 | Judge Machonochie | — | Dorchester | Bridport | Weymouth | Blandford | — |
| 58 | Judge Edge | East Stonehouse | East Stonehouse | East Stonehouse | East Stonehouse | East Stonehouse | Tavistock |

# House of Lords Register.

*Coram* LORD HERSCHELL, LORD WATSON, and LORD MORRIS.

THURSDAY, JUNE 4.

*Goolden* v. *Conservators of River Thames* (limits and definition of the River Thames—Conservancy Acts, 1857, 1864, 1867—Thames Navigation Act, 1866—powers of conservators—right of dredging. Appeal from the Court of Appeal in England, May 14, 1889).—Dismissed.

FRIDAY, JUNE 5.

*Johnson* (*pauper*) v. *W. H. Lindsay & Co.* (negligence—master and servant—common employment—contractor and sub-contractor. Reported 58 Law J. Rep. Q. B. 581; L. R. 23 Q. B. Div. 508).—*Cur. adv. vult.*

*Coram* THE EARL OF SELBORNE, LORD WATSON, LORD BRAMWELL, and LORD HERSCHELL.

MONDAY, JUNE 8.

*Charnwood Forest Railway Company* v. *London and North-Western Railway Company* (railway company—working agreement—construction—terminals—through and local traffic. Appeal from order of Court of Appeal, dated May 2, 1890, affirming judgment of Bowen, L.J., dated August 9, 1889).—Dismissed.

*Governor and Company of the Bank of Scotland* v. *Dominion Bank, Toronto, and others* (bankers—bill of exchange—dishonour—protestation—claim for expenses by collecting bank—alleged failure of duty of collecting bank—cancellation of bill—subsequent bankruptcy of acceptors).—Part heard.

TUESDAY, JUNE 9.

*Governor and Company of the Bank of Scotland* v. *Dominion Bank, Toronto, and others* (appeal from the First Division of the Court of Session. 'Court of Session Cases,' 4th series, vol. xvi. 1081).—Dismissed.

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, LOPES, L.J., and KAY, L.J.

THURSDAY, JUNE 4.

*Justices of the Peace for the County of Kent* v. *Sandgate Local Board* (appeal of defendants from judgment of Lawrance, J., dated January 27, at trial without a jury in Middlesex).—Allowed.

*De Coninck* v. *Singer* (appeal of defendant Jacob Singer from judgment of Day, J., dated January 30, at trial without a jury in Middlesex).—Dismissed.

*Levin & Co.* v. *Seligsen* [(*trading, &c.*) (appeal of plaintiff from judgment of Fry, L.J., dated February 20, 1890, at trial without a jury in Middlesex).—Dismissed.

*Handyside & Co.* (*Lim.*) v. *Gentry* (appeal of plaintiff from judgment of Day, J., dated January 26, at trial without a jury in Middlesex).—Dismissed.

FRIDAY, JUNE 5.

*In re Croaker and another* (*ex parte Debtor*) (appeal of debtor from order of Mr. Registrar Giffard refusing to confirm scheme of composition).—Dismissed.

*Tomkinson and another* v. *Balkis Consolidated Co.* (*Lim.*) (appeal of defendants from judgment of Pollock, B., dated February 7, at trial without a jury in Middlesex).—Dismissed.

SATURDAY, JUNE 6.

*Gregory* v. *Casselden* (appeal of defendant from judgment of Day, J., dated February 3, at trial without a jury in Middlesex).—Dismissed.

MONDAY, JUNE 8.

*Regina* v. *Judge of Halifax County Court and Bairstow* (Q. B. *Crown Side*) (appeal of H. Sutcliffe from order of Pollock, B., and Charles, J., dated April 22, discharging rule *nisi* to hear action in *Sutcliffe & Bairstow*).—Dismissed.

*Love* v. *South of England Marine Insurance Association* (*Lim.*) (appeal of defendants from order of the Lord Chief Justice and Mathew, J., dated April 21, giving liberty to amend defence).—Dismissed.

*In re an Arbitration between J. R. Williams and Sir E. A. A. K. C. Stepney, Bart.* (appeal of J. R. Williams from order of Mathew, J., and Day, J., dated April 10, allowing motion to set aside award upon terms).—Allowed.

TUESDAY, JUNE 9.

*Walford* v. *Prince Steamship Company* (*Lim.*) (appeal of defendants from order of Mathew, J., and Williams, J., dated April 15, affirming order for stay of action pursuant to Arbitration Act, 1889, s. 4).—Dismissed.

*Finska Angfartygs Aktiebolaget* v. *Brown, Toogood & Co.* (appeal of defendants from order of the Lord Chief Justice and Mathew, J., dated April 22, for review of taxation).—Allowed.

*Regina on prosecution of Colonel E. Mitchell* v. *H.M. Secretary of State for War* (Q. B. *Crown Side*) (appeal of Colonel E. Mitchell from order of Cave, J., and Charles, J., dated April 28, discharging rule *nisi* for *mandamus* to determine equivalent for loss under terms of Royal Warrant, 1884).—Dismissed.

WEDNESDAY, JUNE 10.

No sitting.

## APPEAL COURT II.

Before LINDLEY, L.J., BOWEN, L.J., and FRY, L.J.

THURSDAY, JUNE 4.

*Mackenzie* v. *Macintosh* (appeal of plaintiff from judgment of Kekewich, J., dated March 4).—Allowed.

FRIDAY, JUNE 5.

*Berry* v. *Glasebrook* (appeal of defendants from judgment of the Vice-Chancellor, dated February 10).—Dismissed.

*In re E. C. Eagle, dec. Eagle* v. *Cardinall* (appeal of defendants from judgment of North, J., dated April 25).—Dismissed.

SATURDAY, JUNE 6.

No sitting.

MONDAY, JUNE 8.

No sitting.

TUESDAY, JUNE 9.

*In re Bence, dec. Smith* v. *Bence* (*construction*) (appeal of defendant J. F. Bence from order of Kekewich, J., dated March 6).—*Cur. adv. vult.*

WEDNESDAY, JUNE 10.

*Florence* v. *Mallinson* (appeal of plaintiff from judgment of Kekewich, J., dated November 1, 1890).—Dismissed.

*In re G. J. Hunter, dec. Hunter* v. *Hunter* (*construction*) (appeal of defendant J. B. Batchelor from order of Kekewich, J., dated March 24).—*Cur. adv. vult.*

---

MR. JUSTICE HENN COLLINS, who was formerly a Fellow of Downing, was entertained at dinner at his old college on Saturday last. There was a large gathering of the friends of the college to do honour to the new judge, who has recently been elected an Honorary Fellow of this legal foundation. Amongst the guests were Mr. Justice Denman, Mr. Justice Stirling, and Mr. Justice Romer, the Postmaster-General, Sir George F. Bowen, LL.D., Judge Bagshawe, Q.C., Mr. Bigham, Q.C., and Professor Westlake, Q.C. There were several happy speeches. Professor Maitland, the distinguished Downing Professor of English Law, in proposing the health of the visitors, humorously defined equity as 'a system of rules administered chiefly by senior wranglers,' and, certainly, the recent appointments of Cambridge men seem to warrant the assertion.

EXPERIMENTS ON LIVING ANIMALS.—A Parliamentary paper just published shows the number of experiments performed on living animals during the year 1890, under licenses granted under the Act 39 & 40 Vict. c. 77, distinguishing painless from painful experiments. The total number of licensees was 110, of whom thirty-three performed no experiments. The experiments took place in forty-eight licensed places. The total number of experiments performed was 2,102. It is clear from the tables appended to the report that in a large majority of cases the experiment was painless, or else that complete anæsthesia was maintained from the commencement of the experiments till the animal was killed. Pain, we are assured, can hardly have been caused except in 316 cases, in which the animal, after being anæsthetised, was allowed to recover. But these operations were performed with the utmost care, and the wounds were always dressed antiseptically. Indeed, Mr. G. N. Poore, the inspector under the Act, who has drawn up this report, states emphatically that during the many visits he has paid to licensed places it has never fallen to his lot to see a single animal which appeared to be in bodily pain.

MIDDLE TEMPLE.—Mr. J. P. Aspinall, of the North-Eastern Circuit, has been elected a bencher of the Honourable Society of the Middle Temple in succession to the late Sir Montague Smith.

COMMERCIAL FAILURES.—According to *Kemp's Mercantile Gazette* the number of failures in England and Wales gazetted during the week ending June 6 was eighty-four. The number in the corresponding week of last year was seventy-four, showing an increase of ten, being a net decrease in 1891, to date, of 155.

ALIEN PASSENGERS.—Some doubt having arisen as to whether the masters of vessels, especially foreign, arriving in British ports with alien passengers have in all cases declared the full number, in accordance with the Act 6 Wm. IV. c. 2, the Customs authorities have ordered their officers on boarding each ship to observe for themselves, and report if such observation agrees approximately with the number reported by the master. As an additional check, until further instructions are given, the officers are to specially count the exact number of alien passengers on board every tenth ship, and should there be any discrepancy between the actual number and that stated a report is at once to be made, with a view to the prosecution of the masters. The penalty for falsely declaring the number of alien passengers on board is 100*l.*

THE DEATH PENALTY FOR TRAIN WRECKERS.—In connection with the recent attack by brigands upon a railway train in Turkey, when by something like a miracle no serious bodily harm was received, it is interesting to note that the State Legislature of California has passed a law enacting that convicted train-wreckers shall in future be punished with death. 'Only those who are conscientiously opposed to capital punishment in any case,' says the *Railway World*, 'can make any logical objection to such a statute. The average murderer slays but one; the train-wrecker may kill a hundred. Many who are called murderers perhaps never intended to deal a fatal blow. In countless instances the homicide has been committed under a sudden impulse or under terrible provocation. But the man who stealthily watches his chance and who contrives, with the precision of a clockmaker and the cruelty of a fiend, to so adjust obstructions as to imperil the lives of scores of human beings is a monster of depravity. Rarely, indeed, is there any clumsiness in the arrangement. Every detail is regulated with scientific accuracy. In the small hours, when the chance of detection is only as one in a thousand, does the train-wrecker do his work.'

SHORTHAND STATISTICS.—Mr. Isaac Pitman has compiled statistics on the extent to which his system of shorthand is taught in this country, and the returns this year show a striking increase over those of last year. During 1889 there were 44,730 students under class instruction in Pitman's shorthand; in 1890 this number increased to 55,558, who were divided among 1,520 colleges, schools, public institutions, classes, &c. These figures by no means represent all who are learning phonography throughout the country. They do not include private students, who form the greatest proportion of those who take up the study. The statistics show an increase in every respect, but no single item shows a more striking or a more rapid growth than that which consists of statistics with reference to the teaching of phonography in the Board schools. The returns received last year showed that in the Board schools in London and the provinces the study had been taken up by 3,397 boys and 146 girls. The returns this year show 8,143 boys and 1,793 girls under instruction. These figures indicate what an impetus the study of phonography has received since the addition of shorthand to the Education Code as a 'specific subject.'

'MASKE OF FLOWERS.'—By the kind permission of the benchers of the Inner Temple, the 'Maske of Flowers,' originally produced at the Court of King James I. (1613–14), and successfully revived before His Royal Highness the Duke of Connaught at Gray's Inn during the royal jubilee festivities of 1887, will be performed in the Inner Temple Hall, in aid of the St. Michael's Convalescent Home, Westgate-on-Sea, on Wednesday, June 24, at 3.30 P.M. The ladies and gentlemen who have kindly offered to perform on this occasion (including several of the performers of 1887) are, in the main, either members or connected with members of the Inns of Court. The maske comprises songs, choruses, fencing bouts, antique dances (minuet, pavan, &c.), together with an overture and other orchestral pieces, in which two harpsichords are prominently employed. Tickets, one guinea each, may be had from the Lady Halsbury, 4 Ennismore Gardens, S.W.; Lady Jeune, 79 Harley Street, W.; Mrs. Charles Thynne, 7 Redcliffe Gardens, S.W.; and the subtreasurer, Inner Temple Hall, E.C.

UNITED LAW CLERKS' SOCIETY.—The fifty-ninth anniversary dinner in connection with this society was given on June 10 at the City Terminus Hotel, Cannon Street. Mr. Justice Romer presided, supported by Mr. Justice Denman and Mr. Justice Wright, and among those present were: Sir Arthur Watson, Q.C., and Messrs. R. D. B. Acland, J. R. Adams, C. Baggallay, J. E. Bankes, T. H. Devonshire, R. P. Hardy, C. C. Healey, Q.C., G. Henderson, Q.C., M. I. Joyce, H. Lawrence, T. F. Leese, Q.C., E. L. Levett, Q.C., T. Rawle, T. A. Romer, H. S. Ryland, W. B. Smith, and J. Webster. The annual report stated that fifty new members had been admitted during the year, and the total number was now 955. Among seventy-seven members 667*l.* was distributed during the past year for sick pay, making the total sum so distributed 19,535*l.* The cost to the society last year for superannuation was 1,399*l.*, or a total since 1832 of 28,033*l.* Most of the superannuated members received 14*s.* a week for life. The life assurance benefit gave 50*l.* on the death of a member to his widow and children, and to a member on the death of his wife 25*l.* During the past year 785*l.* had been paid under this head, making a total in fifty-nine years of 31,994*l.* The capital fund now invested amounted to 82,285*l.* The benevolent fund had, as usual, been of great assistance, the sum of 500*l.* having been so distributed during the year. In proposing the toast of the evening—'Prosperity to the Society'—the chairman expressed his satisfaction that the popularity of the society was in no way diminished. He regretted that many well-known faces were not present on that occasion. He would not say that law clerks were perfect, but, as a body, they were distinguished for industry, uprightness, and devotion to their employers, and in these respects they would compare favourably with any body of men. In conclusion, he earnestly urged law clerks to join the society, pointing out that it was not a charity, and that anyone joining it could, if the necessity arose, claim its benefits without any loss of respect.—Mr. Justice Denman proposed 'The Bench, the Bar, and the Profession,' and other toasts followed.—In the course of the evening subscriptions were announced amounting to over 400*l.*

A DOG PROVING AN 'ALIBI.'—The following letter recently appeared in our sporting contemporary, *Rod and Gun*: 'Sir,—While staying in Devonshire last week at a farm, I had a practical illustration of an interesting case of sheep-worrying. Looking out of my bedroom window just as it was daylight, I saw a flock of ewes that had recently lambed tearing about the field as if alarmed; and I quickly discovered that two dogs were hunting them. I woke up the farmer, and we were soon on the spot; but the dogs were too quick for us, and we could only identify one of them, which we recognised as belonging to a farm about three miles off. They had killed and partially eaten two lambs, and seriously mauled three others. My friend at once got out his gig; and we drove off to the farm from whence we thought the culprit hailed, expecting to reach there before the dog. On arriving, we told the owner of the animal our errand, and he at once invited us to come and see his sheep-dog, which could not possibly have committed the crime, as he was shut up of a night in the stable. There, truly enough, did we find the collie, looking half-asleep and curled up in a corner among the straw. His owner triumphantly pointed him out; but he was a peculiarly-marked dog, and we had both spotted him, and, moreover, there was a broken window in the stable, and traces of dirty, and apparently recent, claw-marks on the wall. My farmer looked in the brute's mouth, and thought there was wool on the teeth; but the owner contended that that proved nothing, as the dog had been among his own sheep the previous evening. I then suggested that a dose of salt and water might prove if any mutton had been recently devoured; and, the two farmers consenting to this, we dosed poor collie accordingly, and in a few minutes he disgorged a quantity of raw lamb with the wool on it, unmistakably recently killed. The case was admitted proved, and the neighbours speedily came to terms as to the question of damage. To me it seemed a most interesting case of canine intelligence that two scamps of dogs, one we know having sheep within a few yards of him, should not attempt any sport on their own ground; but should deliberately meet some miles off, and then, when interrupted, tear off to their homes, and, like a human criminal, endeavour to prove an *alibi* by being found asleep in bed about the time when the murder was committed.—I am, &c., MERIVALE. Surrey, March 8, 1891.'

## BIRTHS.

On June 5, at 46 Stanley Gardens, Hampstead, the wife of E. A. Wurtsburg, Esq., Barrister-at-Law, of a son.

On June 7, at 11 Hereford Square, S.W., the wife of Charles H. L. Neish, Barrister-at-Law, of a son.

## MARRIAGES.

On May 8, at St. Mary's Church, Woodstock, Cape Town, H. G. Stapylton-Smith, Esq., Solicitor, East London, South Africa, to Alice Emily, younger daughter of John G. Williams, Esq., Solicitor, Lincoln.

On June 3, at St. Jude, Southsea, Joseph Scovell Hobbs, 1st Gloster (28th) Regiment, eldest son of Joseph Hobbs, of 9 Kensington Gardens Square, and of Lincoln's Inn, Barrister-at-Law, to Edith Mary, second daughter of the late Major John Breton, 53rd Regiment, the last Town Major of Portsmouth, and of Mrs. Breton, of Crescent House, Southsea.

On June 4, at St. Stephen's, Cheltenham, Charles Moore Kennedy, Barrister-at-Law, of 14 Hyde Park Gate, S.W., son of John Pitt Kennedy, Barrister-at-Law, formerly Standing Counsel to the Government of India, to Ellinor Edith, daughter of the late George Marwood, J.P., D.L., of Busby Hall, Northallerton, Yorkshire.

On June 4, at St. Mary's Church, West Kensington, Lloyd Chadwick, of Warwick, Solicitor, to Grace Lawrence Righton, of Stanwick Road, West Kensington, eldest daughter of the late Herbert Lawrence Righton, of The Hollies, Lonsdale Road, Barnes.

On June 9, at Christ Church, Lee, Russell Spratt, Barrister-at-Law, of the Middle Temple and of Blackheath, to Ada Rebecca, youngest daughter of the late John M. Burton, F.R.C.S., of Lee Park Lodge, Blackheath.

## DEATHS.

On June 3, at 7 Kensington Gate, Charles Francis Trower, Barrister-at-Law, in his 75th year.

On June 7, at Malta, from an accident at polo, Frank B. R. Hemphill, Major 1st Royal Berkshire Regiment, second son of Mr. Serjeant Hemphill, Q.C., 65 Merrion Square, Dublin.

On June 8, at the Rectory, Stapleford Abbotts, Romford, of pneumonia, following influenza, the Rev. Thomas Cochrane, M.A., twenty-four years rector of the parish, and only son of the late Honourable Sir James Cochrane, Chief Justice of Gibraltar, in his 56th year.

On June 9, at Leamington, William Thomas Shaw Daniel, Esq., Q.C., late Judge of County Courts, in his 86th year.

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# The Law Journal.

*SATURDAY, JUNE* 20, 1891.


## 'OBITER DICTA.'

As we last week ventured to predict would be the case, the judges of the second division of the Court of Appeal have come to the assistance of their brethren of the first division. Final appeals from the Queen's Bench Division are now being taken in Appeal Court II., whilst Court I. are dealing with the new trial paper and interlocutory appeals. It was obvious that, but for this arrangement, there must have been a discreditably long list of arrears at the commencement of the Long Vacation.

NOTWITHSTANDING the present overcrowded state of the profession, the number of gentlemen called to the bar would seem to be on the increase. On the 10th inst. there were no fewer than 108 calls at the four Inns of Court, distributed as follows: At Lincoln's Inn, eleven; at the Inner Temple, fifty-three; at the Middle Temple, thirty-eight; and at Gray's Inn, six.

THE *Law Times*, in commenting on Mr. M'Vane's letter to the Lord Chief Justice (see *ante*, p. 398) 'does not recognise any peculiar claim in unoccupied (*sic*) members of the legal profession upon the seats or floor of the Court.' 'Lawyers engaged in cases occupying the Courts,' it is said, 'must be accommodated, but if the public were to invade the rest of the Court we know of no power to eject them.' 'This, however,' it is added, 'raises too wide a question for present discussion.' In strict law, no doubt, the *Law Times* is right. But we think it to be of the utmost importance, now that the question has been raised, that it should not be suffered to drop. When the Royal Courts were built, with spacious galleries unknown to Sir John Soane's makeshifts adjoining Westminster Hall, it was understood that, in addition to the floors of the Courts, these galleries, and these galleries alone, were intended for the accommodation of the general public, and that the raised seats in the Courts were intended to be reserved for counsel, amongst whom Queen's Counsel were entitled to the front row of such seats. Even the 'occupied members' of the legal profession may come to find considerable difficulty in ejecting any member of the public unless some definite rule be laid down. The question is one which we recommend to the careful consideration of the bar committee. The Lord Chief Justice, it will be remembered, in his answer to Mr. M'Vane, stated that he had given directions 'that the utmost available space should be given to members of the bar in costume,' and we think that the best course for the authorities to adopt would be, in some unmistakable manner, to appropriate the raised seats in Court to members of the bar, whether 'occupied' or not, in accordance with the spirit of these directions.

IN *Wiedemann* v. *Walpole* Baron Pollock has ruled that the fact that the plaintiff in an action for breach of promise of marriage charged the defendant with the promise and that the defendant made no answer affords material evidence in support of the promise within the meaning of the Evidence Further Amendment Act, 1869 (32 & 33 Vict. c. 68), and so no doubt it was held by the Court of Appeal in *Bessela* v. *Stern*, 46 Law J. Rep. C. P. 467, reversing the decision of the Court below. Execution, however, has been stayed to allow the defendant to move, on the ground that *Bessela* v. *Stern* was wrongly followed, and that case is distinguishable, inasmuch as the charge of the promise was there made in the presence of a third party. Before the Act of 1869 neither party to this kind of action was an admissible witness, but section 2 of that Act made the evidence of either admissible, and by way of hedge provided that 'no plaintiff in any action for breach of promise of marriage shall recover a verdict unless his or her testimony shall be corroborated by some other material evidence in support of such promise.' We cannot help thinking that a proviso of this kind ought to have been more strictly construed, even than in *Bessela* v. *Stern*, against plaintiffs in our Courts. The similar provision, however, of the Bastardy Act of 1872, s. 4, which requires corroboration in some material particular, has been liberally

construed (see *Cole* v. *Manning*, 46 Law J. Rep. M. C. 175), and, what is more important, section 4 of the Statute of Frauds, by which no action shall be brought whereby to charge any person upon any agreement made upon consideration of marriage unless the agreement upon which the action is brought, or some memorandum or note thereof, shall be in writing signed by the parties to be charged, was held, not long after the passing of the statute, not to extend to mutual promises to marry, in *Harrison* v. *Cage*, 1 Ld. Raym. 386, overruling *Philpott* v. *Wallett*, 3 Lev. 65. It seems that, as a general rule, both judges and juries have a disposition to be too generous to plaintiffs in actions for breach of promise.

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IT is a little curious that the authority of *Harrison* v. *Cage*, 1 Ld. Raym. 386, to the effect that a promise to marry is not an agreement in consideration of marriage within the Statute of Frauds, and therefore need not be in writing, has been so readily accepted. 'It was ruled in this case,' so Lord Raymond says, 'at Norfolk Summer Assizes last past by Lord Chief Baron Ward that this promise had no need to be in writing. And Mr. Northey said at the bar that the statute intended only agreements to pay marriage portions, and that it had been often ruled so by Chief Justice Holt. Quod Holt non negavit.' In *Philpot* v. *Wallet*, 3 Freem. 540 (not cited in *Harrison* v. *Cage*), however, the exact contrary had been decided some ten years before by three judges to one on the ground that the promise was 'within the words, the meaning, and the mischief of the statute, and as much a catching promise as any that the Act intended to prevent.' But, in *Cook* v. *Baker*, 1 Str. 33, 'after argument, it was held that this promise is not within the Statute of Frauds and Perjuries, which relates only to contracts in consideration of marriage, and that the case in 3 Lev. 411, has been contradicted by later resolutions,' 'the case in 3 Lev. 411,' being *Philpot* v. *Wallet*, though not so vigorously reported by Levinz as by Freeman. If the matter were *res integra* we should be inclined to think that the right rule was the original one of *Philpot* v. *Wallet*; but, of course, it is impossible to expect that *Harrison* v. *Cage* and *Cook* v. *Baker* would be overruled after the lapse of more than 250 years. *Cook* v. *Baker*, it may be added (see 1 Salk. 63), was brought before a Court of Error, but 'the Court took time to consider and look into the cases' upon a technical point, 'and in the meantime the parties made an end of the cause and applied for leave to enter a *nolle prosequi*, which was granted.'

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THE Slaughter of the Innocents has begun early this year, no doubt in the hope of the early rising of Parliament, a hope which it is to be feared, in view of the large amount of business, especially in Supply, still to be transacted, will be long deferred. During the last week no fewer than twenty bills have been withdrawn, some of which were of considerable interest and importance. Sisters-in-law are still to be forbidden as wives, notwithstanding the majorities each year on the second reading in the House of Commons and the even balance of opinion in the House of Lords. The question of private bill procedure in Scotland, which has been the subject of bills for two years, must wait for another session, and probably another Parliament, for solution; and the public trustee is still a functionary of the indefinite future. Meanwhile a couple of bills have received the royal assent, the Irish Land Bill has been introduced into the House of Lords, and several measures have received a third reading in the Commons. Even at this late hour three new bills have been introduced, but two of them are of a purely official character, brought in by Mr. Ritchie and Mr. Raikes; and the third, by Mr. Parnell, may perhaps be considered to have only an electioneering character.

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MR. STUART is pressing for the repeal of the clause of the Eastbourne Improvement Act of 1885 (48 & 49 Vict. c. clxv. s. 169), under which some forty Salvationists have been proceeded against for marching in procession through the streets on Sunday, and for the remission of the penalties by the Home Secretary. Mr. Matthews has declined to give Mr. Stuart any assistance, holding that as long as the clause in question remains on the statute-book he should not be justified in setting himself against the will of Parliament, which has sanctioned exceptional legislation for Eastbourne, and in preventing the magistrates from giving effect to that legislation. The impugned clause is similar to section 38 of the Torquay Harbour and District Act, 1886 (49 & 50 Vict. c. cxix.)—which was repealed in 1888 by section 3 of the Pier and Harbours Confirmation (No. 2) Act, 1888—and enacts that 'no procession shall take place on a Sunday in any street or public place' in the borough of Eastbourne 'accompanied by any instrumental music, fireworks, discharge of cannon or firearms, or other disturbing noise, provided that the foregoing prohibition shall not apply to any of Her Majesty's naval or volunteer forces.' It was held in *Johnson* v. *The Mayor of Croydon*, 55 Law J. Rep. M. C. 117, that a bye-law under section 23 of the Municipal Corporations Act, 1882, to the effect that no person, not being a member of Her Majesty's army or auxiliary forces acting under the orders of his commanding officer, should sound upon any musical instrument on Sunday was unreasonable and void; so that a special Act is needed to give the inhabitants of any borough protection from Sunday street music; and, of course, when such a special Act has been once passed, it can, unless the ordinary practice be very much departed from, be repealed by a special Act alone.

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THE Prince of Wales has been made the subject of much criticism for playing baccarat at Tranby Croft, and there have not been wanting suggestions to His Royal Highness that he should never take part in a game of chance again, much less in the game of baccarat, which in *Jenks* v. *Turpin*, 53 Law J. Rep. M. C. 131, was said by Mr. Justice Hawkins to be an unlawful game. For ourselves we have always doubted the correctness of that *dictum*, and inclined to the opinion that only roulet or rolypoly, games at dice (except backgammon), ace of hearts, pharaoh, basset, and passage, as laid down by the late Mr. Brandt in the second edition of his book on 'Games and Gaming,' at p. 112, are 'unlawful,' in the strict sense of the term. And curiously enough, it is expressly provided by 12 Geo. II. c. 28, s. 10, 'that nothing in this Act or in any former Acts against gaming contained shall extend to prevent or hinder any person or persons from gaming or playing at any of the games in this or any

of the said former Acts mentioned within any of His Majesty's royal palaces, where His Majesty, his heirs or successors, shall then reside,' a provision repeated and extended to 'any game whatever,' by 18 Geo. II. c. 34, s. 6, by which roulet, otherwise rolypoly, was added to the list of illegal games contained in 12 Geo. II. c. 28, s. 10.

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In answer to Mr. Bryce, Sir Michael Hicks-Beach has stated that the Government are advised that the English law of copyright is so favourable to alien authors that there is good reason to expect that the President of the United States will declare that the American Copyright Act applies to this country on the ground that this country 'permits to citizens of the United States of America the benefit of copyright on substantially the same basis as its own citizens.' We long ago (see LAW JOURNAL for November 29, 1890) pointed out that there could be no reasonable doubt on the point left technically undecided in *Routledge* v. *Low*, 37 Law J. Rep. Chanc. 354, whether an alien author, in order to obtain British copyright, should at the time of publication be resident in the British dominions, though we thought also, looking to *Jeffryes* v. *Boosey*, 24 Law J. Rep. Exch. 81, that legislation might be desirable. It is material to observe that by section 13 of the American Act there are two conditions on which citizens of foreign countries are admitted to the benefit of the Act: (1) The condition of reciprocal law and (2) the condition of their country being party to the Convention of Berne. 'The existence of *either* of the conditions aforesaid,' so runs the American Act, 'shall be determined by the opinion of the President of the United States announced by proclamation *made from time to time*, as the purposes of this Act may require.'

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In connection with the claim against the late Archbishop of York or his estate for 7,000*l.* or thereabouts, of which the whole or a great part is said to consist of fees, &c. on admission to the archbishopric, attention may well be directed to the Ecclesiastical Fees Act, 1875 (38 & 39 Vict. c. 76). By this Act 'every person appointed to the office of secretary, apparitor, seal-keeper, or other officer employed in the transaction of official business by any archbishop or bishop in England' holds the same 'subject to all regulations and alterations affecting the same, or affecting the fees receivable in respect thereof, which may hereafter be made by authority of Parliament, nor shall any person by his appointment to any such office acquire any claim or title to compensation in case the same be hereafter altered or abolished by Act of Parliament.' By the same Act every officer above mentioned is bound, under a penalty of 20*l.*, to transmit annually before March 18 to a Secretary of State 'a true account, in writing, of the gross and net amounts of all such fees, allowances, gratuities, *perquisites*, and emoluments as shall have been received by him or become due to him in the year ending January 5 in such year by virtue of his office or employment.' There is no provision in the Act for submitting these accounts to Parliament, but it may be presumed that the returns sent in from the Archbishopric of York in respect of the first year of the late archbishop's enjoyment of the office may be easily obtained by motion in Parliament. The stamp duty on the grant of a restitution of the temporalities to an archbishop is 30*l.* by the Stamp Act, 1870, schedule of duties, tit. 'Grant.' The very heavy duties originally payable under that Act on any appointment to any 'ecclesiastical benefice, dignity, or promotion' were repealed in 1877 by 40 Vic. c. 13, s. 13.

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THE recent decision of Judge Stonor in the case of *Honey* v. *Maude* (see p. 419) is somewhat difficult to reconcile with that of the Court of Appeal in *Woodward* v. *Heseltine*, 60 Law J. Rep. Chanc. 357. In the bill of sale, the validity of which was in dispute, the grantees were described as 'The Union Deposit Bank of,' &c., 'of which bank Henry Isaacs and John Edwards, both of the same place, money lenders, are the sole proprietors.' So far the form of the instrument was exactly like that in *Woodward* v. *Heseltine*. But the distinction taken was that, whenever subsequently mentioned, the grantees were called not 'the said bank,' but 'the mortgagees,' a term which apparently the judge considered applicable to the proprietors and not to an incorporated company. Whether there was anything special in the context to confirm this view the report does not show. If not, it may be urged on the other side that there would be nothing unusual in referring to a corporation aggregate as 'the mortgagees,' and, that being so, the ambiguity detected by the Court of Appeal in the form remains unaffected. Those who agree with the learned County Court judge in the opinion that bills of sale, as well as other documents, should be construed *ut res magis valeat quam pereat* will be gratified to learn from him that an appeal to the House of Lords is pending in *Woodward* v. *Heseltine*. It may be hoped the result will be to supply a more solid foundation for his decision than that which, for want of a better, he has been driven to rely on.

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To the many pitfalls in the way of clients who seek to obtain *ex parte* orders for taxation of their solicitors' bills, another, hitherto unrecorded in the reports, is revealed by the case of *In re Webster*, 60 Law J. Rep. Chanc. 338, which decides that where a client has already obtained one common order for taxation, which he has allowed to lapse, he has no right to obtain *ex parte* a second common order in respect of the same costs. The reason given by Mr. Justice North, which appears to us to be perfectly well founded, is that 'if he could do this, he might by going on for twelve successive months, and getting twelve successive orders, prevent the solicitor during all that time from taking any proceedings to recover his bill.' The force of this remark will be seen when it is remembered that the common order to tax a bill delivered more than one month provides that no proceedings to recover his costs are to be taken by the solicitor pending the reference, and that the taxing-master is to make his certificate in a month, unless he certify that further time is necessary, or that the order is to be of no effect (Seton, 4th edit. p. 605). Another sufficient ground for discharging the order was that the client had suppressed the fact that there was a pending action brought by him against the solicitor in which the solicitor claimed to set off his costs. A third point in the same case deserves attention. The solicitor simply moved to discharge the order for irregularity,

Mr. Justice North, however, refused to discharge it altogether, but left it standing so far as it directed taxation and so far as it directed the certifying of the amount due—to which order the client would have been entitled on a proper application—and discharged it so far as it directed payment and so far as it restrained proceedings pending the reference, and also made the client pay the costs. The old rule, stated more than once in the cases (see *In re Byrch*, 8 Beav. 126; *In re Hinton*, 15 Beav. 192), undoubtedly was, that only by consent can an order warranted by the merits be made on a motion to discharge it for irregularity in having been obtained *ex parte*. Mr. Justice North appears to have departed from this rule, as—if we understand the report rightly—he amended and utilised the order without the consent of the solicitor, who would have preferred to have it discharged altogether.

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THE Justices Clerks' Society will hold its fifty-first annual meeting at the Law Institution next Thursday, and the members will dine together the same evening to meet some distinguished guests. The subjects for discussion and consideration include the working of the Lunacy Act, 1890, and the Summary Jurisdiction (Youthful Offenders) Bill. It is very desirable that there should be as much unanimity as possible in the practice and procedure at petty sessions, and *esprit de corps* is as valuable among clerks to justices as in any other class of men. Whatever force there may be in the hostile criticisms so frequently launched at 'the Great Unpaid,' it must be admitted that, with few exceptions, the clerks perform their numerous, and often delicate, duties to the entire satisfaction of the public. This state of things is promoted and encouraged by the useful society referred to.

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THE readers of 'As In a Looking Glass' and other novels by the same author will be interested to notice the name of Mr. F. C. Philips as one of the plaintiff's counsel in the latest (though somewhat *réchauffé*) *cause célèbre*, *Wiedemann* v. *Walpole*. As all novelists know, truth is stranger than fiction, and many thrilling romances and startling tragedies are revealed in the Law Courts.

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## *REGINA* v. *JACKSON*.

FULL reports of the proceedings before the Court of Appeal in *Regina* v. *Jackson* have now been published. Whether as the result of revision or otherwise, some of the cruder *dicta* which garnished the contemporary reports of the judgments, and were commented on in these columns, have disappeared. We are at liberty to suppose that the Lord Chancellor will receive without ridicule the statements of historians as to the legal existence of slavery in England at a period not so very remote. He confines himself, apparently, to ridiculing the certainly impossible contention that slavery is still lawful. Again, the announcement that an attempt by Mr. Jackson to retake his wife would be treated as a contempt of Court has been suppressed. We still, however, find Lord Halsbury saying that he is prepared to base his judgment on the ground, if we rightly understand him, that a *feme covert* is a person *sui juris*.

The keynote of the decision is, we think, struck in the opening remarks of the Lord Chancellor, in which he expresses his reluctance to suppose that certain propositions referred to in the argument ever were the law of England. Reluctance on the part of a judge to accept conclusions which may be out of harmony with the sentiment of the day is a frame of mind likely to produce bad law. It is peculiarly dangerous when the branch of law to be dealt with is one of great antiquity and but little affected by statute. The legal relations of husband and wife—or perhaps it would be more appropriate to say baron and feme—took shape at a time when what to modern ears sound 'quaint and absurd *dicta*' seemed perfectly natural and proper. To expect that those relations should be in all respects in accordance with the ideas prevalent at the end of the nineteenth century is surely unreasonable. Yet this is almost avowedly the point of view from which Lord Halsbury and Lord Esher approached the question submitted to them. Apart from direct authority, the general position of the wife at common law is such as to make it improbable that she should have the freedom to which she has been declared to be entitled. Compare the right claimed for the husband over her person with that which he undoubtedly possessed at common law over her property, and with the control which he exercised over her legal acts. Is it more outrageous that a husband should have the right to restrain his wife from deserting him without just cause than that he should be able to take the whole of her property and squander it on his pleasures, even on his mistresses? There would have been little ground for surprise if the authorities had accorded to him a much more extensive control over her person than they do.

We do not propose to comment at any length on the judgments of Lord Halsbury and Lord Esher. They were freely discussed at the time of their delivery, and a perusal of the revised reports will not be likely to modify the opinions then formed upon them. Both are highly rhetorical, filled with such phrases as 'absolute dominion,' 'abject slave,' 'imprisonment,' 'gaoler,' 'civilised country.' Both display an inability to state fairly the contention raised on Mr. Jackson's behalf. Lord Esher, for instance, says that it was contended that a husband 'may imprison his wife by way of punishment, and, if he thinks she is going to absent herself from him for any purpose, however innocent of moral offence, he may imprison her.' Both treat the authorities in the same offhand fashion. *In re Cochrane*, 8 Dowl. 630, is the only precedent specifically referred to, and the careful and weighty judgment of Mr. Justice Coleridge in that case is dismissed with scarcely more than a bare assertion that it is wrong. There is much inaccuracy in the general statements as to the effect of the earlier authorities. Thus the Lord Chancellor says that 'the authorities cited for the husband are all tainted with this sort of notion of the absolute dominion of the husband over the wife;' and Lord Esher says they 'make an English wife the slave, the abject slave of her husband.' We assert with confidence that not one single case was mentioned to which these descriptions can fairly be applied. Every authority prior to *Regina* v. *Jackson* either lays down or takes for granted that the husband has a dominion over his wife, but none, so far as we know, says anything of absolute dominion. On the contrary, their effect is to give him a limited power, a power which the Courts will control within reasonable bounds, and which may be lost altogether if abused. Take, for instance, the first matter

referred to by the Lord Chancellor—Lord Hale's interpretation of '*castigatio*' in the writ of *supplicavit*. Whatever the meaning of the word, it occurs in a document issued to protect the wife from excess on the part of her husband. Lord Hale, by the way, did not suggest that '"castigatio" may be taken to mean admonition merely.' It is clear from the context that it imports some exercise of force; and what Lord Hale said was that it meant only 'admonition and confinement to the house in case of her extravagance' (*Lord Leigh's Case*, 3 Keble 433). Again, the Lord Chancellor says that the only case which raised the question of law as to the right of custody in an abstract form is *Cochrane's Case*. What of *Atwood* v. *Atwood*, Prec. in Chan. 492; Gilbert 149, the reports of which disclose no qualifying circumstances? In truth, there is as much authority on the abstract question as can be expected in support of a proposition which has been frequently asserted and never denied or questioned.

It is a relief to turn to the judgment of Lord Justice Fry, of which but a brief summary had previously appeared. He does not, he tells us, agree with the Master of the Rolls in thinking 'that all our predecessors on the bench were deficient in good sense.' He sets himself to justify by reasoning from the authorities the conclusion at which the Court arrived. This reasoning we will proceed to examine.

The lord justice begins by dividing the question into two parts—the first as to the right to capture, the other as to the right to confine. For the first, he says there does not appear to him to be 'a rag of authority.' In saying this he has apparently overlooked Lord Mansfield's *dictum* in *Rex* v. *Mead*, 2 Ken. 279, that a husband 'has a right to seize' his wife 'wherever he finds her,' and Lord Eldon's observations on that case in *St. John* v. *St. John*, 11 Ves. 532, expressive of his doubt whether the Court of King's Bench had not gone too far in holding that the marital right to seize by force was surrendered by the execution of a separation deed.

Lord Justice Fry admits that the right to confine or imprison the wife until she renders conjugal rights (by which we suppose is here meant until she abandons the intention of deserting her home) is asserted in *Cochrane's Case*. But according to him no earlier authority was cited for it except a passage in Bacon's 'Abridgment' that 'the husband has power and dominion over the wife, and may keep her by force within the bounds of duty.' He considers this passage too vague to be satisfactory, and says that it is directly at variance with the decision in *Rex* v. *Lister*, 1 Str. 478. This is not quite correct. All that was decided in *Rex* v. *Lister* was that a husband was not entitled to seize and confine his wife—who was living separate from him under a deed of separation—in order, as he himself declared, to prevail with her to part with some of her separate maintenance. Such conduct could not be described as keeping the wife within the bounds of duty. No doubt, in giving the grounds for their judgment, the Court declared 'that where the wife will make an undue use of her liberty either by squandering away the husband's estate or going into lewd company, it is lawful for the husband, in order to preserve his honour and estate, to lay such a wife under a restraint. But where nothing of that appears he cannot justify the depriving her of her liberty; that there was no colour for what he did in this case, there being a separation by consent.' We think it is pressing these words beyond what was intended, to treat them as a deliberate and exhaustive enumeration of the cases justifying restraint, rather than as an illustration by examples of the kind and degree of misuse of liberty upon which the husband might act. However that may be, the words at the end of the passage quoted seem to indicate that the judges themselves recognised a third case—that of a wife withdrawing herself altogether from her husband's custody—but held that it was excluded on the facts before them by the separation deed. The right of custody which is so constantly asserted means nothing if it does not authorise restraint in such a case as that. Mr. Justice Coleridge's reasoning on this point is to our mind unanswerable.

(*To be continued.*)

## THE TRANSFER OF LICENSES UPON CHANGE OF OCCUPANCY.

THE case of *Regina* v. *Powell and others, Licensing Justices of the Hundred of Swansea*, recently decided by the Court of Appeal and reported in our Notes of Cases for the current week, shows that the true construction of section 14 of the Intoxicating Liquor Licensing Act, 1828 (9 Geo. IV. c. 61), is still open to controversy. In addition to providing for the substitution of new licensees for old in cases of death, sickness, and bankruptcy, and for the substitution of new premises for old in cases of fire or occupation for public works, and for other like contingencies, the section endeavours to protect the landlord in cases where an occupier quits possession of the premises without arranging for a transfer or neglects to apply for a renewal of his license at the general licensing sessions. In an ordinary case of this description the matter is simple. A new tenant is found who applies to petty sessions (under 5 & 6 Vict. c. 44) for a temporary license until the next special transfer sessions, and he then obtains under the section the transfer of the license until (elsewhere than in Middlesex and Surrey) October 10 next ensuing. If one proposed new tenant fails to obtain the transfer, there is nothing to prevent a second making the application, and so on until a tenant satisfactory to the justices is found (*In re Todd*, 47 Law J. Rep. M. C. 89), except in cases where a license has been forfeited or the licensee has become personally disqualified, when the application can only be made to the *next* special sessions (*Regina* v. *The Justices of the West Riding*, 57 Law J. Rep. M. C. 103; *Stevens* v. *Green*, 58 Law J. Rep. M. C. 167; the Licensing Act, 1874, s. 15). When, however, a tenant gives up possession at some date immediately preceding or following the general licensing meeting without applying for a renewal, or where a tenant whose renewal has been refused at such meeting immediately surrenders the premises, difficulties at once arise as to the construction of the section. In *Simpkin* v. *The Justices of Birmingham*, 41 Law J. Rep. M. C. 102, one of these was removed, and it still continues to be the law, in accordance with the decision given in that case, that no application can be made for the transfer of a license on the ground of the removal of a tenant unless the removal takes place while the license proposed to be transferred is still in existence. It was further laid down in *In re Todd*, 47 Law J. Rep. M. C. 89, and in *White* v. *The Justices of Coquetdale*, 50 Law J. Rep. M. C. 128, that the application must be made during the period for which the old license is in force. This view of the law, however, did not meet with the approval of the Court of Appeal,

and in *Regina* v. *The Justices of Liverpool*, 52 Law J. Rep. M. C. 114, these cases were overruled, and it was held that the application could be made, although the period for which the license was in force had expired. Nor was this the only point decided in that case. The facts upon which it arose were that a licensed house was sublet to a person who, failing to obtain a transfer, remained in occupation of the house without a license until after the general annual meeting, but, in consequence of illness, did not apply for a renewal, and shortly afterwards left. The license having expired on October 10, a new tenant applied at the special sessions in January for the transfer of the license. The application was granted, and, upon a case stated, it was held, in addition to the finding above mentioned, that the under-tenant, though not holding a license, was a person entitled to apply at the annual meeting for a renewal, and, therefore, inasmuch as an occupier of the house about to quit possession had neglected to apply for a renewal, an application for a transfer could be made by a new tenant under 9 Geo. IV. c. 61, s. 14.

The latter portion of the decision, by which it was laid down that an occupier, though not holding a license, was a person entitled to apply at the general annual meeting for a renewal of the license, had a very material effect upon the decision of the Court of Appeal in the recent case of *Regina* v. *Powell and others, Licensing Justices of Swansea.* In that case the tenant of a country public-house quitted possession of the house on September 2, without having applied for a renewal of the license at the general licensing meeting on August 30. A new tenant came in and on the 6th obtained a temporary license, under 5 & 6 Vict. c. 44, s. 1, until September 27. On that day the adjourned general annual meeting, and also special transfer sessions were held, and at the latter he was granted, under 9 Geo. IV. c. 61, s. 14, a transfer of the license until October 10. At the transfer sessions in the January following he again applied under the same section for a transfer for the ensuing year, but the justices refused the application on the ground that they had no jurisdiction, since he was no longer a 'new tenant' within the meaning of the Act. This decision was upheld by the Queen's Bench division, and more recently by the Court of Appeal. According to the decision of the higher Court, a 'new tenant' means a tenant who has not already held a license, other than a temporary license, in respect of the premises. As, therefore, the applicant in the case in question had held a license from September 27 to October 10 he was no longer in a position to apply under the section. Moreover, on September 27, the day on which the adjourned annual meeting was held, he was an occupier who, in accordance with the decision in *Regina* v. *The Justices of Liverpool*, could have applied for a renewal of the license. He himself, therefore, was the occupier who had neglected to apply for a renewal, and consequently was not a person entitled to relief under the section. As we observe in some of the text-books upon the subject that a postponement of the application is advised until after October 10, on the ground that otherwise a second application for a transfer for the ensuing year will be necessary, it is desirable that this recent decision should be carefully noted. The least evil resulting from its neglect will be the closing of the house for a year, while the owner will furthermore have to face, as best he may, all the perils and dangers which confront the applicant for a new license.

## LEGISLATIVE PROGRESS.

IN the House of Lords.

The royal assent was given by commission to:—

Seal Fishery (Behring Sea) Bill.
The Registration of Electors Acts Amendment Bill.

Bill read a third time and passed:—

Reformatory and Industrial Schools Children Bill.
Museums and Gymnasiums Bill.

Bills through committee:—

Judicature Acts Amendment Bill.

Second reading:—

Drainage and Improvement of Lands (Ireland) Bill.
Mail Ships Bill.

First reading:—

Purchase of Land and Congested Districts (Ireland) Bill, which had been passed in the House of Commons, was read a first time.

In the House of Commons.

Third readings:—

Purchase of Land (Ireland) Bill.
Markets and Fairs (Weighing of Cattle) Bill.
Russian Dutch Loan Bill.
Customs and Inland Revenue Bill.
Allotments Rating Exemption Bill.

Second reading:—

County Council (Elections) Bill.

New bills:—

To Alter the Date of Holding Elections of County Councillors and to Remove Doubts respecting the Holding of such Elections.

To Facilitate the Reinstatement of Evicted Tenants in Ireland.

To Amend the Post Office Acts and to make Provision for the Service of the Post Office.

Bills withdrawn:—

The Parks Regulation (Ireland) Bill.
The Fishery Board (Scotland) Bill.
The Private Bill Procedure (Scotland) Bill.
The Public Trustee (No. 2) Bill.
The Indian Councils Act (1861) Amendment (No. 2) Bill.
The Registration of Assurances (Ireland) Bill.
The Regimental Debts Consolidation Bill.
The Interpretation (Ireland) Bill.
The Summary Jurisdiction (Youthful Offenders) Bill.
The Archdeaconry of Cornwall Bill.
The Lichfield Cathedral Bill.
The Corn Sales Bill.
The Maintenance of Destitute Parents Bill.
The Church Building Acts (Compulsory Powers Repeal) Bill.
Fisheries Regulation (Scotland) Bill.
Marriage with a Deceased Wife's Sister Bill.
Steam Boilers Bill.
Returning Officers' Expenses (Scotland) Bill.
County Councillors Disabilities Removal Bill.
Boilers Registration Bill.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the utmost service to me.' Post free, 4d. DE VERE & Co., Publishers, 32 Warwick Lane, London, E.C.—ADVT.

# Correspondence.

## TITHE ACT, 1891.

SIR,—Some confusion appears to have existed in the minds of the learned framers of the rules under this Act as to the person on whom the 'occupier's liability notice,' prescribed by section 2, subsection 6 of the Act, ought to be served.

Forms 28 to 30 appended to the rules lead one to suppose that the notice should be served on the occupier of the lands and not on the tithe-owner, as the Act directs. It seems clear that these forms must be altered by substituting the name of the tithe-owner for that of the occupier as the person on whom there has been a failure to serve the notice in question.

I shall be obliged for information on this point from any of your readers who may in the near future have occasion to apply for a certificate in respect of the failure to serve such notice. W.

Norwich: June 11.

## ILLEGIBLE WRITING.

SIR,—The circular issued by the Home Secretary requesting magistrates' clerks to record depositions in plainly legible writing, which you published in your number of the 13th inst. (p. 409), will be noticed with satisfaction by the whole legal profession. I do not know whether it would be considered impertinent if the Home Secretary or Lord Chancellor, or some other authority, should address a similar circular to the judges and masters and the leading counsel, of whom I believe I have met with two generations in the last forty years, and can testify that most of them have tortured solicitors and their clerks with illegible writing. If men in a high position cannot write legibly, they should employ a clerk or secretary to do their writing. A few days ago an articled clerk informed me that it is ungentlemanly to write a plain hand. I hope this will not be adopted as a maxim by the rising generation of solicitors. I understand the Queen's writing is not only plain but elegant. I think, whatever a man's rank may be, it would become him, unless disabled by infirmity, to write plainly, if only from Christian principles and motives of humanity to the inferior beings who have to puzzle their limited understandings with solving ambiguous and illegible handwriting.

Lothbury, E.C.: June 13. C.

# Unreported Cases.

## COUNTY COURTS.

### BILLS OF SALE ACT, 1882, SS. 8, 9, AND SCHEDULE—NAMES AND DESCRIPTION OF PARTIES.

AT the Brompton County Court, on June 11, before his Honour Judge Stonor, the case of *Honey and another* v. *Maude, Edwards & Isaacs, Proprietors of the Union Deposit Bank (claimants)*, was tried. His Honour delivered judgment in this interpleader: The material parts of the bill of sale in issue in this case are as follows: 'This indenture, made August 22, 1889, between Katharine Maude (wife of Alwyne Maude), of, &c. (hereinafter styled "the said mortgagor"), of the one part, and the Union Deposit Bank, of 17 King William Street, Charing Cross, in the county of Middlesex, of which bank Henry Isaacs and John Edwards, both of the same place, money lenders, are the sole proprietors (and who are hereinafter styled "the said mortgagees"), of the other part, witnesseth that, in consideration of the sum of 300*l.* now owing by the mortgagor to the mortgagees, and the further sum of 30*l.* now paid to the said mortgagor by the said mortgagees, the receipt of which the said mortgagor hereby acknowledges, the said mortgagor doth hereby assign unto the said mortgagees the chattels specifically described in the schedule hereto annexed by way of security, &c.,' and the said mortgagor thereby covenants with the said mortgagees for the payment of the money secured and interest, and the payment of the rent of any premises on which the said chattels or any of them were or should be. An objection was taken on behalf of the execution creditors that the covenant for the payment of rent extending possibly to twenty or more different places was too wide, and rendered the bill of sale void; but no authority for this proposition was cited, and the case of *Goldstrom* v. *Tallerman*, 56 Law J. Rep. Q. B. 22; L. R. 18 Q. B. Div. 1, as far as it goes, is adverse to it, and I overruled the objection. A much greater difficulty, however, arose on this bill of sale from the introduction of the Union Deposit Bank as *prima facie* the party to it of the second part; but after much consideration I think that the words 'The Union Deposit Bank,' &c., ought to be regarded as only part of the description and occupation of the two persons who are afterwards described as money lenders and as sole proprietors of such bank, and that the words 'The Union Deposit Bank,' &c., are merely misplaced, and should have followed, and not preceded, the names of the two persons in question, and therefore, notwithstanding the procrustean rule of construction which has so often been applied to bills of sale, I think that the wide and more general rule of construction, '*ut res magis valeat quam pereat*,' ought to prevail in the present case, and save this bill of sale from the hecatomb of such instruments, which has been sacrificed, during nine years to one of the worst drawn Acts of Parliament of modern times. The reference to the Union Bank of Deposit in the present deed is, in my humble opinion, only an additional description, or, at all events, an innocuous superfluity. The recent case of *In re Heseltine* before the Court of Appeal (60 Law J. Rep. Chanc. 357), which, I understand, is now the subject of further appeal to the House of Lords, and which was cited on behalf of the execution creditors, no doubt greatly resembles the present case, and, indeed, is practically the same so far as the introduction of a reference to a bank previously to the name of the proprietor of such bank in the description of the second party to the bill of sale is concerned, the terms employed being 'the Discount Bank of London, of 6 Duncannon Street, Charing Cross, in the county of Middlesex, of which said bank Lewis Simmons, of the same place, is the sole proprietor, of the other part.' But, in the last-mentioned bill of sale, the consideration is expressed to be paid by the bank, and the assignment and covenant are respectively made to and with the bank, and not by, to, and with Lewis Simmons, whilst in the present bill of sale the money is paid by, and the assignment and covenant are made to and with 'the said mortgagees,' who are the proprietors of the bank; and, supposing that the House of Lords should affirm the decision of the Court of Appeal in *In re Heseltine*, I still rely on these distinctions between that case and the present in support of my present decision in favour of the claimants. It has not escaped me that, should it be held in the present case that the bank is the party of the second part to the present deed, and not the two persons who are proprietors of such bank, the deed would be altogether void even at common law, as, on the one hand, there is no evidence of

the incorporation of the bank, nor, indeed, any assignment to it; whilst, on the other, the proprietors not being parties to the deed could scarcely take an assignment of chattels by an indenture to which they were not parties, although by statute 8 & 9 Vict. c. 106, s. 5, they could no doubt take a conveyance of real estate under similar circumstances; but, as I have held that the bank is not a party to this deed, and that the two persons who are the proprietors of the bank are parties, it is not necessary for me further to consider these points. I therefore find for the claimant, with costs.—Cluer for the claimants; Longstaffe for the execution creditors.

BANKRUPTCY—PROOF—DEBT INCLUDING INTEREST.

At the Cheltenham County Court on June 12, before his Honour Judge Brynmor Jones, Mr. Taynton applied, on behalf of Mr. H. G. Margrett, for the admission of a proof for 31*l.* in *In re J. W. Ford*, which had been rejected by the receiver under the Bankruptcy Act, 1890.—It appeared that Mr. Margrett had lent the debtor the sum of 30*l.* for a month, on consideration of his paying 1*l.* as interest. He therefore took from him a promissory note for a month for 31*l.* At the expiration of one month the debtor could not pay the principal, but paid the 1*l.* interest, and agreed to continue to pay interest at the rate of 1*l.* per month, as long as the time of the bill was extended. At the time of the receiving order the debtor had paid Mr. Margrett 20*l.* as interest, and nothing whatever on the principal, and Mr. Margrett had entered a proof for the amount of the promissory note, 31*l.* The receiver had at first admitted the proof under the Act of 1883, but when the new Act came into operation he had reduced it. The principle of the alteration, he contended, was right under section 23 of the Act.—Mr. Taynton contended that the section did not act retrospectively, and, even if it did, it formed no ground for the rejection of the proof.—His Honour asked the receiver for an explanation.—The Receiver replied that when a person proved for a certain amount it was his duty to ascertain how the sum had been arrived at. He found in the present case that a certain sum had been lent at a certain rate per cent., and that the borrower had made certain payments. Under section 23 of the Bankruptcy Act, 1891, when a debt had been proved upon a debtor's estate, and such debt included interest, or any pecuniary consideration in lieu of interest, such interest and consideration (unless the other creditors had been paid in full) had to be calculated at a rate not exceeding 5 per cent. per annum. Mr. Margrett had been paid at a much higher rate, and therefore he had deducted this excessive interest already paid from the amount of the debt, allowing on it only 5 per cent.—Mr. Taynton contended that the account was settled month by month, and that the receiver had therefore no power to reopen a settled account.—The Receiver urged that in bankruptcy cases it was right to investigate accounts *ab initio*.—His Honour inclined to the view of Mr. Taynton.—The Receiver: I have rejected proof after proof on the same principle, and no objection has been taken.—His Honour observed that, as the point was an important one, he would take time to consider before giving his decision.

## SOLICITOR'S CASE.

In the Queen's Bench Division, before Mr. Justice Denman and Mr. Justice Wills, on June 9, the case of *In re a Solicitor and In the Matter of the Solicitors Act* was heard. Mr. F. Hollams appeared for the Incorporated Law Society, and read the report of the statutory committee, from which it appeared that the solicitor, when acting for the complainants in a compromise, received 2,500*l.*, and retained 175*l.* and 15*l.* of it under the following circumstances: The money was paid in three notes, two for 1,000*l.* and one for 500*l.* Two of these notes, the 500*l.* note and one of 1,000*l.*, were paid over properly. As to the third, according to complainant's account (the account the report adopted as the correct one), the solicitor said: 'I want you to oblige me. I will take the other 1,000*l.* note and take my costs out of it—235*l.* (an agreed sum), 15*l.* for stamps—and I will give you two cheques—500*l.*, 250*l.*—the second of which you will please hold over for a couple of days.' The complainant demurred, but ultimately consented. This happened on October 8. The next day the 500*l.* cheque was paid, but the 250*l.* cheque was not paid, though it was presented at the bank on three different occasions—October 24 and November 5 and 6.—On November 18 the solicitor paid 75*l.* of the 250*l.*, but made no further payment. As to the 15*l.* for stamps, the report found that the solicitor admitted not having paid more than 3*l.* or 4*l.*, and that there was no evidence that he had spent over 15*s.* It also appeared that, pending the consideration by the committee, he tendered the amount due by him.—Sir Charles Russell (with him Mr. M'Intyre), for the solicitor, urged that, though there might have been irregularities on the part of the solicitor, the Court would not find him guilty of professional misconduct.—The Court held that, under the circumstances, the justice of the case would be met by making the solicitor pay all costs of the proceedings.

## THE OUTLOOK FOR LAW STUDENTS.

THE following address was delivered by Mr. F. K. Munton to the members of the Law Students' Debating Society, at the Law Institution, London, on Tuesday, February 24, 1891:—

Mr. President and Gentlemen,—When I joined this society, some twenty-seven years ago, shortly before being admitted a solicitor, I regarded with natural concern the outlook for law students. From that time to the present in various capacities I have taken part by pen or speech in the discussion of the subject, and my interest, though from a different point of view, is as keen now as it was at the outset. It may be that my immediate interest is a little more keen in consequence of my having a son old enough to be a member, who is looking forward at no distant date to becoming a solicitor. Possibly I represent the only instance in this Society of two generations taking something like an active part in its business, and I am only sorry that more of the other old members do not find it convenient from time to time to maintain closer association, for I believe it would be very beneficial to the Society if such were the case. (Hear, hear.) Some of us occasionally seek new sensations. I have found one to-night. When your committee were good enough to ask me to come down to this meeting and deliver what they were pleased to call 'an address,' I, without much consideration, assented. Although I am not altogether unaccustomed either to address a public meeting or to take part in matters of this kind, I assure you that when I saw in print what I had promised to do it had a very different appearance to the task previously present to my mind, and, if any member of this society doubts the difference between making a promise to open up a discussion on a wide subject and its announcement in type, let him try it, and I think that it will rather astonish him. But the new sensation to which I refer is this: I never was able to learn anything by heart so as to repeat it; moreover, it seemed to me that in our society an address would come better in a chatty fashion than in a formal way, and under these circumstances I contented myself with making a few notes on half a sheet of foolscap paper for the purpose of refreshing my memory from time to

time in the observations I might make; but, inasmuch as in the hurry of business I contrived at the last moment to lose or misplace the paper in question, I think I discovered a new sensation. (Laughter.) My remarks, therefore, will be truly chatty in character, though I hope they will not be less interesting to the members. I do not, however, think that I should have ventured to address you at all upon so important a subject as that which is down upon the paper but for the circumstance that I accidentally came across a book, the author of which I neither knew by repute nor otherwise, who, in writing upon 'Solicitors as Advocates, and Practical Suggestions,' gave the following paragraph in the preface: 'A knowledge of the theory of law is, of course, indispensable, but much else is wanted if a man is to succeed in his profession. Every articled clerk would do well to remember the words of a speaker at one of the annual provincial meetings of the chief Law Society. Referring to the president's address, he said: "In addition to proper legal education, he attached great importance to that kind of culture which gave a man an insight into the ways of mankind, which was as valuable to a young practitioner as an acquaintance with the technicalities of the law."' Now, it so happens that these observations were made by myself at one of the congresses of the Law Society. (Hear, hear.) They were made offhand, and I certainly never expected to see them in print, and much less did I expect to see the evident importance given to them by an author who was devoting his attention entirely to advising the young members of the profession. Let me, however, remark that if I had not made that statement ten or a dozen years ago I certainly should have made it at an early stage of my observations to-night, because almost everything that I may venture to say, likely to interest you, will be more or less based upon the proposition which I then ventured to lay down, and which got into print as I have stated. To approach the subject of the outlook for law students, we must see what is the present state of the practice of the law, whether it is falling or increasing, and how stand the chances, having regard to the existing number of members and those daily coming into the profession, of earning a living by means of it. I daresay it is known to almost everybody here that the solicitor, as we see him, is of comparatively modern growth. Very few, indeed, of the oldest firms in London date back more than a century, and certainly the importance of any solicitor at that time, whether he ultimately founded a firm or not, was very little, compared to the position which he occupies at the present day. If we read the dramatists of the eighteenth century we shall see the view that was then taken of the solicitor, but, as I have to apply myself to the outlook, there is little time to go into the past. I will content myself with merely quoting—what I daresay has been heard by many in this room—the remark of Dr. Johnson, who said: 'I should be sorry to speak ill of any person in his absence, but I believe the gentleman in question is an attorney.' It represented pretty fairly the public view in those times, nor was it altogether unnatural, for at that period the solicitor in the general way was entirely uneducated. He passed no examinations whatever. He got into the profession by merely serving his time, and nine out of ten solicitors of a century since were persons who were almost utterly ignorant of the general law of the land, relying in that respect upon the assistance of the bar, who at that time held a very different relative position. The bar and the solicitors together now form a joint honourable profession, and let us hope, since the Law Society has inaugurated a system (which I had the honour to initiate in a paper I read on the subject), by which scarcely anything affecting the bar is attempted without consultation, that such course of action will be strengthened and improved as we go on. Not till 1844, or thereabouts, was there any examination for solicitors. It is said that just one question or so was asked, as a matter of form, before a man was admitted, and probably many of you have heard the story, though some of our young friends have not, of an old judge and a young man who was about to become a solicitor. The old judge asked the young man how he would advise a person to act under certain complicated circumstances he named. The candidate in question, not having the remotest idea about it, after a little consideration, put on a grave face, and said: 'My lord, I think, in a case like that, the first thing I should do would be to draw 10*l.* on account of costs.' Said the old judge to the master: 'He will do, pass him,' and he passed accordingly. (Laughter.) Let us now look to the statistics, and consider the probabilities of solicitors as a whole being able to earn anything like a comfortable subsistence by means of the law. I find that the proportion of the solicitors admitted thirty years ago was about the same as it is now—that is to say, in England there is one solicitor to about 2,500 of the population. The population has increased since that time something like 50 per cent., and the number of solicitors has increased at about the same rate. This would be all very well if the business kept pace with the increased number of inhabitants, but those who have had an opportunity of studying the matter know that in the High Court during the last few years there has relatively been a very appreciable decrease of work, and, though of course in the manifold affairs of this country, and having regard to its increasing importance among nations, there must always be a very large amount of business for men of our class to perform, it is a fact that during the last few years there has been the relative decrease just adverted to. I do not know whether it has occurred to many of the younger members of this society to examine into the matter, but it is a fact that if all the cases actually tried in the Courts from one year's end to the other were distributed equally among the solicitors, there would not be half a case apiece; moreover, if all the members of the bar practised there would not be one trial apiece for them! It is true, as regards the bar, that a large number of gentlemen go there without any idea of practising, and it is very difficult to ascertain the precise proportion of men ready to take cases if offered. With regard to the business of a solicitor, everyone familiar with the work of the profession knows that at least three-fourths of it has nothing whatever to do with litigation. I mean that if the business of the solicitors of England and Wales were taken from end to end such would be about the average of non-litigious work. The bulk of the business is that of advisers and diplomatists. Now I ask how many men are there who come into our branch of the legal profession and study during the statutory period, and perhaps come out well at the end, who thoroughly appreciate that the chief duty they will have to perform lies in attending to such matters as do not necessarily require an acute knowledge of the technicalities of the law. I do not think that point is sufficiently considered by those who enter the profession. The subject was to some extent recognised by a gentleman who died a short time ago and left a legacy to provide a prize for the candidate best versed in the direction to which I have referred, but he did not, I think, go far enough. I do not underestimate the need of the legal and other examinations; on the contrary, I hope that the high standard will be continued. As to honours, I think that it is a very excellent thing to try for them, and I speak gently upon this because I was fortunate enough to get a place myself in my day, though I certainly never derived a single client thereby. So far as it goes, it is a pleasure to dwell upon, and I counsel every man going up for his examination to endeavour to get a prize, for the extra knowledge thereby acquired, even if he be unsuccessful, is very valuable. I have,

however, known men who have come straight from the test brimming over with honours, literally packed with law, but as to whom it has been found almost impossible to unpack a single bit to meet some commonplace emergency. It is a great fallacy to suppose that because you can pass your examination well, or even get honours, that you are likely to get work or be able to perform it when you do get it. Now there are several positions in which men find themselves on coming into our profession. There are those who have what I may call a legal family pedigree, others have influential commercial and business relations, and some have plenty of money. The man with the family business already made is not a person one need particularly legislate for, though he has to keep his eyes open, but mere possession of good business connections do not make it all certain that a solicitor will succeed if he is simply learned in law. I look upon tact as the most important qualification, and this can only be acquired by diligent observation and the study of your fellow-man. I remember an occurrence some twenty years ago which will illustrate in a small way what I want to impress upon you when I say how little mere legal skill or abstract knowledge of the law will assist, compared to some knowledge of mankind—a position that might occur to any of you at any time. As all the parties are dead, I am not disclosing secrets, but about the period I name I was engaged in a case of some importance, involving a considerable sum of money, which was set down for trial and in the list to be heard on a certain day. The afternoon before, at the very last moment, my client was in great distress of mind because he discovered that the names of third persons would have to be published to their detriment, and he resolved that under any circumstances he must drop from the fight before incurring heavy further expense, and, in the emergency, the animosity being intense, there was apparently only one course—viz. to withdraw the record, which he instructed me to do, and pay the adversary's costs. Much disheartened, of course, I drove off to achieve the purpose. The official closing hour was at hand, and just as I arrived at the door I ran against my opponent, who struck me as looking remarkably gloomy, and it passed through my mind, though I was close run for time, that I had better just see if he would say anything to me before I showed my hand. I am not going to speak too much about myself, but I studied that man's face—he, too, has long since passed away—and assumed as gay an air as possible, and this attitude achieved startling results. As a fact, my nonchalance induced him to open a conversation, saying: 'I am glad to meet you, and'—well, to finish that story, if I had made a mess of it I might have withdrawn the record, whereas that afternoon ended by our mutually signing an order to stay on payment by his client to mine of half the debt and the whole of the costs. All this was largely due to being careful not to show alarm at a critical moment. There are many others, no doubt, who might have done the same, and I only give it as an example. (Cheers.) I want to urge that, however much you may know of law, unless you school yourself to meet positions such as I have referred to, your education as a solicitor is deficient. Now what is it that busy firms want every day in business, and which it is so difficult to get? If one advertises for an admitted clerk, the profession is so overstocked that one has innumerable answers, the remuneration asked being humiliatingly small, indicating clearly that the demand does not equal the supply; but with the answers it is no easy thing to find a candidate who thoroughly appreciates that something more is wanted of him than abstract law. I honestly believe that there are at least a hundred firms in London who have openings ready for clerks at good salaries if they could find more men who apply their minds to acquiring the qualities to which I have alluded. They cannot be attained at once, but from beginning to end such qualifications should be part of a young man's study. When a brother-solicitor asks me whether I know of any good all-round man, he means a man who will rise to the situation and meet an emergency. Perhaps I may venture to say that I am entitled to speak a little on this subject, having had a long and somewhat varied experience. In my opinion there are many things essential to a young man getting on in our profession. In the first place it is necessary to be very polite. This may seem a needless suggestion, but I declare that I have met men in the legal profession who, if they are giving a mere extension of time to which one is perfectly entitled, assume an air about it as though they were conferring a great favour. Firmness and politeness are not at all inconsistent. Some people, however, are painfully polite. There is a story of a very old solicitor, now dead, a regular money-lender, habitually remarkable for his politeness. He was so smooth that even when he refused a loan the person went away under some sense of gratitude. We all know that there are men who can refuse a favour more pleasantly than others grant one. This unduly polite solicitor on an occasion, when a young man went there, very hard up, for a loan, said: 'Well, my friend, how much do you want?' '100*l.*,' said he. 'Certainly,' said the solicitor, 'but I shall want a little security.' The young man, who thought he was getting on very nicely, said: 'Well, to say the truth, the only security I can really offer is myself.' The old solicitor said: 'Oh! that will do. Come along,' and, taking him up a passage to an open iron door, said: 'Please go in there, that is where I keep my securities.' (Laughter.) But to be serious, politeness in the transaction of business is very important, especially to young men. The next essential is the cultivation of a business memory—not automatic repetition, but a system whereby you can recall the salient features of a matter throughout its progress. Then many young men do not sufficiently acquire the art of listening. It is a thorough art to listen properly, and I believe that in the conduct of business careful listening to what your adversary says, in order that you may thoroughly grapple the point, is a thing often disregarded. I am not pointing at anybody in particular, but there are some people who are so full of what they are going to state themselves that they do not apply their minds at all sufficiently to what their adversary says. I desire to impress upon law students that to learn to listen is almost as important as learning to speak. It is supposed by many that after they have studied the law they are fit to be advisers and diplomatists without further ado. Before you can become a useful legal adviser, you must throw yourself into at least one or more other pursuits. You want to mix with the world, and get a practical knowledge of men and manners, for a successful solicitor and a man of the world are one and the same thing. (Hear, hear.) I must not occupy the time by telling more stories, though the remark I have just made reminds me of something worth relating. Some years ago I put an advertisement in the principal journals, and, wishing to draw attention to my personal views, I stated that only those who had some qualification to be called 'men of the world' need respond. Would you believe that I had a letter of four or five pages from one candidate, seemingly an educated man, in which he said he had been to America, India, the colonies, and a number of other places, adding, 'so I hope that I have established my claim to being something of a man of the world.' (Laughter.) To return for a moment to statistics and the chances in the future, we must remember that in this country any man can become a solicitor who goes through the needful process, and opens an office, and puts on a door-plate, the latter often proportionately large to the

smallness of the business. This sort of thing cannot be done on the other side of the Channel. There the number of solicitors is limited. Every district has its allotted number, and, although you may go through your articles, you must wait till somebody dies, or in some way or another depend upon the shoes of another person. In France there is a large class of persons called 'hommes d'affaires' who perform a substantial share of the business which we as solicitors perform. We are in fact the 'hommes d'affaires' here. The men in France who devote themselves to that particular office are often first-rate diplomatists, but know very little law. I do not say that their duties are precisely like some of those which we perform. Such advisers, however designated, must always be in demand, for in this world of ours it is impossible for those who are engaged in anything like a large way to personally manage many matters connected with their affairs, and they must have a 'man of business' to attend to them. That 'man of business' in this country is a solicitor, and the 'business' which so largely falls upon the shoulders of the solicitor requires many of the qualities I have named to perform it satisfactorily, quite irrespective of the needful knowledge of law. I do not myself see how it is possible for all those who are daily admitted to our profession to earn anything like a substantial subsistence therefrom, and I have come to the conclusion, and I always say it whenever I get the opportunity, that the time has gone past in this country for sending men into the ranks of solicitors merely because it is an honourable calling. With regard to the bar, men intending to practise as advocates mostly show an aptitude for the business they are going to undertake, whereas a man is often articled to a solicitor without having any aptitude whatever for acting as an adviser. Of course the position is less serious for a young man who has a business already made for him, and who has only to hang up his hat in the office to start work, but even then he must nowadays, as I have said before, possess some practical ability to keep his inheritance going. Those of us who remain in the profession will, I think, see litigation decrease more and more. Few people like litigation. I suppose we shall never have a complete code in this country, but the decisions of the judges during the present generation have gone far to supply a code which in a measure tends to decrease contentious work. I believe, for example, that there have been fewer actions with regard to bills of exchange since the law on that subject has been codified. To my mind, however, the cardinal cause of decrease of litigation is the delay and uncertainty in the trial of actions. The ill-judged parsimony of the Treasury on the one hand, resulting in an insufficient staff to try cases, and the extraordinary and remarkable want of organisation on the other, produce deplorable delay and uncertainty. Though, thanks to the Law Society and the Bar Committee, some useful rules are now in operation to soften down things, men are ready to settle their disputes on almost any terms rather than have to hang about from week to week and month to month in the Courts of law waiting for a hearing. It may be said by some that we are going to improve all these things. I have a very strong impression that the present system will last as long as I shall remain in the legal profession, and probably a great deal longer. There are too many conflicting interests in the way. Those who have any commercial business will support me when I say this, that every effort is made to avoid going into Court at all, not that people want arbitration *per se*—indeed, many dislike it—but it is choice of evils. And now to another matter. Litigation, as far as solicitors are concerned, is a very unprofitable business. There is a great deal of worry in it, and we all know that many old sources of profit are taken away. It is a question which I have not come here to discuss, but I say that litigation *per se* is not that class of business from which we should get on very satisfactorily. There is a tendency on the part of the public and the Legislature to cut down all profit in connection with the law, and I believe that, although we have got a conveyancing scale which fairly pays a solicitor for the responsibility which he undertakes, even that will be assailed before many years are over. We have to think of all these things in looking at the prospects of the legal profession. The business upon which solicitors will have to rely in the future is the business demanding brains, and brains will always be paid for more or less according to their value. The business of diplomatists, which is the largest business of solicitors, will get paid for according to what it is worth. You must look at the class of work which will be reduced, and the character of business which will remain. I say that, having regard to the class upon which solicitors will hereafter largely have to depend, it is more than ever important to cultivate the qualities to which I have referred. I served my articles some thirty years ago in a large and well-known office in London, to the much respected senior partner, long since deceased. He never pretended that he had gone minutely into the technicalities of the law, but he was a splendid organiser, and could control everything and almost everybody, and carry on a successful business far better than those who were brimful of abstract legal qualifications. He was one of the best tacticians I ever came across, and, if it were possible to get round his adversary at all, he was the man to do it. I took some hints from him, and in the earlier part of my career I used to reflect on the mode in which the gentleman referred to managed his fellow-men. There is one thing about our profession which is a matter of great satisfaction, and that is the high tone which it has attained of recent years. At one time, as I said in an earlier stage of my observations, a solicitor was nobody at all; now he stands side by side with the bar—in fact, he is so much mixed up with the bar by family and other ties that it is quite ridiculous for anyone to suppose that there is any distinction between the two branches, except that the one is an advocate and the other is the man of business, and, although I do not want to trench upon another subject to-night, I wish to say that I hope it will long continue so. (Hear, hear.) I am opposed to the amalgamation of the two branches of the profession, and think that we should remain as we are. All I want to observe upon that point is, that the bar are trammelled by some old and antiquated rules which work unfavourably, especially in the case of juniors. I am bound to say that I do not see a very encouraging prospect for students who are going to the bar unless they are exceptionally eloquent, or have professional connections who can be of value to them. I think that the chances are certainly less than they have been for a long time past, but I believe that if there was a better arrangement between the solicitor branch and the bar, by which they could more conveniently communicate with each other in matters of business, there would be work brought to the bar which does not now get there at all. I should be glad to see some system by which the barrister and the solicitor could better carry on their business side by side, so to speak, removing the present artificial line of demarcation, which only gets broken down by some of us who happen to have outside opportunities of becoming more natural to each other. This, however, is a matter for our barrister friends to deal with. We have members of the society who are already attaining recognised positions at the bar, and who at some time or other will perhaps address us from their point of view. There is only one other matter upon which I need detain you. It is most important for the law student that he should be a member of a debating society. (Hear, hear.) It is a strange

thing that in this country there is such a very small number out of millions of men who in an emergency can get up and defend themselves, much less defend anyone else. It is not part of our school education to teach men to speak; I wish it were. On the other side of the Channel one sees even an artisan conduct a little case before the judge with marked ability, and he evidently also cultivates the art of listening. I wish our boys were taught much earlier the practice of debate; anyway, every law student should certainly attend a discussion society. I myself derived very great advantage from being a member of this society. Many of my early friends here are occupying high places at the present time, heads of important London firms of solicitors or on the bench. No doubt there are some in this room like those to whom I refer, who do not know it now, but who may occupy equally high positions hereafter. I say this, not with a view of complimenting anybody in particular, but to show that it is an advantage to be a member of the Law Students' Debating Society. One not only acquires the art of speaking, but makes acquaintances in the legal profession. I believe, so far as solicitors are concerned, that law and tact and everything else is of minor importance on certain occasions compared to being well acquainted with the other side, and knowing whether he is an honourable opponent or otherwise. To conclude, let me say that I feel that very much greater care will have to be shown in the future as to the tuition and culture of an articled clerk, and the course which the law student should take, if he hopes to attain anything like a good position. The legal profession has been brought to a high tone, the state in which it is now can hardly be excelled, and it is desirable that every man should do his best to keep it up. In carrying on your business have your own way if you can get it, proceed fairly, always maintaining a lofty standard, and, even if your adversary is in the wrong, do not be in too much of a hurry to impress upon him that you think so. I am pleased to have had an opportunity of coming here to-night, it seems to bring me back to the very early days when I was a really active member. I hope that as long as I am in the legal profession I shall find occasion to come before you now and again, and I can only remark that if you are good enough to listen to anything I say with the attention you have given to-night I shall be amply rewarded. (Amidst loud and continued applause Mr. Munton resumed his seat.)

## OBITUARY.

Sir A. A. Dorion, whose death took place in the midst of the last illness of Sir John Macdonald, was a man of the highest eminence in Canada, and in some respects his reputation was unique. Born seventy-three years ago at Ste. Anne de la Pérade, in 1842 he entered upon a most brilliant career in the legal profession, in the course of which he was elected several times Bâtonnier of the bar in the Montreal district for the whole province. With politics in the blood (his father, grandfather, brother, and nephew have all been legislators of more or less note), Antoine Aimé Dorion had a seat in the old Canadian Parliament from 1854 till confederation in 1867, with the exception of one year. He had been in public life only four years when, in conjunction with the famous George Brown as leader of the Upper Canada wing of the party, he found himself at the head of a Ministry which succeeded that of Sir John Macdonald and Sir George Cartier. In 1863 and 1864 he was again joint leader of his party in power, this time with the Hon. Sandfield Macdonald as Premier. During Sir John's first administration at Ottawa Dorion led the French-Canadian Liberals in opposition, and he became Minister of Justice for the Dominion on Mr. Mackenzie's advent to office in 1873. In the following year, however, he accepted nomination as Chief Justice of the Province of Quebec, and has held that office ever since with great credit to himself and to the colonial bench. His political career had been marked by a rare degree of honesty and uprightness, and as a judge he united these qualities with such a keen insight, such unlimited care and consideration, and such a passion for impartiality, that his decisions have been almost looked upon as oracles. Sir Aimé acted as Administrator of the Province of Quebec for a time in 1876 during the illness of Lieutenant-Governor Caron, and his knighthood was conferred in the following year.

Mr. Charles Andrews, Q.C., believed to be the oldest member of the Irish bar, died on Monday, June 15, at his residence in Hatch Street, Dublin. He was generally respected, and for many years was in good practice. He was called in 1832. By his death the Chief Crown Prosecutorship of co. Sligo becomes vacant.

## NOTICES FOR THE WEEK.

### Rota of Registrars.

**Monday, June 22.**—Court of Appeal No. 2: Mr. Beal. Mr. Justice Chitty: Mr. Godfrey. Mr. Justice North: Mr. Jackson. Mr. Justice Stirling: Mr. Carrington. Mr. Justice Kekewich: Mr. Rolt. Mr. Justice Romer: Mr. Ward.

**Tuesday, June 23.**—Court of Appeal No. 2: Mr. Pugh. Mr. Justice Chitty: Mr. Leach. Mr. Justice North: Mr. Clowes. Mr. Justice Stirling: Mr. Lavie. Mr. Justice Kekewich: Mr. Farmer. Mr. Justice Romer: Mr. Pemberton.

**Wednesday, June 24.**—Court of Appeal No. 2: Mr. Beal. Mr. Justice Chitty: Mr. Godfrey. Mr. Justice North: Mr. Jackson. Mr. Justice Stirling: Mr. Carrington. Mr. Justice Kekewich: Mr. Rolt. Mr. Justice Romer: Mr. Ward.

**Thursday, June 25.**—Court of Appeal No. 2: Mr. Pugh. Mr. Justice Chitty: Mr. Leach. Mr. Justice North: Mr. Clowes. Mr. Justice Stirling: Mr. Lavie. Mr. Justice Kekewich: Mr. Farmer. Mr. Justice Romer: Mr. Pemberton.

**Friday, June 26.**—Court of Appeal No. 2: Mr. Beal. Mr. Justice Chitty: Mr. Godfrey. Mr. Justice North: Mr. Jackson. Mr. Justice Stirling: Mr. Carrington. Mr. Justice Kekewich: Mr. Rolt. Mr. Justice Romer: Mr. Ward.

**Saturday, June 27.**—Court of Appeal No. 2: Mr. Pugh. Mr. Justice Chitty: Mr. Leach. Mr. Justice North: Mr. Clowes. Mr. Justice Stirling: Mr. Lavie. Mr. Justice Kekewich: Mr. Farmer. Mr. Justice Romer: Mr. Pemberton.

Business of the Courts.—There were no motions in the Court presided over by Mr. Justice Denman and Mr. Justice Wills on Tuesday, June 16; there were only two cases put in the paper, and both of them were disposed of before noon. Their lordships then sent for a case from the other Divisional Court, in which only three were entered, and one case (a County Court appeal) was sent, in which, however, it was found that no appeal lay. The other Divisional Court also rose early. It will be seen that, in consequence chiefly of the operation of Mr. Finlay's Act, which has sent all motions for new trials to the Court of Appeal (and so prevented a large proportion of them), the business of the Divisional Courts is now comparatively small, and the services of two more judges would be available for the trial of causes if only there were Courts for them to sit in, which there are not.

## CALENDAR OF THE COUNTY COURTS.

FROM JUNE 22 TO JUNE 27.

| No. of Circuit | His Honour | June 22 | June 23 | June 24 | June 25 | June 26 | June 27 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Birkenhead | Northwich | — | — | — |
| 8 | Judge Heywood | — | Manchester | Manchester | Manchester | Manchester | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | — | — | — |
| 15 | Judge Turner | Middlesbrough | Stockton-on-Tees | — | — | — | — |
| 19 | Judge Barber | — | Derby | Burton | Burton | — | — |
| 47 | Judge Powell | — | Lambeth | Woolwich | Lambeth | Greenwich | — |
| 54 | Judge Metcalfe | Bristol | Bristol | Bristol | Bristol | Bristol | — |
| 55 | Judge Machonochie | Poole | Christchurch | Bournemouth | Wimborne | — | — |
| 58 | Judge Edge | Christchurch | Okehampton | — | — | — | — |

# House of Lords Register.

*Coram* THE EARL OF SELBORNE, LORD WATSON, LORD BRAMWELL, and LORD MORRIS.

THURSDAY, JUNE 11.

*M'Inroy and others* v. *Duke of Athole* (servitude—right of way—prescription—possession—interruption of possession within prescriptive period. Appeal from Second Division of the Court of Sessions, Scotland).

FRIDAY, JUNE 12.

*M'Inroy and others* v. *Duke of Athole*.—Stand over.

MONDAY, JUNE 15.

*M'Cowan* v. *Baine & Johnston* (*The Niobe*) (marine insurance policy—collision—liability. Appeal from the Second Division of the Court of Session in Scotland, reported 'Court of Session Cases,' 4th series, vol. xvii., p. 1,016).—*Cur. adv. vult.*

TUESDAY, JUNE 16.

*Whyte* (*pauper*) v. *Northern Heritable Securities Investments Company* (bankruptcy—Bankruptcy and Real Securities (Scotland) Act, 1857—sequestration—close of sequestration—subsequently ingathered estate—competency of appeal. Appeal from the First Division of the Court of Session in Scotland, reported 16 Rett. 1,033).—Dismissed.

# Court of Appeal Register.

## APPEAL COURT I.

Before LOPES, L.J., and KAY, L.J.

THURSDAY, JUNE 11.

*F. E. T. Fowler* (*judgment creditor*) v. *J. Bowles* (*judgment debtor*) (*Sarah Bowles, claimant*) (appeal of claimant from order of Mathew, J., and Day, J., dated April 8, affirming judge's order dated December 16, 1890, as to costs of interpleader issue).—Dismissed.

*Gough* v. *Mayor, &c. of Liverpool* (appeal of the Mayor, &c. of Liverpool from judgment of Day, J., and Lawrance, J., dated April 24, on special case stated by arbitrator).—Dismissed.

FRIDAY, JUNE 12.

*Regina* v. *Powell and others, Licensing Justices of the Hundred of Swansea* (Q. B. *Crown Side*) (appeal of D. Roberts from order of Smith, J., and Grantham, J., dated April 21, discharging rule *nisi* for *mandamus* to justices to hear application for transfer of license).—Dismissed.

*Wolfe* v. *Roberts and another* (appeal of defendants from order of the Lord Chief Justice and Charles, J., dated May 14, affirming order giving judgment for plaintiff under Order XIV.).—Allowed.

*Patent Stopper Bow and Stamp Company* (*Lim.*) v. *Taylor* (Q. B. *Crown Side*) (appeal of defendant from order of the Lord Chief Justice and Mathew, J., dated May 8, affirming refusal of judge to grant prohibition in County Court action).—Dismissed.

SATURDAY, JUNE 13.

No sitting.

MONDAY, JUNE 15.

*Regina* v. *Leresche and another* (*Justices of Lancashire*) (Q. B. *Crown Side*) (appeal of J. Price from refusal of *ex parte* application, on May 14, by Day, J., and Lawrance, J.; on application to Court of Appeal order *nisi* granted to justices to state case as to maintenance order).—*Cur. adv. vult.*

*Hind* v. *Raikes and others* (appeal of plaintiff in person from order of Mathew, J., and Williams, J., dated April 15, staying action as vexatious).—Dismissed.

*Murray* v. *Warren* (appeal of defendant Warren in person from order of the Lord Chief Justice and Mathew, J., dated May 14, as to what property included in said order).—Dismissed.

TUESDAY, JUNE 16.

*Pelton Bros.* v. *Harrison* (appeal of plaintiff from order of Denman, J., and Wright, J., dated May 27, affirming discharge of order for receiver of defendant's share of W. B. Little's estate).—*Cur. adv. vult.*

*In re Sydney Morse, a Solicitor, ex parte Latimer, Clark & Co.* (appeal of S. James and Electric Lighting Company from order of the Lord Chief Justice and Day, J., dated May 13, disallowing copies of shorthand notes of proceedings before arbitrator).—Dismissed.

*Nobel Bros. Petroleum Production Company* v. *R. Stewart & Co.* (appeal of plaintiffs from Denman, J., and Wills, J., dated June 5, refusing order for production of documents at examination of witnesses and trial of action).—Dismissed.

*Smith* v. *Dawber* (appeal of defendants from order of Denman, J., and Wills, J., dated June 5, affirming refusal of judge in chambers to transfer action to Chancery Division).—Varied by consent.

Before the MASTER OF THE ROLLS, LOPES, L.J., and KAY, L.J.

WEDNESDAY, JUNE 17.

*Parsons* v. *Tomlinson* (application of defendant for judgment or new trial on appeal from verdict and judgment at trial before Lawrance, J., with special jury at Liverpool).—Dismissed.

*Woollacott* v. *Pilkington* (appeal of defendant from judgment of Lawrance, J., dated March 18, at trial without a jury at Liverpool).—Dismissed.

*Richards* v. *Stogdon* (application of plaintiff for judgment or new trial on appeal from verdict and judgment, dated March 20, at trial before Williams, J., with special jury at Cardiff).—Dismissed.

## APPEAL COURT II.

THURSDAY, JUNE 11.

Before LINDLEY, L.J., BOWEN, L.J., and KAY, L.J.

*Low* v. *Bouverie* (appeal of defendant from judgment of North, J., dated February 11; heard May 2).—Allowed.

Before LINDLEY, L.J., BOWEN, L.J., and FRY, L.J.

*In re G. J. Hunter, dec. Hunter* v. *Hunter* (*construction*) (appeal of defendant J. B. Batchelor from order of Kekewich, J., dated March 24; heard June 10).—Order varied.

*Thomas* v. *Christmas* (appeal of plaintiff from judgment of Kekewich, J., dated March 11).—Order varied.

FRIDAY, JUNE 12.

*Westmoreland Green and Blue Slate Company* (*Lim.*) v. *Feilden* (appeal of defendant from judgment of Kekewich, J., dated March 11, and motion of M. J. Feilden for leave to appeal from order dated May 7, 1889).—Dismissed.

SATURDAY, JUNE 13.

*Ward* v. *Royal Exchange Shipping Company* (*Lim.*) (appeal of Messrs. Lancaster, Spier & Co. from order of Chitty, J., dated April 18).—Allowed.

Before LINDLEY, L.J., LOPES, L.J., and KAY, L.J.

MONDAY, JUNE 15.

*R. S. Hall* v. *A. M. Hall and another* (application for new trial dismissed April 23—argued on May 13, as to petitioner's costs of appeal being paid out of fund in Court as security for wife's costs; *Cur. adv. vult.* May 13).—Application refused.

Before LINDLEY, L.J., BOWEN, L.J., and FRY, L.J.

*In re Burfield, dec. Dean* v. *Burfield* (appeal of defendants from order of North, J., dated April 8).—Appeal dismissed.

*In re Portuguese Consolidated Copper Mines* (*Lim.*) *and Co.'s Acts* (appeal of Lord Inchiquin from order of North, J., dated April 24).—Appeal dismissed.

TUESDAY, JUNE 16.

*Lethbridge and another* v. *Harris and another* (appeal of defendants from judgment of Mathew, J., dated February 2, at trial without a jury in Middlesex).—Part heard.

WEDNESDAY, JUNE 17.

*In re Bence, dec. Smith* v. *Bence* (*construction*) (appeal of defendant J. F. Bence from order of Kekewich, J., dated March 6; heard June 9).—Dismissed.

GRAY'S INN.—The benchers of Gray's Inn have awarded to Mr. Horace West Household the Bacon Scholarship of 45*l.* per annum, tenable for two years; to Mr. Thomas Jones Smyth the Holt Scholarship of 40*l.* per annum, tenable for two years; to Mr. Thomas Bailey Clegg the Lee Prize of 25*l.*, and a second prize of ten guineas to Mr. William Muir. A studentship in jurisprudence and Roman Law of 100 guineas for one year has been awarded by the Council of Legal Education to Mr. John Bruce Caldwell Stephen, a student of Gray's Inn.

## HONOURS AND APPOINTMENTS.

MR. JOSEPH PEARCE, of 39 Essex Street, Strand, W.C., has been appointed by the Chief Justice of Western Australia a Commissioner for taking Affidavits to be used in the Supreme Court of Western Australia, and for taking Acknowledgments of Deeds executed by Married Women in the United Kingdom. Mr. Pearce was admitted in 1881.

Mr. William Frederick Taylor (of the firm of Barclay & Taylor), of Macclesfield, has been appointed a Commissioner for Oaths. Mr. Taylor was admitted in 1882.

Mr. Frederick Gordon Tweed, of Gainsborough, has been appointed a Commissioner for Oaths. Mr. Tweed was admitted in 1884.

Mr. Henry Albert Edward Plant (of the firm of Plant, Abbott & Plant), of Preston, has been appointed a Commissioner for Oaths. Mr. Plant was admitted in 1883.

Mr. Charles Henry Owen, of Rochdale, has been appointed a Commissioner for Oaths. Mr. Owen was admitted in 1867.

Mr. George Samuel Pearce, of Bath, has been appointed a Commissioner for Oaths. Mr. Pearce was admitted in 1883.

JUDICATURE ACTS AMENDMENT.—The House of Lords Standing Committee on Tuesday considered the Judicature Acts Amendment Bill, Lord Herschell presiding. On the motion of the Lord Chancellor, clause 1 was amended so as to provide that every ex-Lord Chancellor shall be an *ex-officio* judge of the Court of Appeal, but shall not be required to act as such unless requested to do so by the Lord Chancellor. Clause 3 was amended with the object of enabling the House of Lords in Admiralty appeals to call in the aid of qualified assessors. A new clause was inserted to remove the doubts which have arisen with respect to the position of the High Court in England and appeals therefrom in cases of prize. The bill was ordered to be reported as amended.

## BIRTHS.

On May 22, at Landour, in the Himalayas, North-West Provinces, India, the wife of T. Lewis Ingram, of the Middle Temple, Barrister-at-Law, of a daughter.

On June 9, at Ashton Lodge, Portswood, near Southampton, the wife of R. B. Linthorne (*née* Gibbon), Solicitor, Southampton, of a daughter.

On June 11, at Fairford, Gloucestershire, the wife of Thomas De Lisle Hardy, Solicitor, of a daughter.

On June 12, at 16 Denning Road, Hampstead, the wife of Robert Furse M'Millan, Barrister-at-Law, of a son.

On June 13, at 4 Queen's Place, Chapel Allerton, Leeds, the wife of Thomas Piercy, Solicitor, of a daughter.

On June 14, at Biggleswade, Beds., the wife of Henry Chandler Solicitor, of a son.

## MARRIAGES.

On June 10, at St. Silas', Liverpool, Marshall Bendall, son of G. M. Keilor, Esq., The Elms, Wood Green, London, to Alice Ada, younger daughter of the late George Clegg, Solicitor, Oldham.

On June 11, at the Parish Church of St. Rumbold-Whyke, Chichester, Arthur Davis Jones, of Highbury, N., to Florence, second daughter of Oliver Lloyd, of Rumbolds-Whyke, Sussex, Solicitor.

## DEATHS.

On June 9, at Buxton, of pulmonary congestion, Sarah, wife of Thomas Ewing Winslow, Esq., Q.C., of Crake Hall, Wimbledon Common, and daughter of the late Rev. Henry Walker, of Great Bromley Hall, Essex, aged 66 years.

On June 10, at Hatfield, near Doncaster, Ellen, wife of the late William Johnson Fox, Solicitor, in her 79th year.

On June 12, somewhat suddenly, at the residence of her brother, John Willim Hall, Solicitor, Bilston, Jane Hall, aged 60 years, youngest child of the late John Hall, Solicitor, Newbury.

On June 13, at Lindfield House, Lindfield, Hayward's Heath, Henry Williams, Barrister-at-Law, aged 88 years.

On June 13, at his residence, 14 Devonshire Place, Claughton, Birkenhead, Richard Duke, Solicitor, in the 80th year of his age.

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# The Law Journal.

*SATURDAY, JUNE 27, 1891.*


## 'OBITER DICTA.'

THE judges of the Court of Appeal are making a determined and fairly successful attempt to dispose of the long list of final appeals from the Queen's Bench Division. Both branches of the Court have been engaged upon them throughout the week, the even numbers in the printed list being taken in Court I., while the odd numbers have been heard in Court II. In the meantime Queen's Bench interlocutory appeals have been postponed till further notice, and it is announced that Admiralty appeals with assessors will not be taken till Tuesday, July 14, when they will be heard in Court I.

IT was quite time that the attention of the Government should have been called to the insufficient number of Courts at the Royal Courts of Justice. Seeing that Mr. Justice Williams has for some time past been hearing Chancery actions in a room which is the merest apology for a Court, and that Mr. Justice Wright has been banished from the building altogether and has lately had to sit at the Old Hall, Lincoln's Inn, it is not surprising that Mr. Darling, Q.C., M.P., should last week have put a question on the subject to the First Lord of the Treasury. Mr. W. H. Smith admitted that the existing number of Courts was at times insufficient, and stated that the subject would be brought to the attention of the First Commissioner of Works, pointing out at the same time that, whenever any of the judges sat at the Guildhall under the Act of this session, a certain amount of relief would be experienced at the Royal Courts. Mr. Darling, who was apparently dissatisfied with Mr. Smith's reply, proceeded, with characteristic humour, to inquire whether, if it was not intended to add to the accommodation at the Law Courts, the Government would consider the expediency of allowing the judges to revert to the ancient practice of sitting in the open air for the transaction of business. No answer was given to this query, but it is to be hoped that something will soon be done to remove what is felt to be a serious inconvenience, and one by no means calculated to add dignity to the administration of justice.

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ON Wednesday last the Inner Temple Hall was the scene of revels performed by a company of persons belonging to or connected with the bar. The quaint musical combats between the votaries of wine and tobacco, attired in appropriate costumes, the realistic sword and dagger fights and the old-time minuets and morris dances which followed, were all entertaining and productive of considerable applause. But perhaps the most amusing thing in connection with the performance was the fact that all the money which had been realised by the sale of tickets, and which was to have been devoted to a charity, had to be returned at the doors, in consequence of the provisions of an Act of Parliament having been overlooked. The license of the Lord Chamberlain had been duly obtained, in compliance with the Act 6 & 7 Vict. c. 68, but it seems not to have been present to the mind of the committee (who may be presumed to have had the best legal advice) that they were subject to the jurisdiction of the London County Council by reason of the Act of 41 & 42 Vict. c. 32, which prohibits (under penalty) any person having or keeping open any house, room, or other place of public resort within the metropolis for the public performance of stage plays, or for public dancing, music, or other public entertainment of the like kind, without the certificate of the Metropolitan Board, whose powers are now vested in the London County Council. It seems clear that this Act applies, as it is expressly extended, to the metropolis as defined by the Metropolis Management Act, 1855, and by section 250 of the last-mentioned Act the metropolis is to be deemed to include the places mentioned in Schedule C, of which the Inner Temple is one. Fortunately, the mistake was discovered in time, and we have been spared the shock of proceedings against the Lord Chancellor and benchers of the Inner Temple for an infringement of the law.

THE following is the professional card of a solicitor who has recently set up in practice in a district of Lancashire:—

*To Tradesmen, Shopkeepers, and others.*
Have you any bad debts? Does anyone owe you any money?
If so, apply at once to
Mr. ——— ———, Solicitor.
(*Agent to the Scottish Union and National Insurance Company.*)
Address ———.
Mr. ——— will get the debts in for you without delay.
TERMS:—Sixpence in the £ commission, and out of pocket expenses charged.
Moneys received paid over weekly. No delay in rendering accounts.
Everything done on business principles.

Is this in accordance with professional etiquette? Perhaps some of our readers will enlighten us.

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THERE is, it appears, to be yet another Bills of Sale Act. When will there be an end to the legislation on the mortgage of chattels? In the House of Lords, on Tuesday, a little bill of one section was read a second time, on the motion of Lord Herschell, to exempt a certain class of goods from the operation of the Acts of 1878 and 1882. The enacting part of the bill is in the following terms: '1. Section 1 of the Bills of Sale Act, 1890, shall be amended so as to read as follows: An instrument charging or creating any security on or declaring a trust of imported goods given or executed at any time prior to their deposit in a warehouse, factory, or store, or to their being re-shipped for export, or delivered to a purchaser not being the person giving or executing such instrument, shall not be deemed a bill of sale within the meaning of the Bills of Sale Acts, 1878 and 1882.' The Lord Chancellor observed that everyone must feel that sooner or later an effort would have to be made to consolidate the law upon the subject of bills of sale. Lord Herschell, in expressing his concurrence with the Chancellor, expressed his willingness to make the attempt. He is a bold man, and if he succeeds in framing a really satisfactory measure, and thereby putting an end to a miserable class of cases which encumber so many pages of the Reports, and are thoroughly distasteful to every intelligent lawyer, he will confer a great boon on the community.

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MR. MUNTON'S address to the Law Students' Debating Society (see *ante*, p. 420) will well repay a careful perusal. That a mere knowledge (however complete) of law is not enough; that the arts of listening and remembering should be cultivated; that contentious business is tending to decrease; and that attendance at debating societies is not only highly useful, but almost essential—such were the views which Mr. Munton impressed upon the students, and we think quite rightly. One point is well worth the attention of the Bar Committee. 'I believe,' said Mr. Munton, 'that if there was a better arrangement between the solicitor branch and the bar, by which they could more conveniently communicate with each other in matters of business, there would be work brought to the bar which does not now get there at all. I should be glad to see some system by which the barrister and the solicitor could better carry on their business side by side, so to speak, removing the present artificial line of demarcation which only gets broken down by some of us who happen to have outside opportunities of becoming more natural to each other. This, however, is a matter for our barrister friends to deal with.' Mr. Munton, we may observe, is 'opposed to the amalgamation of the two branches of the profession.'

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THE Stamp Duties Bill, which we recently examined at length (see *ante*, p. 329), has now been for some time under the consideration of the Standing Committee on Law, and its ultimate passing in the present session, together with its companion the Stamp Duties Management Bill, may be considered assured. Few measures will be more cordially welcomed by business men of all kinds. 'The present law relating to stamps,' so we read in the *Financial News*, 'is a wearisome network which no one feels safe in touching. The lines which distinguish one class of instruments from another are very erratic, and the dangers of understamping are perpetually cropping up in the course of commercial litigation, rendering parties liable to heavy penalties or depriving them of the assistance of otherwise valid documents.' We observe that the bill is at present intended to come into operation on January 1, 1892—a very proper date. It is to be hoped that the Standing Committee will not follow the precedent set in 1882 in connection with the Bills of Exchange Act, which came into operation on the date of its passing—on August 18—by virtue of an alteration in committee, the bill having been originally intended not to come into operation until January 1, 1883.

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LORD BARRINGTON has moved for a return of all the payments made by the various archbishops and bishops since 1885 on account of fees, duties, and other outgoings, including *first fruits and tenths*. A very comprehensive list of fees will be found in *Truth* of this week. First fruits, being the profits of the first year of every spiritual office, and tenths, being a tenth part of the profits of each subsequent year, are payable by the holder of every spiritual office of profit (except livings of not more than 50*l.* a year annual value) to Queen Anne's Bounty for the purpose of augmenting the value of small livings. Queen Anne (see 2 & 3 Anne, c. 2) surrendered to the Church in perpetuity these parts of the Crown revenue which Henry VIII. (see 26 Hen. VIII. c. 3 and 27 Hen. VIII. c. 11) had transferred from the Pope to the Crown. Every archbishop and bishop has by 6 Anne, c. 17, s. 5, four years to compound for the payment of first fruits, so that, if he should die before the four years were expired, he is discharged of so much as did not become due at his death. The holders of all dignities, prebends, and offices 'whereof the lands, tithes, tenements, and other hereditaments and endowments' have become vested in the Ecclesiastical Commissioners are 'absolutely relieved and discharged from the payments of all first fruits and tenths in respect of such their dignities, prebends, and offices respectively' by 4 & 5 Vict. c. 39, s. 4, under which the Commissioners pay one-twentieth part of certain parts of new revenues to the governors of Queen Anne's Bounty by way of compensation; but the Act does not appear to apply to archbishops or bishops, the estates of whose sees were not vested in the Commissioners until after the passing of that Act, by 23 & 24 Vict. c. 124, which Act contains no reference to first fruits or tenths. But the whole subject is very obscure, as also is that of the enjoyment of the temporalities of a see during the period which elapses between the death of one bishop and the

'restitution of the temporalities' to his successor. 'The revenue derived from the custody of the temporalities,' it is said in the eleventh and latest edition of Stephen's 'Commentaries,' vol. ii. p. 540, 'which was formerly very considerable, is now by a customary indulgence *almost* reduced to nothing, for at present, as soon as the new bishop is consecrated and confirmed, he *usually* receives the temporalities entire and untouched from the Crown, and at the same time does homage to his sovereign.' Be the amount 'almost nothing' or not, however, it seems to form part of the hereditary revenue of the Crown, and as such to have been surrendered to the Exchequer for the public use by 1 & 2 Vict. c. 2, passed 'for the support of Her Majesty's household, and of the honour and dignity of the Crown.'

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MR. JUSTICE WRIGHT had before him two very important points in *Smith* v. *Gronow* last week. The action was for the ejectment of the assignee of a lessee on the ground of forfeiture by the bankruptcy, annulled before re-entry, of the lessee. The proviso for re-entry was framed (according to the usual form) to come into effect 'if the said lessee, his executors, administrators, or assigns, shall become bankrupt or take the benefit of any Act for the relief of insolvent debtors.' The first question was whether the proviso refers only to the bankruptcy of the person holding the estate, so that if the lessee becomes bankrupt after assignment it can apply only to the bankruptcy of the assignee, or whether it applies to the bankruptcy of either party. Mr. Justice Wright has held that the proviso applies only to the bankruptcy of the person holding the estate, on the ground that a power of re-entry after assignment appeared to him to be more than the subject-matter requires, and more than ought to be understood in the absence of any words expressing an intention to apply the remedy for the protection of merely personal rights against a stranger to the term. Any other view would lead to such absurd practical consequences, and would make assignments so very perilous to assignees, that we cannot help thinking that Mr. Justice Wright's view is the right one. Upon the second point—whether the effect of the proviso was avoided by the annulment of the bankruptcy—Mr. Justice Wright has expressed an opinion, rather than given a judgment, to the effect that 'the bringing of the action by the lessor notified to the assignee the lessor's intention to re-enter, and that the annulment of the bankruptcy cannot defeat that.' We have no reasonable doubt that this opinion is correct. It is true that in *Ancona* v. *Waddell*, 48 Law J. Rep. Chanc. 111, and other cases therein referred to, it has been held that the forfeiture by bankruptcy of an estate, devised with a provision of forfeiture for bankruptcy, has been cured by the annulment of the bankruptcy; but we think that these cases are clearly distinguishable. So important is the point, however, that we hope that it may before long be brought before a Court of Appeal. Meanwhile it will be for practitioners to consider whether the ordinary form of proviso for re-entry in case of bankruptcy requires modification or not. We incline to think that it does.

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'C.' IN a letter we printed last week (*ante*, p. 419) has met with two generations of judges and masters and leading counsel in the last forty years, and 'can testify that most of them have tortured solicitors and their clerks with illegible writing.' Most certainly, where the highly placed persons against whom this grave charge is brought cannot, from defective education, write legibly, they should dictate, as far as possible, to clerks who are more fortunate. But we cannot but think that 'C.' is exaggerating. It is impossible, however, to exaggerate the delay and annoyance which illegible handwriting is likely to cause.

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IN the case of *Comfort* v. *Betts*, which was recently before the Court of Appeal, a novel question was raised as to the validity of a deed of assignment, by which a number of creditors of the defendant assigned their several debts to the plaintiff in order that he might sue for the same, and out of the amount recovered pay the assignors their respective debts. Although the debts were assigned to the assignee 'absolutely,' it was contended that the deed did not constitute an 'absolute assignment' within the meaning of section 25, subsection 6, of the Judicature Act, 1873, inasmuch as it contained a trust in favour of the assignors. The Court, however, overruled this contention, holding that the assignment was absolute, and that the plaintiff was entitled to maintain an action upon it against the defendant. Lord Justice Fry, in giving judgment, said: 'I know of no objection to a person passing a legal right to another, and converting himself into an equitable owner. Before the Judicature Act, 1873, such a thing might have been done . . . and I cannot see that that Act has created any objection to such a course.'

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AMONG the puzzles from time to time set by the Legislature to test the ingenuity of lawyers, section 6 of the Copyhold Act, 1887, deserves a high place. It begins by providing that, 'After the passing of this Act it shall not be lawful for the lord of any manor to make grants of land not previously of copyhold tenure to any person to hold by copy of Court roll or by any tenure of a customary nature without the previous consent of the Land Commissioners,' and then proceeds to enact that 'wherever any such grant has been lawfully made the land therein comprised shall cease to be of copyhold tenure, and shall be vested in the grantee thereof to hold for the interest granted as in free and common socage.' It can hardly be intended that these latter words should apply to grants made before the passing of the Act, the presumption against such a wanton piece of confiscation being too strong. But, if they are to be read as confined in their operation to grants made after the Act, then, as such grants can be lawfully made only with the consent of the Land Commissioners, the result is a very curious one. The Land Commissioners are to be solemnly asked to consent to a grant of land to be held by copy of Court roll, and upon their consent being given and the grant made the land is to vest in the grantee, not as copyhold, but as freehold. Can this be the true meaning? Or is it possible to read 'lawfully' in the sense of 'lawfully save for the restriction imposed by this section'? Even so the clause is open to the objection that it will enable limited owners of manors to alienate the demesne lands without the safeguards imposed by the Settled Land Act for the benefit of those in remainder. And how on either construction can land 'cease to be of copyhold tenure' which *ex hypothesi* was not of that tenure before the grant?

A RETURN of the time occupied by judges of the High Court in holding Courts at the assizes held in the year 1890 has just been laid upon the table of the House of Commons. This document discloses that in the year referred to the total number of days on which various judges sat in Courts, civil or criminal, in assize towns amounted to 833½, the Winter Assize being responsible for 295 days, the Spring Assize (on the Northern and North-Eastern only) for thirty-seven, the Summer Assize for 309, and the Autumn Assize, at which criminal business only is taken on several of the circuits, for 192½. Of the circuits, the Northern heads the list with 174 days, the North-Eastern being a good second with 168½, these circuits enjoying the services of two judges for the greater part of the time. Next comes the Midland with 125 days, having two judges at Birmingham only, then the South-Eastern with 113, the Western with eighty-three, the Oxford with seventy-four, the South Wales with fifty-one, and the North Wales with forty-five. The Oxford, however, in reality shared with the Midland forty-six days spent by judges at Birmingham, making the real total of that circuit 120 days. In addition to this, the sittings at the Central Criminal Court monopolised fifty-four days of judicial time, raising the gross total to 887½ days. We have no doubt that when this return was moved for it was imagined that it would afford some index of the amount of judicial time taken up by the circuit system. Those who hope to find such information will be disappointed. For all practical purposes the return is, it is not too much to say, entirely useless. In the first place, the number of days given in the return is exclusive of the commission-days at each town, an item which would make a very substantial addition to the total. In the second place, there is no record of the intervals which elapsed between the sittings at the various towns, during which the judges did not find it practicable to return to town. This would form a still more important addition, swelled as it would be by such accidents as the one alluded to in the following note appended to one of the towns: 'No business, civil or criminal; one action entered was settled three days before the commission-day.' A return upon the subject, to be useful as well as interesting, would have to include information upon these points.

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THE Coinage Bill, introduced by the Chancellor of the Exchequer to give effect to his proposal to devote 400,000*l.* of the surplus, not required for the purposes of education during the current year, to the improvement of the gold coinage, has the merit of brevity. The object of the bill is attained in one section, which, according to the cumbrous method so popular in recent times with parliamentary draftsmen, and so extremely confusing for the purposes of reference, is divided into four subsections. By these provision is made for the issue of an Order in Council directing that gold coins below the least current weight, as provided by the Coinage Act, 1870, shall, if they have not been illegally dealt with, be paid for by the Mint at their nominal price, subject to such conditions as to time, manner, and order of presentation as the Order may prescribe. Coins illegally dealt with are those which have been impaired, diminished, or lightened otherwise than by fair wear and tear, or defaced by having any name, word, device, or number stamped thereon, whether the coin has been lightened thereby or not, and in the case of sovereigns and half-sovereigns loss of weight exceeding three grains is to be *primâ facie* evidence that they have been illegally dealt with. The money not immediately required is to be invested, and the interest applied to the same purpose. When principal and interest are exhausted, the operation will *ipso facto* terminate, leaving, it is to be hoped, a smaller amount of light gold in circulation. Advantage is taken of the bill to amend the first schedule of the Coinage Act, 1870, so as to increase in the case of the half-sovereign and all the silver coins the 'remedy' or variation from the standard weight allowed the Mint in their manufacture. In the case of the half-sovereign this variation is increased from one-tenth to three-twentieths of an Imperial grain, and, in the case of the sixpence, it is nearly, and in that of a threepenny-piece more than doubled. We do not know what excuse Mr. Goschen has for tampering with the standard weight of the coinage in this manner, but perhaps it is only fair to allow the small half-sovereign a little greater allowance than the exact tenth of that allowed to the large fivepound-piece. The same remark applies to the small silver coins, which are treated by the Act of 1870 upon the same mathematical principles, the sixpence receiving half the allowance of the shilling, and the threepenny-piece half that of the sixpence.

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MR. CUST (see *ante*, p. 395) has brought forward a bill (which, having been read a second time without opposition, may now be expected to pass) to relieve allotments from liability to be assessed to general district rates under the Public Health Act, 1875, s. 211, at a higher rate than market gardens and other cultivated grounds, which are at present assessed at a fourth rate only of the value, for reasons given by Mr. Justice Erle in the *South Wales Railway Company* v. *The Swansea Local Board*, 24 Law J. Rep. M. C. 30, as pointed out in the LAW JOURNAL for May 31, 1890. It will be remembered that by the Public Health (Rating of Orchards) Act, 1890 (53 & 54 Vict. c. 17), orchards were added to the list of exemptions from the higher scale of rating. In that Act it is recited that 'doubts had arisen whether orchards are or are not included among the lands' to which the existing exemptions apply, and we observe that Mr. Cust's bill contains a similar recital of doubts in respect to allotments. For ourselves, for reasons we have already given, we never felt any doubt that under the existing law allotments are subject to full rating under ordinary circumstances. It would seem, therefore, to be a more proper form of recital that some allotments are exempted and some not, and that it is expedient, as we believe it to be, to extend the benefit of the exemption to all.

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A COUNTY COURT has no jurisdiction to try an action for infringement of letters patent. So it was recently held by the Court of Appeal in *Regina* v. *Halifax County Court*, and we see no reason for doubting the correctness of the decision. The question turns upon the construction of section 117 of the Patents Act, 1883, and section 56 of the County Courts Act, 1888. By section 117 of the Act of 1883, which makes provision for the trial of actions for the infringement of a patent by 'a Court,' it is enacted that the word 'Court' shall mean the High Court of Justice. This of itself is almost enough, but it might perhaps be said that a right of action ought to

be limited by an interpretation clause. It therefore becomes desirable to consider the meaning of section 56 of the Act of 1888, which deals expressly with the restrictions on County Court jurisdiction. By this section 'the Court shall not have cognisance of any action in which the title to any' (*inter alia*) 'franchise shall be in question.' The Court has held that the word 'franchise' in this section includes letters patent, but also that section 117 of the Act of 1888, by defining 'Court' as 'High Court,' excludes the jurisdiction of the County Court, so that the decision that a 'franchise' includes letters patent is technically an *obiter dictum* only.

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'NEMO debet bis vexari' is a well-known maxim of law, and one which seems applicable to the case of *Vernon* v. *Watson* (Notes of Cases, p. 90). The secretary of a friendly society was convicted under section 16 of the Friendly Societies Act, 1875, of having misapplied money received by him as the subscriptions of members, and was ordered to pay over the money, or else be imprisoned for two months with hard labour. The defendant did not pay over the money, but suffered his term of imprisonment. The trustees of the society then took civil proceedings in the Derby County Court, and succeeded in obtaining a judgment for the amount misapplied. A Divisional Court (Baron Pollock and Mr. Justice Charles) reversed the judgment (60 Law J. Rep. Q. B. 205), holding that the case was governed by the decision in *Knight* v. *Whitmore*, 53 L. T. (N.S.) 233. There, the treasurer of a branch of the United Society of Boiler Makers and Iron Shipbuilders, registered under the Trades' Union Act, 1871, having unlawfully and fraudulently misapplied moneys received by him on behalf of the society, was ordered to pay a penalty and repay the misappropriated sum, and, in default of payment, to be imprisoned for two months with hard labour. He did not pay, and was accordingly sent to prison. When he had served his sentence an action was brought against him by the general secretary of the society for the misappropriated money, which, it was alleged, he still retained. The County Court judge entered a nonsuit on the ground that the society's claim against the defendant had been satisfied by their previous proceedings, and a Divisional Court held that the judge was right in doing so. The same principle applied to *Vernon* v. *Watson*, and the Divisional Court, and now the Court of Appeal, have held that the right of action had disappeared when the defendant had been sent to prison for the same offence.

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THE power entrusted to the Board of Trade by section 23 of the Companies Act, 1867, of granting licenses for the omission of the word 'limited' from the style of companies formed not for the purpose of profit is sometimes, as was shown on a recent occasion, a source of embarrassment to the official responsible for its exercise. But it may be doubted whether the way out of the difficulty proposed by the late secretary of the department will meet with general acceptance. His plan, that of making the use of the word 'limited' optional instead of compulsory in all cases, is certainly simple, but the reasons urged in support are hardly satisfactory. Lord Thring, 'the greatest authority on the subject,' is quoted as having said that, 'The necessity of using "limited" as the last word in the name of a limited company is much to be regretted. It affords no protection to the creditor, as no enactment is required to inform a shopkeeper that an incorporated company is of necessity a limited company' ('Law and Practice of Joint Stock Companies,' edit. 1867, p. 231). Now it is not true either in law or in fact that an incorporated company is of necessity a limited company. Under the Act of 1862 itself, a company may be registered with unlimited liability; and, though instances may not be common, one very well-known banking-house in the city has availed itself of this power. However, a *primâ facie* presumption of limited liability arises from incorporation, and it may be conceded that no great harm would be done by leaving the tradesmen to act on that presumption, provided that their attention be called to the fact of incorporation. Common notoriety may be sufficient for this purpose in the case of companies incorporated by charter or special Act of Parliament, they being generally bodies of some importance. But any firm of private traders, however insignificant, may register under the Companies Acts, and their having done so might well be unknown to a person doing business with them if they made no change in their firm name. By the addition thereto of the word 'limited' notice of their incorporation is effectually conveyed, together with the certainty, instead of the mere presumption, that their liability is limited. The reason given for throwing away this valuable security can scarcely be considered adequate.

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AN important point, never previously determined, relating to costs in divorce proceedings came before the Court of Appeal in *Hall* v. *Hall* (Notes of Cases, p. 101). A suit for dissolution of marriage was instituted by a husband against his wife on the ground of her adultery, and the husband paid into Court the sum of 45*l.* as security for his wife's costs. This was done in conformity with the practice of the Divorce Division, which requires a husband seeking a divorce either to deposit a sum of money, or to give security for a sum of money, to cover the wife's costs. A decree *nisi* was obtained by the husband, and the wife moved the Court of Appeal for a new trial. The application for a new trial was, however, dismissed. Thereupon the husband asked that his costs of the application for a new trial might be paid out of the fund of 45*l.* which he had paid into Court, and which still remained there. This the Court of Appeal, after taking time to consider their judgment, refused. Their lordships thought that, in a proper case, the Court of Appeal had power to order the costs of a successful husband to be paid out of the moneys which he had paid into Court to provide his wife with funds for her defence, if those funds were still in Court. But they added that the Court would not do that unless the wife's solicitor had so conducted himself as to render such an order just as against him. It is a well-established rule that the Court will not deprive the wife's solicitor of his costs out of the fund intended for his payment, and for which he looks for his remuneration in conducting her defence, unless he has himself done something to justify such a measure. In the case of *Hall* v. *Hall*, although the motion for a new trial was not only unsuccessful, but was really hopeless, the Court was not prepared to draw the inference that the wife's solicitor acted oppressively or vexatiously toward the husband in acting for her on the motion she made for a new trial. On that ground, therefore, their lordships did not think it right to accede to the husband's application.

'As with the letters of Junius, so with the letters of Wilfrid Murray—we are all free to hold our own opinion as to their authorship, but absolute certainty is denied us. Sir Philip Francis died without confessing that he was Junius; and Mr. Hurlbert has gone away denying that he is Wilfrid Murray.' This is the view of the *Standard* in its leading article on the recent judgment of the Court of Appeal in *Evelyn* v. *Hurlbert*. The public are no doubt mainly concerned in the solution of a mystery which has a fascination for a certain class of minds. But a graver responsibility and far more serious duty is, in our opinion, thrown on the Public Prosecutor and his legal adviser than that of solving a mystery. If the Master of the Rolls is justified in saying that 'it was an infamous case, and one party or the other was guilty of the most wicked perjury,' it is clear that no time ought to be lost in instituting a prosecution and visiting the perjurer, whether plaintiff or defendant, with condign punishment. The plaintiff is in England, and, judging from her excited remarks in Court last Saturday, she is anxious for further investigation. The decision of the Government officer will be looked for with interest.

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THERE is a homely proverb about those 'who in quarrels interpose' which has no doubt come home to the Lord Mayor of London since the publication of his correspondence with the General Omnibus Company. Arbitration or mediation between employers and employed is one thing, but the championing of discharged servants without waiting to learn from their masters the cause of such discharge is another. In these days a small number of capable and honest *employés* are not discharged by a company out of revenge for joining in a strike which was almost universal among the men, and it is surely outside the province of a Lord Mayor to interfere at all. With reference to his lordship's suggestion that proceedings should be abandoned against men who were committed for trial for unlawful acts (not for joining a strike), the company could not do less than decline to interfere with the course of justice; and their hit at the chief magistrate of London was as well deserved as it was severe. A similar question was raised after the Southampton riots, where certain magistrates were anxious to quash all proceedings against the rioters. The men were sent to trial, however, and pleaded guilty; and when the time 'for showing mercy' had arrived, all the circumstances were duly considered by the judge.

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## UNWRITTEN CHAPTERS IN THE LAW OF DESIGNS.

### I.

### PATENT *v.* DESIGN.

FEW legal doctrines have been established by a single litigation. The doctrine that *a design may be registrable although it embraces 'proper subject-matter for valid letters patent'* is an instance of this rare phenomenon in comparative jurisprudence. For many years the minds of tradesmen and manufacturers had been perplexed by the problem whether it was lawful to register as a design what might conceivably be protected by a patent; and, in spite of certain *obiter dicta*, it seemed as if the involuntary legislation which suitors initiate was never to come effectually to their aid. At length the *deus ex machinâ* descended in the form of an action brought by Messrs. Walker, Hunter & Co. against the Falkirk Iron Company, in the Scotch Court of Session. The material facts in this case, which is reported in 4 P. O. R. at p. 390, were as follow: The pursuers were the registered owners of a design 'for a range fire-door with moulding on the top, the moulding forming part of the range.' The adoption of this shape was found to be attended with important advantages, which were thus conveniently summarised in the judgment (at p. 393): 'When the door had no moulding, first an open space or slit was left for the length of the fire-grate, through which cold air was admitted to the upper side of the fire; and, secondly, the fire cover having the moulding on it was heavy, and inconvenience was found in lifting it off, while, if the moulding was put on the fall-bar and became part of it, as was frequently the case in the latter part of the manufacture, it intercepted the heat and prevented the full benefit of the radiation being got from the fire. The use of the new shape results in the removal of these disadvantages, and yet preserves a symmetrical if not an ornamental form.' The defenders, among other ingenious objections to the pursuers' claim, contended that their design was not a proper subject for registration and certificate, and that the provisions of part iii. of the Act of 1883—relating to the registration of designs—did not apply when the subject-matter of the application might be protected by letters patent taken out in terms of the first part of the statute.

Lord Maclaren, the judge of first instance, appears to have been of opinion that this objection, if well founded in fact—which he held it not to be—would have been fatal to the pursuers' claim. 'The thing registered,' said his lordship, '*is apparently not a subject for which a patent could be obtained*; and, on the other hand, it is not a mere unmeaning combination of known devices. *Between these limits* I think the designer may get a protection for any variety of intelligent form or pattern capable of being applied to the kind of goods for which he seeks a certificate.'

The defenders appealed to the Inner House; and the point of law, with which alone we are here concerned, was disposed of by Lord Shand in a lucid and powerful judgment, from which we extract the following passages: 'It is quite true the subject of registration must not be an article of manufacture itself, but a design to be applied to an article of manufacture . . . and also that the branch of the statute which relates to the registration of designs does not afford, or profess to afford, protection to any mechanical principle or contrivance directly the Act on this branch gives protection only to the shape or configuration in such a case as the present. The result of such protection may be, however, to secure important advantages such as attend a mechanical contrivance, if these advantages should be the result directly or indirectly of the shape or configuration adopted. Thus, in the present case, the new shape of fire-range door with the moulding as part of it has the particular advantages over the old shape of door which I have already noticed. *These are not directly the subject of protection, but, inasmuch as they are dependent on and inseparable from the shape or configuration, they are indirectly secured by the registration of the design.*'*

* Affirmed on this point by the House of Lords in *The Hecla Foundry Company* v. *Walker, Hunter & Co.*, 1889, 6 P. O. R., per Lord Herschell, at p. 588.

Hitherto the only proposition that it has been possible to formulate as to the mutual relation of patent and design has been an answer to the question so often submitted to counsel: 'Can a patent be anticipated by the registration of a design?'* The judgment of Lord Shand in *Walker* v. *The Falkirk Iron Company* shows that there may be such a thing as the infringement of a design by a patent.

## *REGINA* v. *JACKSON.*

(*Continued from p.* 417.)

RESUMING our consideration of Lord Justice Fry's judgment, we find that his next argument is that 'similar cases must have occurred over and over again; but the habitual course of practice has been to have recourse to the Ecclesiastical Court and to obtain a decree of restitution of conjugal rights; and no case is to be found by which it is established that such a right as that contended for by the husband in this case is given by the law of England.' The habitual course, we agree, for husbands who desire the aid of the law for the enforcement of their conjugal rights has been to go to the Ecclesiastical Court, for no other Court could give them aid; and a resort to the law would generally be preferred by those who could afford it from a natural reluctance to use force. We suspect, however, that the classes in whom that reluctance is not so strong—the classes who, according to Blackstone, 'were always fond of the old common law,' and who, we may add, showed a marked sympathy for Mr. Jackson—not unfrequently exercise the marital right of custody; but their disputes are mostly settled in the police courts. Hence the number of cases in which the question has come before the superior Courts of common law is not large. Yet two have arisen in which the right to confine has been in dispute without special circumstances (*Atwood* v. *Atwood* and *In re Cochrane*), and in both it has been upheld. It appears that it is possible to read Mr. Justice Coleridge's judgment in the last case without being convinced by its reasoning; but those who speak disparagingly of it should at least remember that the applicant could have gone in turn to three other tribunals, and that even an erroneous decision of any one of them in her favour would have stood. Why, then, should she have acquiesced in the judgment against her, unless she was advised that she had no chance of success elsewhere?

Then it is said that *Rex* v. *Leggatt*, 18 Q. B. 781; *sub nom. Ex parte Sandilands*, 21 Law J. Rep. Q. B. 342, 'to say the least, weakens the authority of *Cochrane's Case*.' Now here with great deference we think that the lord justice has gone astray through not paying sufficient attention to Lord Campbell's language. He quotes Lord Campbell not quite accurately as saying that 'the husband has no such custody of the wife as a parent has of a child.' The question was whether the Court would, on an application by a husband for a *habeas corpus*, order his wife to be delivered up to him against her will. To this Lord Campbell said that, in the case of an infant, 'the parent has the right to the custody of the child, and, if the infant is of tender years, the Court will order it to be delivered to its father. But the husband has no such right at common law to the custody of his wife.' What does 'such right' here mean? Obviously such right as the Court will enforce by an order of delivery on *habeas corpus*; in other words, such right as a father possesses over his child 'of tender years.' To leave out the reference to the tender years of the child is to miss the point of the judgment. The common-law right of a father to the custody of his children lasts throughout their infancy, but he cannot enforce that right by *habeas corpus* after they have attained an age at which they are presumed to have discretion to understand the position in which they are placed. The Court will then make no order unless they are detained against their will, and, when they are so detained, will not order them to be delivered to their father, but only to be set at liberty. There are thus two forms of the father's right of custody—one which the Court will actively enforce, another which it will not enforce, but will not interfere with when in fact exercised except in cases of abuse. Now, all that the Court held in *Rex* v. *Leggatt* was that the husband had not a right of the former kind to the custody of his wife. The question was covered by authority, the exact point having been determined by the King's Bench in Lord Ellenborough's time (*Rex* v. *Wiseman*, 2 Smith, 617); but, apart from direct authority, it would have been strange indeed had the Court decided it otherwise. To do so would have been in effect to hold, in opposition to the opinion of a distinguished predecessor of Lord Esher's,† that marriage operated permanently to depress the understanding and discretion of the wife below the standard of an unmarried girl of sixteen. There was nothing in *Cochrane's Case* to justify such a decision, and the idea that there was evidently did not occur to Mr. Justice Coleridge himself or to any of his colleagues. We may observe, by the way, with reference to an interlocutory remark of Lord Halsbury, that the case with which the Court was 'much pressed' in *Rex* v. *Leggatt* was, as clearly appears from the LAW JOURNAL REPORT, not *In re Cochrane*, but *Rex* v. *Mead*.

We now come to the last argument, founded on the Matrimonial Causes Act, 1884, which deprived the Court of the power to attach a husband or wife for disobedience to a decree for restitution of conjugal rights, and substituted a power to award pecuniary satisfaction. It is difficult at first sight to see the connection between the power of a Court to imprison a party in contempt and the right of a husband to seize his wife and prevent her by force from deserting him, or why the abolition of one should be deemed to have affected the other. Lord Justice Fry, of course, does not say that the Act took away the marital right, but he says that, if the non-existence of the right was doubtful before, it is doubtful no longer. We do not assent to this. We should say the Act has made no difference, and any doubt that existed before would equally exist after it. There had been an authoritative declaration in favour of the right; the Legislature must be presumed, if they considered the matter at all, to have taken the law to be as it had been declared by a competent Court, and if they wished to alter it they would have said so.

We cannot but think that there is some confusion of thought in all the judgments on this point, and that it arises from the unfortunate use of the word 'imprisonment' to describe the right claimed for the husband.

* *Mutatis mutandis*, the judgment of Mr. Justice Kekewich in *Thomson* v. *Macdonald*, 1891, 8 P. O. R., at p. 8, is instructive upon this point.

† Sir John Trevor, M.R., in *Hyde's Case* (Gilbert, 83), laid it down that 'a woman by her marriage did not lose her understanding and discretion, but rather improved it by the teaching of her husband.'

It is the wife's duty to live with her husband. What is claimed for the husband is the right to use force reasonably sufficient to bring her to the home where her duty requires her to be, and to prevent her from again deserting it. For this purpose it may be necessary to confine her in the house; but an exercise of the like power by a father, or by a schoolmaster to whom he has committed the custody of his son, would not generally be called 'imprisonment.' To describe it in the case of a husband as imprisoning his wife until she renders conjugal rights is, it appears to us, inaccurate. Rather it is the exaction in specie of the conjugal right of *consortium*, or, in the words of Bacon's 'Abridgment,' keeping the wife by force within the bounds of duty. It would be otherwise if the claim were to confine the wife at a distance until she consented to return to her husband's house. Owing to a want of definiteness in the reasoning of the various judgments on this branch of the subject—the Lord Chancellor's opinion upon it has to be collected by inference from what purports to be a statement of the case put forth for the husband—it is difficult to feel sure of its true effect, but we think it may be summed up as follows: First, the fact that the Court formerly itself imprisoned for contempt instead of handing the wife over to the husband is an argument against the husband's right to imprison; secondly, the Legislature, by taking away the Court's right to imprison, has in some way made it clear that the husband never had any such right. To the first of these propositions it may be answered that it is by no means exceptional for the remedy obtainable from a Court to differ from that which the plaintiff can, if strong enough to rely on his own arm, exact for himself. But the existence of the former remedy is no argument against the right to exact the latter. For an example, take the case of a chattel which has wrongfully come into the possession of one to whom it does not belong. The owner has a right to resume it if he can lay hands on it, none the less that if he prefers to bring an action he cannot get back the chattel, but can only recover damages. The second proposition seems to be somewhat inconsistent with the first, and it is significant that Mr. Finlay, who put forward the first in argument, does not appear from the reports to have relied on the second. If the Court had had the power to hand over a wife to her husband, we could have better understood the abolition of that power being used as an argument against the husband having the right to take her himself. But since it is admitted, and indeed insisted, that the remedy given by the Court was not that which the husband claims to exact for himself, what can it matter for this purpose whether the practice be to attach for contempt in disobeying a decree or to award compensation to the injured party?

## LEGISLATIVE PROGRESS.

IN the House of Lords.

Bills read a third time and passed:—
The Judicature Acts Amendment Bill.
Customs and Inland Revenue Bill.
Public Accounts and Charges Bill.
Russian Dutch Loan Bill.

Bills through committee:—
Mail Ships Bill.
Fisheries Bill.

Second readings:—
Brine Pumping (Compensation for Subsidence) Bill.
Mortmain and Charitable Uses Amendment Bill.
Bills of Sale Act, 1890, Amendment Bill.
Local Authorities (Scotland) Loans Bill.
Roads and Streets in Police Burghs (Scotland) Bill.

First reading:—
Factories and Workshops Bill, brought up from the Commons.

In the House of Commons.

The Lords' Amendments to the Savings Banks Bill considered and agreed to.

Third readings:—
Cork (County and City) Courthouses Bill.
Factories and Workshops Bill.
Consolidated Fund (No. 2) Bill.
Pilotage Provisional Orders (No. 1) Bill.
Returning Officers (Scotland) Bill.

Second readings:—
Post Office Acts Amendment Bill.
Free Education Bill.
Municipal Registration (Dublin and Belfast) Bill.

New bills:—
To Amend the Contagious Diseases (Animals) Acts, 1878 to 1890, with respect to the Conveyance of Animals by Sea.
To Amend the Coinage Act, 1870.
To Amend the Sale of Food and Drugs Act, 1875.
To Amend the Acts relating to Reformatory Schools in Scotland.
To Confer further Powers on County Councils and other Authorities with respect to Main Roads and other Highways and Bridges.

Bills withdrawn:—
Industrial Assurance Bill.
Sea Ware Crofting Counties (Scotland) Bill.
Theatres, &c., London Bill.

Of private bills, the Dover and Calais Submarine Tubular Railway Bill was withdrawn, and the Manchester Ship Canal Bill was read a third time.

# Reviews.

## THE TITHE ACTS.

*The Tithe Acts and the Rules under the Tithe Act*, 1891, *together with the Extraordinary Tithe Redemption Act*, 1886, *the London (City) Tithes Act*, 1879, *and other Acts relating to the subject of Tithe and Tithe Rentcharge*. Also, Explanatory Notes and References and an Introduction containing a short Treatise on the Recovery of Tithe Rentcharge. Fifth Edition, rewritten and rearranged. By G. PEMBERTON LEACH, of Lincoln's Inn, Barrister-at-Law, and Assistant Commissioner to the Board of Agriculture. London: Shaw & Sons. 1891.

THE history of tithes—the law as to which has lately been very materially changed by the Tithe Act, 1891—is extremely ancient, but a large portion of the legal learning with regard to it is now of very little practical importance. 'The right,' said Vice-Chancellor Bacon, in *Bailey* v. *Badham*, 54 Law J. Rep. Chanc. 1067, 'is

as old as Leviticus. It is a right to receive what? A portion of the annual produce of cultivated land—that, and nothing else. . . . Before the Tithes Commutation Act it went to the persons entitled to the tithe, but the Legislature has thought fit to alter that, not to alter the nature.' The Act here alluded to, 'the Act for the commutation of tithes,' passed in 1836, is here given, and is followed by twelve Tithe Amendment Acts, the last on the subject being the Extraordinary Tithe Amendment Act. Prefixed to the work is an Introduction, giving a short sketch of the law; and in the Appendix we have the Acts and portions of Acts which have reference to the Tithe Acts. Here is also the circular issued to local boards on the last day of April in the present year. The volume is handy and the notes will be found serviceable. Attention is drawn to the fact that, though the Tithe Act, 1891, came into operation on March 26, 1891, when it received the royal assent, yet as regards the recovery of rentcharge it does not come into practical operation until July 1, 1891, except in those parishes where the rentcharge has, under 1 Vict. c. 69 and 2 & 3 Vict. c. 62 (both now repealed), been made payable on January 1 and July 1, instead of on April 1 and October 1.

## HUTCHISON ON BANKING.

*The Practice of Banking*, embracing the Cases at Law and in Equity bearing upon all Branches of the Subject. By JOHN HUTCHISON. London: Effingham Wilson & Co. Warrington: Percival Pearse. 1891.

THE publication of this volume has, we are told in the preface, been somewhat delayed owing to the very sudden death of the author last year, the whole work, except a small portion of the index, having, however, been practically completed before the author's death. This circumstance may account for the fact that on several material points the latest legislation has not been duly incorporated in the work. Thus, in the discussion of the law as to Memorandum and Articles of Association, there ought to have been some reference, at all events, to the Companies (Memorandum of Association) Act, 1890. At page 58 *et seq.*, where the question of the liability of directors who have proved unfaithful servants is briefly discussed, we ought to find a notice of the important alteration made by the Directors' Liability Act, 1890. Section 165 of the Companies Act, 1862, mentioned on page 57, is now superseded by section 10 of the Companies (Winding-up) Act, 1890, which extends to promoters. The precedents will be found useful. The principal form given is that which holds the first place in the volume—viz. Memorandum and Articles of Association of a banking company, which is supplemented by some twenty pages of notes on the law affecting these documents.

# Correspondence.

## TRIAL BY JURY.

SIR,—It is curious to note, progressing in education and intelligence as we do, that we are gradually and unconsciously letting slip one of our great institutions—namely, trial by jury.

A quarter of a century ago juries had a proud distinction, and the public the great satisfaction that all important cases, whether civil or criminal, were disposed of by their fellows.

Formerly the members of the bar only did the advocacy, the judge expounded the law, and the jury, 'the twelve good men and true,' had the decision as to facts left to them; but now a change has gradually taken place. About one-third of all civil cases at assizes are tried without juries, and many others are referred by the judge, on one pretence or another, to a member of the bar, and even with those that are tried in Court the functions exercised by the judge are so expanded that the jury have not only the law laid down to them before considering their verdict, but are told the judge's views of what the verdict should be in language somewhat ambiguous, but the meaning of which is so unmistakable, whether given in harsh dictatorial or gentle and persuasive and eloquent terms, and often times with such effect that it is difficult to determine in many cases from which source, the judicial bench or the jury-box, the verdict actually emanates.

As to criminal cases. In times past the verdict of a jury was looked upon as conclusive, but now, in many instances, the trial and verdict are a farce, as if the public who read the accounts of the trial, or the judge who presides, do not agree with the verdict an appeal is made to the Home Secretary, the verdict of the jury is set aside or altered, and so frequently has this happened in recent years that I fear the institution of trial by jury has lost its importance and the juries have lost their sense of responsibility.

I have in my mind many cases, both civil and criminal, but I refrain from mentioning any, as the object of my letter is simply to call attention to the subject generally, and to point out more particularly to jurymen their legitimate position, and to suggest to them in future to look upon the judges as exponents of the law of the country, and themselves as constituting the actual tribunal as to facts and as the arbiters selected by their country to perform a grave and important duty in the performance of which they should not be influenced by anyone.

ONE OF THE PUBLIC.

## ADMINISTRATION BONDS.

SIR,—The *Case of Josephine Reeves*, appearing in last week's Notes of Cases, reminds one of the desirability of abolishing that lump of antiquated rubbish, the administration bond.

Had this document been one over which the compiler of the forms, made pursuant to the Bankruptcy Act, 1883, had supervision, there can be no doubt it would long since have been at least considerably shortened, and not left as it is at present, fair game for the sneers of commercial men.

Why should there not be used a form printed at the foot or on the back of the oath that the sureties (of course fully describing them as at present) undertake that the administrator shall faithfully administer the estate according to law under penalty of a defined sum?

Also, if necessary, statute law should provide that the bond may be given to and enforceable by the president for the time being of the Probate Division, without naming him.

No bond stamp should be required in the case of an estate under 500*l.* in value. STYLUS.

June 22.

## THE RIGHT OF ADMITTANCE TO THE COURTS.

SIR,—Although your comments on my letter to Lord Coleridge have, on the whole, been very fair, will you kindly allow me to say a word or two of explanation in your columns?

It will be seen that the principle I thought fit to remind Lord Coleridge of was that his personal friends or people provided with tickets by him had absolutely no more right to form the public in his Court than the friends of the humblest subjects of the Queen. This, I believe, is a well-established principle, and no judge has, to my knowledge, ever maintained that he has the right to select what portion of the public shall be admitted, to the exclusion of another. Should a judge take on himself to do any such thing, without the consent of both parties, there is a chance, in my humble opinion, of such a trial being declared only a 'private arbitration,' and the proceedings declared null and void on the ground that the parties did not consent to such arbitration. Lord Coleridge does not maintain that he has the right of selecting his audience. Far from it, he has strenuously denied having done any such thing as most of the papers said he had. I may say that my contention with reference to the admittance of the public is undoubtedly right. The only question was, Did the newspapers speak the truth when they reported that no one was admitted without a ticket? If they did, my remarks were applicable to the alleged action of the Lord Chief Justice; for if it were true that places were practically reserved for people with tickets, the constitutional right of the public to *free* admittance to a public trial was undeniably infringed and a system of 'selection' introduced. If they did not, my contention, although right in the abstract, did not apply to the system in vogue at the recent baccarat libel case. Lord Coleridge has explained his orders to the officials; perhaps it was their action in carrying out what they considered his orders which gave rise to the newspaper reports I have referred to. It is satisfactory to know that the Lord Chief Justice has publicly denied the statement (not invented by me) that admission to his Court was by ticket only.

With reference to the question of the prior right of members of the Inns of Court to a seat in the well of the Court over the public, provided there is room, I am glad you are not disposed to let the matter rest unsettled. I may say that my contention in the letter you have referred to practically comes to this: No member of the public has the right to take precedence over another; if, however, such a system was in vogue at a trial and one section of the public was, as a matter of fact, being admitted by virtue of their possessing a ticket signed by the judge and another excluded; if such a system of priority could be defended, and such rule could be held just, fair, and within the power of a judge, then members of the Inns of Court should enjoy the benefit of that rule. This privilege I claimed, based as it was on an implied premiss which I denied and which is only hypothetical, so I shall not trouble further with the matter as it stood then.

I now, however, claim that, as a matter of courtesy, if on no higher ground, students for the bar (even if they stand, to all intents and purposes, in no different relation to ordinary members of the public in the eyes of the Court) should be granted the privilege of a place in the well of the Court, such privilege conferring on them a prior right of admittance over a member of the public. All customs had a beginning. I presume time was when certain people, who do not come under the designation of either peers, privy councillors, or judges, had not the 'privilege' of sitting on the bench. Now, however, not only is their privilege established by 'custom,' but even that of a class, vaguely designated as 'any other persons'—which I take to include everybody and anybody—a judge may choose to invite.

Such 'custom' is now, it appears, 'immemorial'; I hope it will soon be obsolete. It occurs to me that, unless my memory fails me, history does not make any mention of mere spectators being accommodated with a seat on the bench by Chief Justice Gascoigne when he was trying a case, to which a friend of the then Prince of Wales was a party, and which was attended by that prince in person. That case seems to be very similar to the recent one, but we may safely presume the now 'immemorial custom' was not in vogue then. Gascoigne had no mean opinion of the dignity of the bench, as his committal of the prince to prison for contempt showed. Though I admit it is no business of mine, and my utter inability to remedy this scandal, yet I cannot help reiterating my humble opinion that the dignity of the bench is not by any means enhanced by being graced by the presence of ladies, attracted to the Court by mere curiosity.

I base my contention that the privilege of a prior right of admittance over the public should be granted to law students on the ground that it is part of a student's training to watch and mark how able counsel conduct a case. It may be that a law student and a member of the public are at the door seeking admittance; it is not improbable that sheer and perhaps often idle curiosity is the motive of both in trying to hear the case—however, with this difference, that, whilst the law student may combine business with pleasure and learn something by being present in Court, the mere spectator cannot urge any such plea.

So, sir, if I was wrong in maintaining that members of the Inns of Court had a prior claim to admittance, or that the courtesy granted to certain people provided with tickets should be granted to law students, I now urge that the 'custom' of admitting students to the well of the Court should now be established. Those who consider us simply ordinary members of the public cannot object to my contention, for then the presence of a law student will simply count as one of the public being present by virtue of a direct personal interest other than sheer curiosity.

I hope, sir, you will try and get the extent to which a judge may go in restricting the general right of the public to be present at any trial, so long as there is room, definitely settled. L. T. AUGIER M'VANE.

37 Temple, E.C.: June 24.

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SIR,—If, as I understand, the suggestion in your paragraph in 'Obiter Dicta' column of this week's LAW JOURNAL is that 'unoccupied' counsel have a right to fill the seats on the floor of a Court to the exclusion of 'unoccupied' solicitors, I beg to point out that this is not so, and could not be allowed.

A solicitor, whether 'unoccupied' or engaged, remains an 'officer' of the Court, and as such has strictly a greater right to a place than an 'unoccupied' barrister, who is considered *amicus curiæ*. It is of

equal personal importance to a member of either branch that he should, if he chooses, be present—as a member of the public—at the trial of cases in which he is not engaged, if there is room for him. The two front rows in all the Courts are very properly and necessarily reserved for counsel, and more space is rarely required by those actually engaged. The space between the front row and the bench specially allotted to solicitors concerned in the cases being heard is generally fully occupied by them or their clerks end clients, and the special reservation of the remaining seats for 'unoccupied' barristers would be not only unnecessary, but, it is submitted, illegal. FARLEIGH RHODES.

June 22.

# Unreported Cases.

## MAYOR'S COURT.

### STOCK EXCHANGE—GAMBLING CONTRACT.

ON June 22, in the Lord Mayor's Court, the case of *Bérire* v. *Thalheim* came on for trial before the Recorder (Sir T. Chambers, Q.C.) and a jury. The plaintiff, a clerk in the City, in the employment of his father, sued the defendant, who is also a clerk in the City, to recover 39*l.* 9*s.* 10*d.*, the balance of an account for transactions on the Stock Exchange. It appeared that the two parties were young City clerks who had been friends, and who had speculated on the Stock Exchange. According to the plaintiff, they agreed to buy 100 shares in King Solomon's Mines (Lim.) and 2,500 East London railway shares. On the first settling-day there was a loss of 62*l.* 4*s.* 9*d.* The shares were carried over, and they continued to fall until the total loss was 203*l.* 12*s.* 3*d.* In this loss the plaintiff said that the defendant had consented to pay half. He had paid some of it by instalments, and he had taken the money when there had been any balance in his favour. Mr. Lionel Cohen, stockbroker, proved that the transactions had been entered into and the money paid. As a matter of fact he dealt with the plaintiff's father, in whose name all the business was done, because the regulations of the Stock Exchange prohibited any dealings with clerks. The defendant said that he admitted making the agreement with the plaintiff to speculate, but when he found the stocks were going down he asked the plaintiff to close the account and open a 'bear' account. The plaintiff declined to do that, because he said he was certain that the stocks would recover. Defendant then said that he would have nothing more to do with the business, and the plaintiff must go on alone. He had paid the amount which was due from him. The learned recorder pointed out that the Gambling Act would apply. Both were principals, and it was different to a claim by a broker against a principal. It was a pure gambling contract, like a horse race, or wagering on two drops of rain running down a window pane. The plaintiff must be nonsuited.—Judgment accordingly.—Mr. Atherley-Jones, M.P., was counsel for the plaintiff; Mr. Le Riche for the defendant.

MR. JUSTICE WRIGHT AND MR. JUSTICE HENN COLLINS.—On Saturday, June 20, the members of the Northern Circuit entertained Mr. Justice Wright and Mr. Justice Henn Collins at a complimentary dinner at the Hôtel Métropole, in celebration of their recent elevation to the bench. Mr. S. Pope, Q.C., occupied the chair, and about 120 of both the past and present members of the Circuit assembled.

## INCORPORATED LAW SOCIETY.

ATTENDANCE of Members of the Council from April 16, 1890, to April 13, 1891:—

| — | Council | Committee | — | Council | Committee |
|---|---|---|---|---|---|
| Mr. Addison | 29 | 34 | Mr. Mills | 32 | 59 |
| Mr. Bristow | 24 | 10 | Mr. Morrell | 10 | 31 |
| Mr. Broomhead Colton-Fox | 4 | 2 | Sir Richard Nicholson | 1 | 1 |
| Mr. Budd | 19 | 19 | Sir Thos. Paine | 32 | 22 |
| Mr. Cooper | 9 | 4 | Sir H. W. Parker | 20 | 9 |
| Mr. Cunliffe | 36 | 146 | Mr. Pemberton | 28 | 6 |
| Mr. Dees | 2 | — | Mr. Pennington | 37 | 152 |
| Mr. Ellett | 16 | 10 | Sir A. K. Rollit, M.P. | 14 | 3 |
| Mr. Follett | 16 | 2 | Mr. Roscoe | 34 | 71 |
| The Right Hon. H. H. Fowler | 8 | — | Mr. Saunders | 7 | 10 |
| Mr. Frere | 30 | 6 | Mr. Walters | 32 | 99 |
| Mr. Freshfield | 1 | 2 | Mr. Waterhouse | 25 | 55 |
| Mr. Godden | 37 | 67 | Mr. Williams | 30 | 49 |
| Mr. Gregory | 23 | 23 | Mr. Wing | 13 | 12 |
| Mr. Hollams | 17 | 6 | Mr. Bradley | — | — |
| Mr. Howlett | 17 | 1 | Mr. Cooper Healey | 3 | 1 |
| Mr. Hunter | 29 | 86 | Mr. Diver | — | — |
| Mr. Janson | 13 | 1 | Mr. Girand | 6 | — |
| Mr. Jevons | 1 | — | Mr. Hawkins | — | — |
| Mr. Keen | 33 | 55 | Sir T. Martineau | 10 | — |
| Mr. Lake | 31 | 116 | Mr. Mead-King | 8 | — |
| Mr. Laurence | 13 | 3 | Mr. Milne | 1 | — |
| Mr. Manisty | 17 | 13 | Mr. Shelly | — | — |
| Mr. Margetts | 13 | 4 | Mr. Tozer | — | — |
| Mr. Markby | 25 | 61 | *Mr. Dryland | 9 | 1 |
| Mr. Marshall | 4 | 1 | *Mr. Francis | 4 | 2 |
| | | | *Mr. Heelis | 4 | — |
| | | | *Mr. Woodhouse | 4 | — |

* Retired in October.

## LAW AND PROFESSIONAL NOTES.

By T. F. UTTLEY, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### BILLS OF LADING.

A BILL of lading, if it is to be of any use either to an importer or a banker who may have made advances against the goods, ought to be at least a guarantee that the goods are on board the ship specified, and this was one of the points which was discussed at the recent International Cotton Conference at Liverpool. After a great deal of argument it was ultimately agreed that the bills of lading should be evidence against the shipowners, but that they should not be signed until the bales were either on board or practically in the custody of the people on the quay, and, therefore, such bills of lading will be what they ought to be—receipts for goods actually received or their equivalents. A resolution was also approved of providing that in case any bales shall be shut out of the vessel the shipowner is to have liberty to forward the same by another steamer, notice of which is to be sent to the consignee when practicable; and a resolution to charge freight on the actual gross invoice weight was also passed, and is likely to be of a useful character. To maritime lawyers the conference is of great interest, and a perusal of its proceedings will convey many useful hints. The old form of a bill of lading is very quaint and runs thus: 'I. W., No. 1, a. 20. Shipped by the grace of God in good order by A. B., merchant, in and upon the good ship called the *John and Jane*, whereof C. D. is master, now riding at anchor in the river of Thames, and bound for Barcelona, in Spain, twenty bales containing 100 pieces of broadcloth, marked and numbered as per margin, and are to be delivered in the like good order and condition at Barcelona aforesaid (the dangers of the seas excepted)

unto E. F., merchant there, or to his assigns, he or they paying for the said goods, per piece freight with primage and average accustomed. In witness whereof the master or purser of the said ship hath affirmed to three bills of lading of this tenor and date, one of which bills being accomplished, the other two to stand void. And so God send the good ship to her designed port in safety. Dated at London, the day of .'

NOTICE REQUISITE IN WEEKLY TENANCIES.

Notice always has reference to the letting. Thus in a letting from week to week a clear week's notice, expiring on the day the rent becomes due, will be sufficient. That is the rule laid down in a popular text-book for every one. It does not seem, however, to have been followed in a recent case at Stockport, where a blacksmith was in the employment of a railway contractor who was constructing a railway, and occupied one of the huts provided for the convenience of the workmen. Plaintiff's tenancy began on a Thursday. The site of the hut being required for the erection of a station, notice was given on a Saturday to the plaintiff requiring him to give up possession on or before the following Saturday. Believing he should have notice from Thursday to Thursday, plaintiff remained in the house over the Saturday, and on the Monday defendant proceeded to take off the roof, and, of course, plaintiff questioned his right of interference. His advocate sought to show that the notice must expire at the end of a week, dating from the commencement of the tenancy, although it might not be necessary to give a full week's notice. His Honour, however, said he had very carefully considered the case of *Jones* v. *Mills*, which was the authority, and found that the judges did not entirely agree. One said a week's notice was necessary, but this was contested by two other judges, and the only thing definitely settled was that in a weekly tenancy there must be some reasonable notice. He held, therefore, that the notice in this case was a reasonable notice, and gave judgment for defendant.

DE ROS *v.* CUMMING.

Are you a collector of curious coincidences? If you be such a gatherer here is a sufficiently noticeable one. On February 10, 1836, there was tried in the Court of King's Bench, before the Lord Chief Justice of England, an action for defamation, the plaintiff being a noble lord and the defendant a gentleman of position and a member of Crockford's, Graham's, and the Bentinck clubs. The slander was to the effect that the noble plaintiff had cheated at cards. The leading counsel for the plaintiff was the Attorney-General of the day, Sir William Follet, who, in his opening speech, denounced the accusation of cheating as a deliberate conspiracy to ruin his client. After a great deal of unsavoury evidence the jury returned a verdict for the defendant, but what do you think was the name of the defendant? It was Cumming. No connection at all, I should say, of the unfortunate gentleman who as plaintiff has come to grief in the baccarat case; still the occurrence of the same name in two kindred actions, with so wide a gulf of time between them, is strange enough. Thus writes Mr. George Augustus Sala, in his 'Echoes of the Week,' in the *Manchester Evening News* of the 13th inst.: 'I read in the report of the trial of *De Ros* v. *Cumming* that "the case had excited much interest in fashionable circles," and the Court was excessively crowded. So you see that there is not much ground for the dolorous jeremiads to which we have had to listen lately about the presence of ladies of fashion at crapulous trials being an unmistakable symptom of the degeneracy of the age. The ladies flocked to the House of Lords when the Duchess of Kingston was tried for bigamy, and to the Old Bailey when the Rev. Dr. Dodd was tried for forgery. The last-named criminal was quite a fashionable lion. "My Lord Chesterfield's tutor; chaplain to the Magdalen Hospital, my dear; preached such sweet sermons. Ah! I thought so: Guilty. Have you a little more ratafia left in your flask, dear Lady Betty?" Bless the ladies! Why should they not amuse themselves whenever they have a mind thereto? I had a peep at the dear creatures last Monday in the Queen's Bench Division Court, Lord Chief Justice Coleridge presiding. The baccarat case was in full swing, and a portly matron, "beautifully gowned," as the society papers have it, was under examination or cross-examination; I'm sure I don't know which. I thought the proceeding the reverse of interesting, and found the stuffy atmosphere of the Court—redolent as it was with the mingled odours of forensic wig-powder, black bombazine, hair oil, and feminine scent-bottles to be rather provocative of headache. Still it was a sight to see the ladies, for whose accommodation rows of stalls had been arranged on the very bench to the right of the judge. How they seemed to be enjoying the trial, to be sure! There was only one thing lacking: it wanted music. A snatch from the gambling chorus in "Robert le Diable" would have been admirably appropriate. It was quite accidentally that I got into the Court. I had been summoned as a witness in an action before Mr. Justice Pollock, in which the compiler of a remarkable Slang Dictionary sued a well-known firm of printers for damages for breach of contract in having refused to continue the printing because a small percentage out of some thousands of words were unseemly ones. I had to wait a couple of hours before I was put into the witness-box to testify as an "expert," in bad language I suppose, to the merits of the work, but the learned Q.C. for the defence protested against my being heard. The learned judge upheld the objection, and I was sent about my business. I lost 5*l.* 1*s.* by the transaction, the shilling representing the cost of a lovely gardenia, which I had donned as a "button-hole" with a view to propitiate the jury. They had much better have listened to my evidence. I would have told them some most moving tales of a philological kind. As it was they were unable to agree upon a verdict, and were discharged. Wandering modestly about the darksome corridors of the ill-built and evil-smelling Palace of Justice, I chanced upon a friendly person in authority who had control over the doorkeepers of the Court in which the baccarat case was going on who knew me. There is an old proverb, you well remember, that "More people know Tom Fool than Tom Fool knows." The person in authority passed me into the Court, and I was able to soothe my wounded feelings—smarting under the cost of the 5*l.* 1*s.*—with the sweet spectacle of the ladies on the bench.'

CUMMING *v.* WILSON AND OTHERS.

Referring to this now notorious case in a local daily, Mr. C. T. Tallent-Bateman pertinently remarks that it is important that the legal aspect of this part of the case should be generally and promptly understood, otherwise misconceptions might be formed and errors disseminated which would be most injurious to the public interest. He then points out that (1) the offence of cheating at cards is (under 8 & 9 Vict. c. 109, s. 17) equivalent to obtaining money 'by a false pretence,' with intent to cheat or defraud; (2) the offence of obtaining money, &c., 'by any false pretence, with intent to defraud,' was, at the passing of the last-mentioned Act, and still is under 24 & 25 Vict. c. 96, s. 8, a misdemeanour and not a felony. (3) It is not an offence to compound a misdemeanour, unless the latter is virtually an offence against the public. (4) It is, to say the least, an extenuating circumstance in the case in question that the 'compact' had not the corrupt or selfish elements usually associated with 'compounding,'

for there is no suggestion that the other parties received, or stipulated to receive, from the offender any money, or goods, or other 'amends' as a consideration for the agreement. (5) Because no prosecution is instituted against all the parties to the agreement it must not, therefore, be assumed that the law is not impartial; we should the rather infer that the authorities are satisfied that the plaintiff's misdemeanour (practically established by the verdict) was against the private individuals and not against the public generally, and that, consequently, there has been no offence of 'compounding.' With this useful statement of the law on the subject it is, perhaps, about time to allow this case to rest.

### A STUDENT'S RIGHT TO HIS DEGREE.

The Supreme Court of the State of New York has had a curious case before it for decision—namely, whether a student has a right to a degree. It appears that a Mr. Thomas Cecil, a student of the Bellevue Hospital Medical College, claimed that, having complied with all the requisite preliminary conditions for a degree, he was entitled to be examined for it. The secretary to the faculty told him that he could not be permitted to sit for final examination nor consequently take his degree. The question was, therefore, had the college authorities a right arbitrarily to withhold a degree from a student, and, if so, must they produce their reasons; for they claimed that the granting of the degree was totally within their discretion, and their action could not be gainsaid? The judge of the Supreme Court held, however, that when a student has complied with the rules and regulations of the college, and with all the conditions upon which it agrees to confer degrees, he has a contract right to his degree which cannot be denied without good reason. An institution cannot take the money of a student, allow him to remain and use his time, and then arbitrarily refuse to confer on him the degree which they have promised. While a Court cannot review the discretion of a college in refusing for a definite reason to allow a student to be examined and receive a degree, yet in case of an arbitrary refusal there is no exercise of discretion at all, but simply a wilful violation of duty. Whether the English Courts would follow this ruling remains to be seen; at all events the Yankee student has got a neat little decision to his own heart, and very proud of it he ought to be.

### A GUIDE TO THE PUBLIC RECORD OFFICE.

A guide to the principal classes of documents preserved in the Public Record Office has been prepared by Mr. S. R. Feargill-Bird, and issued as a Government publication. The records of the superior Courts of law and of special and abolished jurisdictions, State papers and departmental records are digested and arranged in alphabetical order, the various classes of documents bearing on the same subject being brought together irrespective of the Courts or offices to which they belong. The more easily defined classes, such as accounts, Chancery enrolments, charters and grants, inquisitions, leases, surveys, and rentals, treaties, &c. are referred to under their respective titles, whilst others, including many hitherto known only as 'miscellanea,' are classified under the subjects to which they relate, such as army and navy ecclesiastical measures, feudal tenures, taxation, &c. 'The Guide,' states the *Estates Gazette*, 'is likely to be of considerable use not only to members of the legal profession, who at present make the most use of the searching-rooms of the Record Office, but to students of history and economics generally.'

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MR. ALLEN ERNEST M'ADAM, of 6 East India Avenue, Leadenhall Street, E.C., has been appointed a Commissioner for Oaths. Mr. M'Adam was admitted in 1883.

## TWO HUNDRED YEARS UNCLAIMED.

MR. SIDNEY H. PRESTON, of 1 Great College Street, Westminster, writes as follows:—

Permit me to call your readers' attention to a recent remarkable notice, calling for the representatives of the proprietors of shares in the West New Jersey Society, in consequence of no dividends having been paid thereon for nearly 200 years—namely, since 1692. The following are the names of the proprietors:—

Joseph Collyer, Matthew Gibson (playing-card maker), Josiah Davies, Peter Delannoy, Peter Fowks, Nathaniel Gifford, Benjamin Levy, Joseph Micklethwait, Thomas Miller, Thomas Morris, Edward West, Joseph Syms, and Shove family.

The 'windfalls' for the descendants of these stockholders must therefore be very large, as in the case of *Burn* v. *The Royal Exchange Assurance Corporation*, decided a few years since, the plaintiff, a descendant of an original stockholder for 100*l.* in the corporation, succeeded in making good his title to the 100*l.* and dividends accrued thereon since 1760, making in all a sum of no less than 3,600*l.*

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## NOTICES FOR THE WEEK.

### ROTA OF REGISTRARS.

MONDAY, June 29.—Court of Appeal No. 2: Mr. Godfrey. Mr. Justice Chitty: Mr. Farmer. Mr. Justice North: Mr. Lavie. Mr. Justice Stirling: Mr. Pugh. Mr. Justice Kekewich: Mr. Pemberton. Mr. Justice Romer: Mr. Clowes.

Tuesday, June 30.—Court of Appeal No. 2: Mr. Leach. Mr. Justice Chitty: Mr. Rolt. Mr. Justice North: Mr. Carrington. Mr. Justice Stirling: Mr. Beal. Mr. Justice Kekewich: Mr. Ward. Mr. Justice Romer: Mr. Jackson.

Wednesday, July 1.—Court of Appeal No. 2: Mr. Godfrey. Mr. Justice Chitty: Mr. Farmer. Mr. Justice North: Mr. Lavie. Mr. Justice Stirling: Mr. Pugh. Mr. Justice Kekewich: Mr. Pemberton. Mr. Justice Romer: Mr. Clowes.

Thursday, July 2.—Court of Appeal No. 2: Mr. Leach. Mr. Justice Chitty: Mr. Rolt. Mr. Justice North: Mr. Carrington. Mr. Justice Stirling: Mr. Beal. Mr. Justice Kekewich: Mr. Ward. Mr. Justice Romer: Mr. Jackson.

Friday, July 3.—Court of Appeal No. 2: Mr. Godfrey. Mr. Justice Chitty: Mr. Farmer. Mr. Justice North: Mr. Lavie. Mr. Justice Stirling: Mr. Pugh. Mr. Justice Kekewich: Mr. Pemberton. Mr. Justice Romer: Mr. Clowes.

Saturday, July 4.—Court of Appeal No. 2: Mr. Leach. Mr. Justice Chitty: Mr. Rolt. Mr. Justice North: Mr. Carrington. Mr. Justice Stirling: Mr. Beal. Mr. Justice Kekewich: Mr. Ward. Mr. Justice Romer: Mr. Jackson.

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MR. EDWARD JAMES NEVILLE (of the firm of Danger & Neville), of Liverpool, has been appointed a Commissioner for Oaths. Mr. Neville was admitted in 1885.

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HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## CALENDAR OF THE COUNTY COURTS.

FROM JUNE 29 TO JULY 4.

| No. of Circuit | His Honour | June 29 | June 30 | July 1 | July 2 | July 3 | July 4 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Pfoulkes | — | Runcorn | Altrincham | Warrington | Birkenhead | — |
| 8 | Judge Heywood | — | Manchester | Manchester | Manchester | Manchester | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | — | — | — | Middlesbrough | Stockton-on-Tees | — |
| 19 | Judge Barber | — | — | — | Bakewell | Chapel-en-le-Frith | — |
| 47 | Judge Powell | — | Lambeth | Greenwich | Lambeth | Lambeth | — |

# House of Lords Register.

*Coram* LORD HERSCHELL, LORD WATSON, and LORD MORRIS.

THURSDAY, JUNE 18.

*Stewart* v. *Robinson* (glebe land—boundaries. Appeal from the Court of Session in Scotland, reported 27 Scot. Law Rep. 819).—Part heard.

FRIDAY, JUNE 19.

*Stewart* v. *Robinson*.—Dismissed.

*Welch* v. *Tennent* (husband and wife—domicile of spouses—English marriage—wife's real estate in England—conflict of laws—sale of such real estate—conversion—*jus mariti*. Appeal from Court of Session in Scotland, reported 16 Rettie, 'Court of Session Cases,' 876).—Part heard.

MONDAY, JUNE 22.

*Welch* v. *Tennent*.—*Cur. adv. vult.*

*Dewar* v. *Wotherspoon* (lunacy—*curator bonis*—validity of appointment—no cognition before a jury. Appeal from the Court of Session in Scotland, reported 28 Scot. Law Rep. p. 85).—Part heard; stand over.

*Coram* THE LORD CHANCELLOR, LORD WATSON, LORD BRAMWELL, LORD HERSCHELL, LORD MACNAGHTEN, and LORD MORRIS.

TUESDAY, JUNE 23.

*Little* v. *Port Talbot Company* (*The Apollo*) (ship—dock—harbour master—damage to ship—liability—case re-argued).—*Cur. adv. vult.*

# Court of Appeal Register.

## APPEAL COURT I.

Before THE MASTER OF THE ROLLS, LOPES, L.J., and KAY, L.J.

THURSDAY, JUNE 18.

*Evelyn* v. *Hurlbert* (application of plaintiff for new trial on appeal from verdict and judgment at trial before Cave, J., with jury in Middlesex).—Part heard.

FRIDAY, JUNE 19.

*Evelyn* v. *Hurlbert*.—*Cur. adv. vult.*

SATURDAY, JUNE 20.

*Evelyn* v. *Hurlbert*.—Refused.

*Hood* v. *Brown* (application of plaintiffs for judgment or new trial on appeal from verdict and judgment dated April 23, at trial before Wills, J., and common jury in Middlesex).—Refused.

Before the MASTER OF THE ROLLS, BOWEN, L.J., and KAY, L.J.

MONDAY, JUNE 22.

*Lovering* v. *City of London and Southwark Subway Company* (appeal of plaintiff from judgment of Lawrance, J., dated February 17, at trial without a jury in Middlesex).—Allowed.

*Pinto and another* v. *Trott & Co.* (appeal of defendants from judgment of Day, J., dated January 22, at trial with special jury in Middlesex).—Part heard.

TUESDAY, JUNE 23.

*Tinkler* v. *Smith and another* (appeal of plaintiff from judgment of Grantham, J., dated February 14, at trial (jury discharged) in Middlesex).—Dismissed.

*Dearne and Dove Steel Company* (*Lim.*) v. *Phœnix Railway Carriage and Wagon Company* (appeal of defendants from judgment of Mathew, J., dated March 17, at trial without a jury at York).—Allowed.

*Clark* v. *Dawber* (appeal of defendant from judgment of Mathew, J., dated March 23, at trial without a jury at Leeds).—Dismissed.

WEDNESDAY, JUNE 24.

*Patrick* v. *Dear* (appeal of defendant Dear from judgment of Mathew, J., dated March 23, at trial without a jury at Leeds).—Dismissed.

*Dodson & Co.* v. *Robinson & Co.* (appeal of defendants from judgment of Lawrance, J., dated March 24, at trial without a jury at Liverpool).—Judgment varied.

*Caswell* v. *Sheen and others* (appeal of defendants from judgment of Cave, J., dated April 1, at trial without a jury at Stafford).—Dismissed.

*Coburn* v. *Great Northern Railway Company* (appeal of plaintiff from judgment of Hawkins, J., dated April 10, directing nonsuit at trial with a jury in Middlesex).—Allowed.

## APPEAL COURT II.

Before LINDLEY, L.J., BOWEN, L.J., and FRY, L.J.

THURSDAY, JUNE 18.

*Lethbridge and another* v. *Harris and another* (appeal of defendants from judgment of Mathew, J., dated February 2, at trial without a jury in Middlesex).—Dismissed.

*Nash* v. *Cunard Steam Ship Co.* (*Lim.*) (Q. B. *Crown Side*) (appeal of plaintiff from judgment of Pollock, B., and Charles, J., dated February 2, affirming judgment of County Court).—Allowed.

FRIDAY, JUNE 19.

*Taylor* v. *Taylor* (appeal of respondent (Marie Taylor) from order of Jeune, J., dated June 9, dismissing petition and refusing application of respondent for costs and alimony).—Allowed.

SATURDAY, JUNE 20.

*Mercantile Investment and General Trust Co.* (*Lim.*) v. *The International Company of Mexico* (appeal of plaintiffs from judgment of Day, J., dated Feb. 4, at trial without a jury in Middlesex).—*Cur. adv. vult.*

Before LINDLEY, L.J., LOPES, L.J., and FRY, L.J.

MONDAY, JUNE 22.

*Hick* v. *Rodocanachi, Sons & Co. and others* (appeal of defendants Raymond and Reid from judgment of Mathew, J., dated February 11, at trial without a jury in Middlesex).—Part heard.

TUESDAY, JUNE 23.

*Hick* v. *Rodocanachi, Sons & Co. and others.*—*Cur. adv. vult.*

*Brinckworth* v. *Pentelow* (appeal of plaintiff from judgment of Grantham, J., dated February 7, at trial without a jury at Northampton).—Dismissed.

WEDNESDAY, JUNE 24.

*Attorney-General* v. *Vestry of St. James and St. John, Clerkenwell* (appeal of defendants from refusal of North, J., dated June 8, of order for further and better particulars of claim).—Dismissed.

*Aplin* v. *Willey and another* (appeal of plaintiffs from refusal of North, J., dated June 15, of order of trial of action with a jury on the Western Circuit).—Dismissed.

*In re Worswick, dec. Robson* v. *Worswick* (appeal of Chaplains and Poor of Wyggeston Hospital, Leicester, from refusal of North, J., dated June 19, of order for trial by official referee).—Allowed.

*Bishop* v. *Southern Counties Deposit Bank* (appeal of plaintiff from judgment of Wright, J., dated February 11, at trial in Middlesex (jury discharged) damages agreed if judgment set aside).—Dismissed.

*Cross* v. *Roberts* (appeal of defendant from judgment of Lawrance, J., dated February 18, at trial without a jury in Middlesex and cross notice of contention by plaintiff).—Part heard.

BAR COMMITTEE.—At a meeting of the Bar Committee, held at the Luncheon Room, Lincoln's Inn, on Tuesday last, Sir Henry James was re-elected chairman; Mr. W. F. Robinson, Q.C., vice-chairman; Mr. E. P. Wolstenholme, treasurer; and Mr. S. H. Lofthouse, hon. secretary. The following resolution was also passed: "That, it having been represented to the Bar Committee that cases exist in which the sons of County Court judges are in the habit of practising before their fathers, the Bar Committee desire to record their opinion that such a system should be as far as possible discouraged, and that copies of this resolution be sent to the Lord Chancellor and the Attorney-General."

## HONOURS AND APPOINTMENTS.

MR. RICHARD ROACH PITTIS, J.P., of Newport, Isle of Wight, has been appointed Official Receiver in Bankruptcy for the district of the Isle of Wight, rendered vacant by the transfer of Mr. Wheeler. Mr. Pittis, who was an honour man, was admitted in 1873.

Mr. Robert Pearson, jun., of Helmsley, Yorks, has been appointed Clerk to the Guardians, the Sanitary Authority, School Attendance Committee, and Assessment Committee of the Helmsley Poor Law Union, and Superintendent Registrar of Births, &c., for the Unions of Helmsley and Kirby-moorside, all in succession to his late father, Mr. Robert Pearson, sen., who died on May 22 last. Mr. Pearson, who is also Registrar of the Helmsley County Court, was admitted in 1883, and is a partner in the firm of Messrs. Hugh W. & R. Pearson, of Malton, Helmsley, and Kirby-moorside.

Mr. Edward Vernor Miles, of 30 Theobald's Road, Bedford Row, W.C., has been appointed a Commissioner for Oaths. Mr. Miles was admitted in 1884.

Mr. Edward Niel Baynes, of 61 Lincoln's Inn Fields, has been appointed a Commissioner for Oaths. Mr. Baynes was admitted in 1885.

Mr. Wm. M'Kay (of the firm of Ward, Perks & M'Kay), of 85 Gracechurch Street, E.C., has been appointed a Commissioner for Oaths. Mr. M'Kay was admitted in 1885.

Mr. Walter Hills, of Margate, has been appointed by his Honour Judge Selfe to be registrar of the County Court of Margate, in the place of Mr. Egerton Isaacson, deceased, and his appointment has been approved by the Lord Chancellor.

Mr. Francis Ogden, of Manchester, has been appointed a Commissioner for Oaths. Mr. Ogden was admitted in 1887.

Mr. Benjamin Houldsworth Lomax, of St. Helens, has been appointed a Commissioner for Oaths. Mr. Lomax was admitted in 1885.

Mr. John Pethybridge, of Bodmin, has been appointed a Commissioner for Oaths. Mr. Pethybridge was admitted in 1883.

Mr. James Marshall Allan Poncia, of Brighton, has been appointed a Commissioner for Oaths. Mr. Poncia was admitted in 1883.

ACTION AGAINST A COUNTY COURT REGISTRAR.—At the County Court, Plymouth, on June 16, before Judge Edge, Mr. Petherick Higman, farmer, recovered from Mr. Albert C. L. Glubb, registrar of Liskeard County Court, the full penalty of 50*l.*, under section 41 of the County Court Act, 1888, which provides that no registrar or other officer of the County Court shall be concerned in any proceedings as solicitor or agent for any party. The evidence showed that in his private business Mr. Glubb was assisted by his son, who was admitted two years ago. Mr. Glubb, senior, paid his son no remuneration, but the latter saw his father's clients and advised them. When a case resulted in a County Court action the son took the proceedings in hand. It was proved that in one action the registrar was, in the opinion of his client, his solicitor from the beginning to the end of the case, and thus actually adjudicated in a case in which he was directly concerned. The defence was that the registrar took nothing but a father's interest in the affairs of his son, who carried on a quite distinct business, and that the son practised in the Liskeard County Court at the invitation of the late Judge Morgan Howard.

## BOOKS RECEIVED FOR REVIEW.

BYLES on Bills. Fifteenth Edition. London: Sweet & Maxwell. 1891.

Emden's Practice and Forms in Winding up Companies. Fourth Edition. London: W. Clowes & Sons (Lim.). 1891.

Index of Cases Judicially Noticed, 1865–90. By G. J. Talbot and Hugh Fort, Barristers-at-Law. London: Stevens & Sons (Lim.); Sweet & Maxwell (Lim.). 1891.

Law of Tithes and Tithe Rent-charge (The). By E. F. Studd, Barrister-at-Law. Second Edition. London: Stevens & Sons (Lim.). 1891.

Patents for Inventions and how to Procure them. By G. G. M. Hardingham. London: Crosby Lockwood & Son. 1891.

LORD TRURO'S WILL.—Probate duty has been paid on 33,350*l.* 19*s.* 1*d.*, as the net value of the personal estate of Colonel the Right Hon. Charles Robert Claude, Baron Truro, of 29 Dover Street, Piccadilly, and Falconwood, Shooter's Hill, who died at the Hotel Eden, Rome, on March 27, aged seventy-five years. Lord Truro's will bears date July 8, 1890, and the executors are Mr. Arthur Edwin Quekett, of 29 Delamere Crescent, Paddington, and Mr. Charles Alfred Wood, of 40 Cheapside, solicitor. The testator devises and bequeaths all his real and personal estate in trust, so much of the income thereof to be applied as the trustees may think necessary for the benefit of his ward, Emily Mowbray, until she is twenty-one years of age, when the income and accumulations of income are to be paid to her for her life, but with liberty on her marriage to raise such sum as may be necessary for her own use and benefit. Subject as above stated and to her life interest, the estate is to be held in trust to her appointment in favour of her children, or, in the event of her death without leaving issue, for Lord Truro's nephew, Thomas Montague Morrison Wilde.

GRAY'S INN.—Saturday, June 13, being the Grand Day of Trinity Term, the treasurer (Mr. Arthur Beetham) and benchers of Gray's Inn entertained at dinner the following guests: The United States Minister, the Lord Chancellor, Lord Saye and Sele, the Lord Chief Justice of England, Mr. Justice Charles, General Sir Charles Arbuthnot, the President of the Royal Society (Sir William Thomson), Sir H. Trueman Wood, Admiral Lindesay Brine, Mr. Forwood, M.P., the President of the Incorporated Law Society (Mr. Cunliffe), the Sub-Dean of the Chapels Royal (the Rev. Edgar Sheppard), the President of the Institution of Civil Engineers (Mr. Berkeley), the Rev. Dr. Stokoe, and Dr. Godfrey; and the Masters of the Bench present, in addition to the treasurer, were the Duke of Connaught, Mr. Henry Griffith, the Hon. Sir Arthur Collins, Q.C. (Chief Justice of Madras), Mr. Hugh Shield, Q.C., Mr. W. Bowen Rowlands, Q.C., M.P., Mr. James Sheil, Mr. W. D. Jeremy, Mr. Charles Forbes, Mr. John Rose, his Honour Judge Paterson, Mr. E. H. Power, Mr. James Mulligan, Mr. Miles W. Mattinson, M.P., Mr. J. C. Lewis Coward, and the Rev. J. H. Lupton.

THE COINAGE.—The Chancellor of the Exchequer's Coinage Bill proposes that it shall be lawful for the Queen by Order in Council to direct that gold coins of the realm which have not been called in by proclamation and are below the least current weight as provided by the Coinage Act of 1870, shall be exchanged or paid for by or on behalf of the Mint at their nominal value. This, however, will only be done if the coins have not been 'illegally dealt with;' and for the purposes of the bill a gold coin will be deemed to have been illegally dealt with where it has been impaired, diminished, or lightened otherwise than by fair wear and tear, or has been defaced by having any name, word, device, or number stamped thereon, whether the coin has or has not been thereby diminished or lightened. In a sovereign or half-sovereign, loss of weight exceeding three grains from the standard weight is to be *primâ facie* evidence that the coin has been impaired, diminished, or lightened otherwise than by fair wear and tear. The exchange is to be carried out subject to such conditions as to time, manner, and order of presentation as may be mentioned in the order. Towards meeting the expenses of the exchange of coinage the sum of 400,000*l.* is to be charged on and issued from the Consolidated Fund in the year ending March 31 next. So far as not immediately required, the sum may be invested in such manner as the Treasury may direct, and any interest thereon is to be applied for the purposes of the bill. In the making of coins a 'remedy' (or variation from the standard weight and fineness) is allowed of an amount not exceeding that specified in a schedule of the Coinage Act of 1870. It is proposed by the bill to increase these 'remedy allowances' in the case of some coins.

BUSINESS IN CHAMBERS.—On Wednesday, June 17, an application was made to Mr. Justice Chitty to restore to his paper for hearing in chambers a summons which came on for hearing on Monday last, and was then struck out. It appeared that the solicitor of one of the parties alone attended in chambers, and had asked that the summons might be adjourned for a week. His lordship said that it frequently happened that when summonses were before him in chambers some of those parties who ought to appear before him did not attend. In one case not even a solicitor's clerk attended, and he was kept waiting doing nothing for half-an-hour. This was exceedingly inconvenient. He was not now speaking so much of inconvenience to himself, although the result was that he had to read the papers a second time. The non-attendance he was complaining of occasioned general inconvenience, and also expense and delay. He had stated on Monday last that he would not grant an application made to him in chambers of the present nature, and he directed the application to be made to him in open Court. He would grant the present application, but he would not allow the costs of it.

## MARRIAGES.

On June 1, at Monckton Hall, Musselburgh, N.B., Thomas Henry Armstrong, M.A., Solicitor, Edinburgh, to Nellie, daughter of the late John Gulland.

On June 17, at Olney, Bucks, Archibald Allen, Solicitor, Olney, to Emily Maud, youngest daughter of the Rev. J. P. Langley, Vicar of Olney.

On June 23, at St. Giles's, Edinburgh, David Forsyth, Solicitor, Elgin, to Annie Glover, only daughter of the late David William Murray, Aberdeen Park, London.

## DEATHS.

On May 29, at his residence, Melrose, Sandycombe Road, Kew Gardens, of pneumonia, following influenza, Thomas M'Millin, Solicitor, in his 53rd year.

On May 31, at Wingfield, Stoke, near Devonport, Henry Charles Fox, son of the late Charles Fox, Esq., of Plymouth and Blackheath, and grandson of the late Robert Bayly, Esq., Q.C., of the Inner Temple aged 50 years.

On June 18, at Glen Lyn, Lordship Lane, S.E., late of Blackheath, Eliza Pain, the dearly beloved wife of Julius Samuel Miller, Solicitor, in her 48th year.

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# The Law Journal.

*SATURDAY, JULY* 4, 1891.


## 'OBITER DICTA.'

THE profession will hear with much regret that Mr. Justice Butt has been ordered by his medical advisers to return at once to Wiesbaden for the benefit of his health, and that his lordship will not sit in Court again this side of the Long Vacation. Mr. Justice Jeune will dispose of the Admiralty business during the absence of the President, and Mr. Justice Collins has been temporarily attached to the Probate and Divorce Division, and, after disposing of the Probate special jury causes, will deal with the cases in the Divorce list.

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ACCORDING to an evening contemporary, the President of the Probate, Divorce, and Admiralty Division will resign directly an Act is passed amending the Judicature Act in such a way as to enable a judge to be appointed President other than the junior judge of the Division. It is also stated that Mr. Justice Smith will then be appointed President. We are aware of no authority for these statements, but Mr. Justice Jeune was so recently appointed to the bench that it may probably be thought that some senior judge should be promoted, while there can be no doubt that the appointment of Mr. Justice Smith would be a popular one with the profession.

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WE are certainly disposed to agree with the opinion expressed by the bar committee at their annual meeting that the sons of County Court judges should be discouraged from practising before their fathers. It is obviously not in accordance with the best traditions of the bar that they should do so. Such a practice must of necessity give rise to a suspicion of partiality on the part of the judge, and although the suspicion may be perfectly groundless, it would seem most undesirable to make it possible to entertain it.

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AT the recent Bedford Assizes, a prisoner on his trial for rape, after giving evidence himself in denial of the charge, under the Criminal Law Amendment Act, 1885, proposed to call one of the jurors as a witness to his character. Mr. Justice Williams declined to allow the juror to be sworn, but said that he might give his fellow-jurors the benefit of his knowledge in deliberating on the verdict, and this having been done, the jury acquitted the prisoner. We have much doubt whether the practice pursued was in accordance with precedent. It appears to be a settled rule (see 'Best on Evidence,' 7th edit. p. 193) that a juryman may be a witness for either of the parties to a cause which he is trying, and 'it is essential that this should be so, as otherwise persons in possession of valuable evidence would be excluded if placed on the jury panel, and might even be fraudulently placed there for the purpose of excluding their testimony.' It is said, too (see 'Starkie on Evidence,' 3rd edit. p. 542), that if a juror know any facts material to the issue he ought to be sworn as a witness, and if he privately state such facts, it will be ground of motion for a new trial. The rule was applied to a criminal trial in *Regina* v. *Rosser*, 7 C. & P. 648; and though we can find no instance of its being applied to a witness merely to character, we cannot but think that it ought to be applied to such a witness, on the ground that the test of cross-examination cannot be properly employed to testimony privately given in the jury-box. It is true, no doubt, that witnesses to character are seldom cross-examined, but their liability to cross-examination is undoubted. Moreover, if evidence as to character be given privately in the jury-box, there will not be the same facility for the prosecution, under 6 & 7 Wm. IV. c. 111, giving evidence, if they should happen to possess it, that the prisoner has been previously convicted of felony.

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'IN the *Berkeley Peerage Case*,' so it is said in 'Taylor on Evidence,' 8th edit. vol. ii. p. 1175, in reference, no doubt, to the case heard at the beginning of the present

century, 'counsel entertained some idea of calling the Prince Regent as a witness, but it ultimately became unnecessary to do so.' In the *Berkeley Peerage Case* which is now being heard before the Privileges Committee of the House of Lords, a letter signed by George IV. was held inadmissible, but without any direct overruling of *Abignye* v. *Clifton*, Hol. 213, in which the simple certificate of James I. as to what passed in his hearing was admitted in evidence *in the lifetime* of His Majesty. *Abignye* v. *Clifton*, however, is a case which has been very much questioned (see 'Best on Evidence,' 7th edit. p. 185), and the better opinion seems to be that the evidence of the sovereign, if given at all, must be given on oath (see Taylor, citing 2 Lord Campbell's 'Lives of the Chancellors,' 510). It is, of course, perfectly clear, as was pointed out by Baron Parke in *The Attorney-General* v. *Radloff*, 10 Ex. p. 94, that the sovereign cannot be compelled to give evidence, and we think it to be equally clear that the deduction of Baron Parke from this, to the effect that the sovereign cannot be a witness at all, was quite unsound. The fact, however, remains undoubted that in no case has the sovereign yet appeared as a witness, and that Charles I. took upon himself to direct the judges of his day to leave the question of admissibility of his evidence an undetermined one in point of law.

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BY Mr. Ritchie's County Council Elections Bill it is proposed that March 8 shall be the ordinary day of election of county councillors, instead of November 1, as at present, under section 75 of the Local Government Act, 1888, and section 52 of the Municipal Corporations Act, 1882; that all periods which in the enactments of the Municipal Corporations Act, 1882, are computed by reference to November 1 shall, so far as those enactments apply to county councils, be computed by reference to March 8 then next following; that the county register shall be completed before December 20 and come into operation on January 1; and that the burgess lists, forming the burgess roll, which come into operation on November 1 (see section 45 of the Municipal Corporations Act, 1882) 'shall on and after that day, until the next January 1, form part of the county register in substitution for the former burgess lists.' It is also proposed that, 'for the purpose of the elections of county councillors for any electoral division which is co-extensive with, or wholly comprised in, a municipal borough,' the mayor of the borough shall be the returning officer. The bill, which is occasioned by the impossibility of getting the registers ready in time for elections in November next, and which it had been intended to obviate the necessity of by a certain long ago dropped County Electors Registration Acceleration Bill, is expressed to be a permanent, not a temporary, one, as might have been expected. By what are called 'transitory provisions' it is proposed, as of course would be necessary, that the county councillors, whose term of office at present expires in November next, shall continue in office until the next following day of election fixed by the bill. It is much to be regretted that the bill should have become necessary.

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THE concluding paragraph of clause 14 of the Stamp Duties Bill (see *ante*, p. 328), which substantially reproduces in other respects section 17 of the Stamp Act, 1870, contains an alteration of considerable importance. It is pretty well known that, though under that enactment no unstamped document shall, except as in the Act mentioned, 'except in criminal proceedings, be pleaded or given in evidence, or admitted to be good, useful, or available in law or equity' (words which reproduce those of 5 & 6 Wm. & M. c. 21, s. 11), the Courts have held that for 'collateral purposes,' as to prove an illegal consideration for a debt (*Coppock* v. *Bower*, 4 M. & W. 361), unstamped documents may be admissible. But by the bill it is proposed to provide that no unstamped document shall, except on payment of unpaid duty and penalty, and except in criminal proceedings, 'be given in evidence or be available *for any purpose whatever*.' These words will effect a very material change, and sweep away the judge-made law (whether right or wrong) in which unstamped documents have been held to be admissible 'for collateral purposes.' Can the alteration be reasonably objected to? We think not, and for this reason: It is already provided by section 54 of the Act of 1870 that any person taking an unstamped promissory note 'shall not be entitled to recover thereon, or to make the same available *for any purpose whatever*,' and this enactment received a strict construction in the recent case of *Ashling* v. *Boon*, in which Mr. Justice Kekewich, following *Green* v. *Davies*, 4 B. & C. 235, and distinguishing *Evans* v. *Prothero*, 1 D. M. & G. 572, held that a promissory note, insufficiently stamped, cannot be admitted in evidence to prove the receipt of the money for which the note was given.

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THE case of *Osborne* v. *The Skinners' Company* (26 Notes of Cases, 107) has called attention to another instance of the remarkably careless manner in which Parliamentary drafting is now performed. Part 2 of the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70) is the offending statute. Hitherto there have been two separate classes of Acts dealing in different ways with different branches of this subject. On the one hand were the Artisans Dwellings Acts, in which, amidst more important provisions for the erection of such dwellings on a large scale, power was given to local authorities to take action in the case of houses unfit for human habitation, and to remedy the evil by ordering structural alterations or improvements, or, if necessary, by demolition. On the other hand were the Nuisance Removal and Public Health Acts, by which the more trivial nuisances of blocked drains, bad ventilation, and the like were intended to be dealt with. For these two different classes of Acts two different definitions of the expression 'owner' of the premises were, as became their subject-matter, adopted. In the former, lessees were included in the term only if they had an interest in the premises of twenty-one years or more (Artisans Dwellings Act, 1868, s. 3). In the latter, the word included any person receiving a rack-rent from the occupier either on his own account or as trustee or agent (Nuisances Removal Act, 1855, s. 2; Public Health Act, 1875, s. 4; *Cook* v. *Montagu*, 41 Law J. Rep. M. C. 119). In other words, the structural alteration was enforceable against the freeholder, the remedy of the temporary nuisance against the rack-renter. In these circumstances the draftsman of the Housing of the Working Classes Act, 1890, proceeded to his task, and, having first, in section 29, inserted the definition

of 'owner' from the Artisans Dwellings Act, 1868, he in section 32 adopted a few clauses from the Nuisances Removal Act, 1855, which for the sake of variety, we presume, he relegated to a schedule. In *Osborne* v. *The Skinners' Company* (*ubi sup.*) the Divisional Court decided, as they were clearly bound to do, that the definition of section 29, and not that of the Nuisances Removal Act, was to be looked to in the interpretation of these sections. The result is that a local authority may now, upon a representation being made that a house is unfit for human habitation owing to some trivial nuisance, proceed against the owner of the ground-rent for the closing of the house. But, further, previous Acts require, in one form or other, that notice shall be given to the person affected of the actual nuisance or defect complained of and the particular work required to be done. In the case of important alterations the Artisans Dwellings Act, 1868, contains elaborate provisions for the supply of a plan, specification, and estimate of cost to the owner without charge. The draftsman of the Act of 1890 appears to have considered such details as surplusage. The single form of notice in schedule 4, which, by the way, from its very wording is only applicable elsewhere than in London, simply requires the owner 'to make the said premises fit for human habitation.' The freeholder must, therefore, discover the evil and the remedy for himself. Meanwhile, the occupiers of the premises will have been removed under section 32, and a reasonable allowance on account of their expenses in removing have become a civil debt due from them to the local authority, recoverable summarily. Finally, in section 36, the draftsman decided to reproduce bodily section 25 of the Artisans' Dwellings Act, by which a charging order is to be granted to an owner when he has completed 'any works required to be executed by an order of a local authority under this part of this Act.' As 'this part of this Act' does not give a local authority power to require the execution of any works, as the Act from which the section is taken does, the freeholder may find this section somewhat delusive. The fact that a Court may, and probably will, give a meaning to this section is no excuse for the insertion of a provision which, literally, certainly has no meaning.

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IN the case of *In re an Arbitration between Williams and Stepney* (noted last week) the Court of Appeal differed from a Divisional Court, consisting of Mr. Justice Mathew and Mr. Justice Day, upon the important question whether the Arbitration Act, 1889 (52 & 53 Vict. c. 49), is applicable to an arbitration under an agreement entered into before the Act came into operation. A mining lease granted in 1839 contained an arbitration clause, which, however, gave no power to the arbitrators to award costs. A dispute having arisen in 1890, subsequent to the coming into operation of the Act, it was referred to three arbitrators, who made an award giving costs to the successful party. The question turned entirely upon sections 2 and 25 of the Act. The Divisional Court were of opinion that these provisions gave no power to the arbitrators to award costs; but the Court of Appeal, consisting of Lord Esher, M.R., and Lords Justices Lopes and Kay, took a different view, holding that section 25 applied the provisions of the whole of the Act to arbitrations begun after the commencement of the Act under any agreement made before it came into operation, and that the arbitrators had, therefore, power to give costs by reason of section 2.

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A BALANCE-ORDER for payment of calls on shares in a company is a process for enforcing a previous order relating to calls, and is made upon such of the contributories as have made default, or such of them against whom it is thought proper to make such order. In the recent case of *The Westmoreland Green and Blue Slate Company* (*Lim.*) v. *Fielden* (Notes of Cases, p. 103) it was decided by Mr. Justice Kekewich that an action lies by the liquidator in the name of a company which is in course of being wound up against a contributory for moneys owing on the allotment of his shares, and for calls made on his shares before the winding-up, notwithstanding that the liquidator has obtained a balance-order in the winding-up for payment of the same moneys under section 101 of the Companies Act, 1862, but that no action lies on the balance-order itself. That decision has been affirmed by the Court of Appeal, their lordships holding that a balance-order is not equivalent to a judgment, and does not operate as a merger of the original debt; and, further, that the Legislature, in providing this summary remedy, did not intend to take away the ordinary remedies of the liquidator. In *Chalk Webb & Co.* (*Lim.*) v. *Tennent*, 57 L. T. (N.S.) 598, it was decided by Mr. Justice North that no action could be brought upon a balance-order. In that case the calls in respect of which the balance-order had been made were made in the winding-up, whereas in *The Westmoreland, &c. Co.* v. *Fielden* they were made before the commencement of the winding-up. Mr. Justice North's decision was accordingly sought to be distinguished on that ground, but without success. It seems clear that in actions of this nature the liquidator is not suing upon the balance-order, but on the previous obligation in respect of the allotment-money and calls. It would be manifestly wrong, therefore, to treat the liquidator as barred by the balance-order from taking further proceedings against a defaulting contributory.

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THE new scheme of the Inns of Court will not, we hope, be finally adopted without a reconsideration of the question raised by the late Master of the Rolls, when Solicitor-General in 1872, whether it would not be desirable to admit to the lectures 'not only students of the Inns of Court, but gentlemen not intending to follow the law as a profession, and even members of Parliament.' Anyone can become a student of an Inn of Court, and the late Master of the Rolls suggested that the present tax imposed on entry should be remitted, 'so far as regarded those students who made a declaration that they did not intend to follow the law as a profession.' Commenting on this, we wrote many years ago (see LAW JOURNAL for March 8, 1872) with approval of the suggestion that the tax should be remitted in such cases, as 'we should be glad to see the knowledge of law in its outlines and leading principles widely disseminated among the educated classes.' And we still think that there is much to be said for the establishment, by the Inns of Court, of a system of lectures 'public' in the widest sense of the term.

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SIR WILFRID LAWSON, himself a justice of the peace, appealed through the *Times* to the public for subscriptions towards the costs of the justices of the peace who originally decided the case of *Sharp* v. *Wakefield* in the same way as the House of Lords eventually decided, and the requisite amount was at once subscribed. Sir Wilfrid puts the costs at about 600*l*. How the justices could possibly have become liable for these or any costs utterly passes our comprehension. The licensing justices, the quarter sessions, the High Court, the Court of Appeal, and the House of Lords successively, *five* Courts in number, without any dissentient voice, pronounced the same decision; and it seems so utterly opposed to all justice as well as to all precedent that the licensing justices should have to pay any costs (for it is only in very rare cases that justices have to pay costs, even if they should happen to have decided wrongly, as we recently [*ante*, p. 344] pointed out), that we cannot help thinking that there must be some mistake. Should it turn out to be really the fact that the justices who originally decided *Sharp* v. *Wakefield* became personally liable for the costs of that celebrated appeal, and should this fact become generally known, we cannot but think that the office of justice will cease to be considered a desirable one.

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THE right of admittance to the Courts, on which we published letters last week (*ante*, p. 436), no doubt requires more definite settlement. The main obstacle to its settlement is, that it is only occasionally, say once or twice a year, that 'unoccupied' professional men, be they barristers, solicitors, or law students, can find themselves disputing for admission with the public, or any limited portion of it, admitted by ticket. When the occasion for any dispute has ceased, the dispute dies a natural death till a new occasion arises. We incline to think that the public ought to have the gallery, the whole gallery, and nothing but the gallery, except standing room on the floor, and that after the most careful provision made for the 'occupied' counsel and solicitors, the rest of the Court ought to be divided amongst the unoccupied counsel and solicitors, the reporters and the law students, reporters especially being entitled to special consideration. There would be great practical difficulty, however, in working such a scheme of appropriation.

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THE sub-treasurer of the Inner Temple has written a letter to the press explaining that the difficulty as to payment for admission to the 'Maske of Flowers' last week arose from the fact that the promoters of the performance only learnt at the last moment that a theatrical license was requisite, and that as it was then too late to take any steps to obtain one, they resolved to avoid even a technical breach of the law, and to make the admission free. No objection whatever was raised by the County Council. A license for the performance has now, however, been obtained from the Lord Chamberlain, and the second representation of the revival will take place in the Inner Temple Hall on Monday next, at 8.30 P.M. It was intended that the performance should have been given on Tuesday last, and it is announced that the tickets issued for that occasion will be available on Monday.

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## 'LAW JOURNAL REPORTS' FOR JULY.

THE LAW JOURNAL REPORTS for July contain nearly 100 pages of Chancery cases (pp. 377–472), of which there are ten cases in the Appeal Court and four cases decided by the several judges of that Division. Twenty-seven cases in the Queen's Bench Division (fourteen of them on appeal and one in the House of Lords) cover from p. 361 to p. 456; and there is also a small instalment of five Probate cases (pp. 40–56). The number also contains Orders and Rules under the Winding-up and Tithe Rent-charge Recovery Acts and the Statutes of the Realm (ch. 8 to ch. 19 inclusive).

In the Chancery Division, in the case of *Roberts* v. *Cooper*, the Court of Appeal adjusted a conflict of claims between a wife insisting on her equity to a settlement and the assignees of her reversionary interest. In *Elve* v. *Boyton* a company created by royal charter was held to be within an investment clause which authorised the application of the funds to the shares of any company incorporated by Act of Parliament. *In re Leavesley* decided questions as to the efficacy of charging orders obtained by judgment creditors of a lunatic. *In re The Johannesburg Hotel Company* was a case of cross-claims between two companies, one of which was in liquidation and had been promoted by the other. *In re Porrett* was a case in which the registrar of the Liverpool District Registry was held by the Court of Appeal, reversing Mr. Justice Kekewich, to have exceeded his authority in making an order on a petition of course for delivery and taxation of a bill of costs of a solicitor living at Sheffield, who had been employed by a company having its registered office at Liverpool to take legal proceedings in London. *In re Lacon* was a decision of the Court of Appeal in which the presumption against double portions was rebutted. In the winding-up of *The Bridgewater Navigation Company* the Court of Appeal varied the order of Mr. Justice North in respect of the distribution among different classes of shareholders of the surplus assets of the undertaking which had been sold. In *The Whitwood Chemical Company* v. *Hardman* the Court of Appeal dissolved an injunction which had been granted by Mr. Justice Kekewich restraining a company's manager from setting up and becoming a director of a rival company, as in the agreement made between the manager and the plaintiff company there was no stipulation against his doing any particular thing. In *In re Radcliffe* the Court declined to order the transfer to a father of the moiety of a fund subject to a power of appointment on which, after the death of one of his two sons, the father had released the power. *In re Slevin* involved the application of the *cy-près* doctrine, where the charity to which a legacy had been bequeathed had ceased to exist before the legacy was paid over, though it existed at the testator's death. *Angus* v. *Clifford* was an action of deceit, in which the Court of Appeal applied the doctrine of *Derry* v. *Peek*, and refused, reversing Mr. Justice Romer, to hold directors liable for statements in a prospectus untrue in fact, but not made with fraudulent intent, the prospectus having been issued before the passing of the Directors' Liability Act. *In re Scott* was a case of the application of the Infants' Settlement Act, 1855, to an illegitimate infant who died leaving a husband surviving. *In re The Opera Company* was an adjudication of the conflicting claims of the sheriff and the official liquidator of a company, in which the latter, as the officer of the Court, was

restrained from taking advantage of a mistake in law made by the former. *In re Jeffery* was a case of will-construction with respect to contingent gifts and the operation of section 43 of the Conveyancing Act, 1881.

In the Queen's Bench Division the House of Lords held, in *Holliday* v. *The Mayor, &c. of Wakefield*, that under the Waterworks Clauses Act, 1847, compensation for the prospective prevention of the working of a mine by reason of leakage from a reservoir cannot be awarded at any time before the working has approached the limits mentioned in section 22. In *Learoyd* v. *Brook* a master was held to have been justified in dismissing an apprentice for misconduct without returning any part of the premium. *Ex parte Ohlson* and *Ex parte Garland* were cases of exemption from obtaining licenses under the Pawnbrokers Act, 1872. *Regina* v. *The County Council of Norfolk* defined the limits of the powers of highway authorities, of highway districts or areas, and of district commissioners under a local Act and the construction of the Highway and Locomotives Act, 1878. In *Phelps* v. *Hill* the Court of Appeal held that when a ship is forced to put back for repairs the master must not make a greater deviation from the proper course of the voyage than is reasonably necessary. In *Clink* v. *Rudford* the Court of Appeal interpreted the lesser clause of a charterparty and the consequences of detention at a port of loading in respect of demurrage and lien. *Crumbie* v. *The Wallsend Local Board* defined the meaning of the words 'the accruing of the cause of the action' in the Public Health Act, 1875, s. 264. *Shepherd* v. *Berges* explained the meaning and application of a re-entry clause in a lease. In *In re Mirams* it was held that a charge on his income created in favour of a creditor by a workhouse chaplain was not invalid on the ground of public policy, as the office was not a public office, inasmuch as the pay came out of local and not out of national funds. *Unwin* (*petitioner*) v. *Macmullen* (*respondent*) was a case of qualification to be enrolled as a burgess under section 9 (*e*) of the Municipal Corporations Act, 1882. The Court of Appeal has no jurisdiction in such a case to hear an appeal. According to *Selig* v. *Lyon*, where a trustee in bankruptcy refused to continue an action in which the bankrupt was plaintiff, and submitted to a stay of proceedings, the bankrupt, having obtained his discharge and obtained an assignment from the trustees of this *chose in action*, was held not to be entitled to have the stay removed. In *Miller* v. *Dell* the question was the date at which the Statute of Limitations, in somewhat peculiar circumstances, began to run. In *Henderson* v. *The Underwriting and Agency Association* it was held that the peculiar practice of granting discovery of ships' papers was applicable to actions brought upon marine policy alone and could not be extended. In *Beasley* v. *Roney* damages for injuries sustained by a wife were held, under the Married Women's Property Act, 1882, to be her separate property. *In re Dewhurst* decided that a collateral consideration could not make betting debts provable in bankruptcy. *Paine* v. *Chisholm* was a case in which costs on the higher scale were refused. According to *Allcock* v. *Hall* the Court of Appeal has power, under Finlay's Act, to enter judgment instead of ordering a new trial when it is satisfied that the verdict is perverse and no further evidence could be given. Questions of undue preference under the Railway and Canal Traffic Act, 1888, were settled in *The North Lonsdale Iron and Steel Company* v. *The Furness Railway Company*. In *Steinman* v. *The Angier* (1887) *Line* a shipowner was held not to be protected against thefts by his own servants by the words 'thieves of whatever kind, whether on board or not, by land or sea,' in a bill of lading. In *Montgomerie* v. *The United Kingdom Mutual Steamship Association* the construction and operation of a marine insurance policy were defined. *Armour* v. *Bate* decides that under Order XXXVI., rule 32, where a plaintiff does not appear at the trial the proper judgment is one dismissing the action, and not a judgment for the defendants. *In re The Council of the Borough of Dover and the Kent County Council* decides that the Court of Appeal has no jurisdiction to entertain an appeal from the High Court on questions submitted under section 29 of the Local Government Act, 1888. In *The Overseers of the Parish of Putney* v. *The London and South-Western Railway Company* the promoters of a line of railway were held liable, under section 133 of the Lands Clauses Consolidation Act, 1845, to make good deficiencies in poor-rates in respect of land purchased without statutory powers. In *Roberts* v. *Jones* and *Willey* v. *The Great Northern Railway Company* the attempt by a plaintiff who recovered a substantial portion of his claim oppressively to fix an unjust liability on the defendant was held good ground for depriving him of his costs, and unjustifiable use by the plaintiff of his privilege in choosing his venue was also ground for special dealing with the costs. In *Brandon* v. *M'Henry* the rejection of a proof by a trustee in bankruptcy was declared valid, even when the bankruptcy was subsequently annulled. *Reeve* v. *Gibson* was a case in which special statutory costs were given in an action respecting dramatic copyright. *In re Wallis* decides that the Bankruptcy Court has power to allow a bankrupt to withdraw an application made under the Act of 1883, s. 28, for an order of discharge.

In the Probate, Divorce, and Admiralty Division, in *O'Shea* v. *Wood*, the Court held that an order could not be made to produce for inspection documents which are the private property of plaintiff's solicitor. According to *Michell* v. *Michell* the Court has no power under the Matrimonial Causes Act, 1884, s. 3, to order a settlement out of property settled to the separate use of a wife without power of anticipation. *Askew* v. *Askew* was a case of limited grant of administration *pendente lite*, and of security given in double the amount of specific sums received by the administrator. *The Curfew* involved special questions under a charterparty. *In the Goods of Streatley* ratified an unusual form of attestation of a will.

## THE CRIMINAL EVIDENCE BILL.

FURTHER consideration of the Chancellor's Evidence Bill makes it still more clear that to be worth passing it needs much alteration. If it were not that the Evidence (Consolidation) Bill applies to Ireland, we should suggest that the two bills should be referred to one committee in the House of Commons and dealt with in the same way as the London Public Health Bills have been treated by amalgamation into one comprehensive measure. In the memorandum to the Consolidation Bill the draftsman has specified most, if not all, the enactments making parties to criminal proceedings and their husbands or wives competent witnesses. And

whether the bills are dealt with together or separately, all these enactments ought to be scheduled for repeal, so that we may not have to forage the statute-book for the exceptions to the general rule.

It will be necessary, if this is done, to guard against altering the law for the worse by imposing the fetter of consent where it does not now exist.

The only cases in which the husband or wife are now compellable witnesses seem to be (1) under 40 & 41 Vict. c. 14, s. 1, with reference to criminal proceedings to declare or enforce civil rights (one of these *quo warranto* has now been made a civil proceeding); and (2) offences against the property of husband or wife (see 47 & 48 Vict. c. 14, s. 1, which amended 45 & 46 Vict. c. 75, s. 12, in consequence of the decision in *Regina* v. *Brittleton*, 53 Law J. Rep. M. C. 83; L. R. 12 Q. B. Div. 266); and (3) offences against the person or liberty of husband or wife by the other party to the marriage, in which case the injured party is at common law a competent and apparently a compellable witness (Taylor, 8th edit. 1165). If a general rule is to be laid down as to the evidence of husbands and wives, the proviso as to the need of the defendant's consent, which is in any way absurd, ought to be excised, or some provision is needed to make it clear that the power to withhold consent does not apply when an offence has been committed by one party against the marriage tie or the person or property of the other party.

The whole existing law as to England as proposed to be altered might be then summed up in the following manner:—

'1. Except as hereinafter in this section provided, every party to any legal proceeding and every person by or on whose behalf the proceeding is brought or defended, and the husband or wife of the party or other person, is an admissible and compellable witness in the proceeding.

'2. The defendant to a criminal proceeding and his or her wife or husband is an admissible witness at every stage of the proceeding, but, except as hereinafter provided, is not a compellable witness.

'3. In a criminal proceeding for *bigamy* or for any offence by any person against the person or property of his or her wife or husband, the husband or wife of the defendant is a compellable witness (45 & 46 Vict. c. 75, s. 12; 47 & 48 Vict. c. 14, s. 1).

'4. In a criminal proceeding for the non-repair of a public highway or bridge, or for a nuisance to any public highway, river, or bridge, and upon a criminal proceeding for the purpose of trying or enforcing a civil right, every defendant and his or her wife or husband is a compellable witness.'

These proceedings are in substance civil; consequently it would not be advisable to give the defendant the advantage of not being compellable to testify.

'5. Where the wife or husband of a defendant is not a compellable witness, he or she is not an admissible witness against the defendant without the consent of the defendant.'

The evidence, it is presumed, will be admissible without defendant's consent against persons jointly charged.

'6. A defendant, or any other person called as a witness in a criminal proceeding, is entitled to refuse to answer any question tending to show that the defendant has committed or has been convicted of any offence for which he cannot be convicted in the particular proceeding, unless the proof that the defendant has committed or has been convicted of the other offence is admissible evidence to show that the defendant is guilty of an offence of which he can be convicted in the particular proceeding, or unless the defendant has given evidence of good character.'

This provision is drawn with reference to the rules of law as to the trial of persons accused of offences after previous convictions. (See 7 & 8 Geo. IV. c. 28, s. 11; 6 & 7 Will. IV. c. 111; and 24 & 25 Vict. c. 96, s. 116; 24 & 25 Vict. c. 99, s. 37; 35 & 36 Vict. c. 112, s. 9.)

'7. The defendant to a criminal proceeding, if called as a witness, is not entitled to refuse to answer any question on the ground that the answer would tend to criminate him as to any offence of which he might be convicted in the particular proceeding.

'8. A proceeding on the revenue side of the High Court is not a criminal proceeding within the meaning of this section.

'9. Nothing in this section shall make any person in a civil proceeding, nor any person other than a defendant in a criminal proceeding, compellable to answer any question tending to criminate himself.'

The rule of 16 & 17 Vict. c. 83, s. 3, that husband or wife are not compellable to disclose communications during marriage, which is included in the Evidence Consolidation Bill, will be considerably cut into as to criminal proceedings by the Chancellor's bill. At present the husband or wife is not compellable if he or she objects, but apparently the ground of objection in the future will be not the objection of the witness but that of the defendant.

The rule as to questions tending to show adultery (32 & 33 Vict. c. 68, s. 3) will not be affected by any of the alterations above suggested, if that enactment is either left outstanding or re-enacted in the Evidence Bill.

## THE 'MASKE OF FLOWERS.'

THE 'Maske of Flowers' (see *ante*, p. 427) will be again represented at the Inner Temple Hall on Monday evening next, at half-past eight, tickets being obtainable at the treasurer's office on payment of half-a-guinea, and the performance being for the benefit of a much-needed and useful charitable institution. Nor will the money be returned at the doors this time. Neither the County Council nor the ghost of the Board of Works, neither the Lord Chamberlain nor the Middlesex Magistrates, neither the Theatres Act of the present reign, nor the Public Entertainment Act of George II. have any remaining terrors for the spirited promoters of the 'Maske.' Let us now glance for a moment at the statutes and cases which bear on the curious question whether, and how far, the Lord Chancellor and the benchers of the Inner Temple were on Wednesday week last within an inch of being fined almost as much as they could afford to pay, and, what would have been much worse, becoming 'otherwise punishable as the law directs.'

First, what is the 'Maske'? Is it a stage-play within the Theatres Act (6 & 7 Vict. c. 68), or an entertainment of the like kind with music and dancing within the Public Entertainment Act (25 Geo. II. c. 36)? If the former, the license of the Lord Chamberlain is needed, as was decided in *Shelley's Case*, 53 Law J. Rep. M. C. 16, for but one performance *in a theatre*. If the latter, the Middlesex magistrates are the licensing authority; but no license is required unless there be

'something like an habitual keeping,' as was held by Baron Parke and other judges in *Marks* v. *Benjamin*, 5 M. & W. 565. If the former, the poor actors, no doubt, incur a fine where money is taken, and escape it where no money is taken (see sections 11 and 17 of the Theatres Act); but the manager of the theatre does not. If the latter, it does not matter whether money is or is not taken for admission (*Archer* v. *Willingrice*, 4 Esp. 186). In neither case does the fact that the whole thing is got up for charitable purposes make any difference in the eye of the law, though it would probably affect the minds of the convicting Court in fixing the amount of the punishment. Sir Percy Shelley was fined 1*s.* only, the maximum penalty being 20*l.*—a daily penalty.

Now whether the 'Maske' is an entertainment of the stage or an entertainment of the like kind with dancing or music is a question of fact (*Wigan* v. *Strange*, 35 Law J. Rep. M. C. 31), but we think we may without much risk commit ourselves to the opinion that it is an entertainment of the stage within the Theatres Act. This Act extends the Lord Chamberlain's jurisdiction 'to all theatres within the Parliamentary boundaries of the City of London,' and such boundaries are by 2 & 3 Wm. IV. c. 64, defined as 'the whole space contained within the boundaries of the liberties of the City of London, including the Inner Temple and the Middle Temple,' so that the Lord Chamberlain at all events, looking to this Act as interpreted in *Shelley's Case*, is a proper licensing authority. But is *Shelley's Case* in conflict with *Regina* v. *Strugnell*, 35 Law J. Rep. M. C. 78, in which, as pointed out by our correspondent Mr. Roberts, it was held that no penalty was incurred by hiring a room for six nights for the performance of plays? We think not, because in *Regina* v. *Strugnell* the question was not whether or not a penalty had been incurred by anybody, but whether or not it had been incurred by the defendant, and the Court held that it had not. As for the County Council, that body has by the Local Government Act all the powers of the defunct Metropolitan Board of Works, and section 12 of the Metropolis Management and Buildings Acts Amendment Act (41 & 42 Vict. c. 32) expressly enacts that the 'board' (now the county council) may make regulations for the protection from fire, &c., of 'houses or other places of public resort to be kept open for the public performance of stage-plays and of houses to be kept open for public dancing, music, or other public entertainment of the like kind,' and adds that 'from and after the making of such regulations' no person may *have* (one single having is enough if the analogy of *Shelley's Case* holds good) any such house, &c., without a certificate to the effect that the house, &c., 'was on its completion in accordance with the regulations for the time being in force, and in so far as the same are applicable, and to the conditions affixed therto.' So far so good, or rather, so bad, for the merry maskers. But let us read on a little till we come to section 26, which so many careful persons, ourselves included, contrived to overlook last week. 'Nothing in this Act,' says that far-seeing enactment, 'or in any bye-law thereunder, shall apply to the Inner Temple, the Middle Temple, Lincoln's Inn, Gray's Inn, Staple Inn, Furnival's Inn, or the close of the collegiate church of St. Peter, Westminster.' Thus fortified, let us go and see the 'Maske' on Monday next.

## LEGISLATIVE PROGRESS.

IN the House of Lords.

Bills read a third time and passed:—

Cork (County and City) Courthouses Bill.
Consolidated Fund (No. 2) Bill.
Law Agents and Notaries Public (Scotland) Bill.

Bills through committee:—

Roads and Streets in Police Burghs (Scotland) Bill.
Local Authorities (Scotland) Loans Bill.
Bills of Sale Act (1890) Amendment Bill.
Brine Pumping (Compensation for Subsidence) Bill.
Tramways (Ireland) Act (1860) Amendment Bill.
Forged Transfer Bill.
Commissioners for Oaths Act Amendment Bill.

Slander of Women Bill: referred to Standing Committee.

Second readings:—

Land Purchase (Ireland) Bill.
Factories and Workshops Bill.
Schools for Science and Art Bill.
Markets and Fairs (Weighing of Cattle) Bill.

The Lords' amendments to the Presumption of Life Limitation (Scotland) Bill were considered and agreed to.

In the House of Commons.

Third readings:—

Municipal Registration (Dublin and Belfast) Bill.
Public Health (London) Bill.
Penal Servitude Bill.
London County Council (General Powers) Bill (private bill).
Crofters' Common Grazings (Scotland) Bill.

Bill through Committee:

Local Registration of Title (Ireland) Bill.

Second readings:—

Turbary (Ireland) Bill.
Public Health (Scotland) Acts Amendment Bill.
Local Government (Scotland) Act (1889) Amendment Bill.

Cork Court House Bill: Lords' amendments considered and agreed to.

New bills:—

To Provide for the Reimbursement to Training Colleges in Ireland of certain Past Expenditure on their Sites, Buildings, &c.

To make Provision in regard to the Construction of Public Works in the Western Highlands and Islands of Scotland.

To Amend the Law relating to the Salaries and Fees of Consular Officers.

To Facilitate the Acquisition of Ranges by the Volunteers and others.

THE BANKRUPTCY ACTS, 1883 AND 1890.—The following appears in the *London Gazette* of June 26: 'Board of Trade, Whitehall Gardens, June 23, 1891.—Notice is hereby given, that the Board of Trade have appointed Mr. Richard Roach Pittis, solicitor, of Newport, Isle of Wight, to be official receiver in bankruptcy for the district of the County Court holden at Newport and Ryde, Isle of Wight, as from June 20, 1891, in succession to Mr. Samuel Wheeler, appointed to be assistant official receiver, under the Companies (Winding-up) Act, 1890, attached to the High Court of Justice.'

# Correspondence.

## THE 'MASKE OF FLOWERS.'

SIR,—There appears to be considerable misunderstanding as to the necessity for a license in connection with the recent performance in the Inner Temple Hall.

The provisions as to licensing of theatres under 25 Geo. II. c. 26, now carried out by the County Council, have no application: first, section 4 of that Act exempts performances duly licensed by the Lord Chamberlain; and, secondly, that Act does not apply to occasional performances in a room not regularly used for theatrical purposes (*Gregory* v. *Juffs*, 6 C. & P. 271).

All theatres for the performance of stage-plays must be licensed under 6 & 7 Vict. c. 68. In *Shelley* v. *Bethell*, 53 Law J. Rep. M. C. 16; L. R. 12 Q. B. Div. 11, it was decided that the penalty was incurred by a single performance for a charity; but the performance in that case was held in a building permanently fitted as a theatre. In *Regina* v. *Strugnell*, 35 Law J. Rep. M. C. 78; L. R. 1 Q. B. Div. 93, it was held that the public performance of a stage-play for six nights in a hired room was not *having or keeping* a place for the performance of stage-plays within the meaning of that Act. But section 11 covers the present case, as it prohibits actors from performing for hire (of which payment for admission is evidence) in any places other than theatres licensed by the Lord Chamberlain or other authority.

What license was then required? By 6 & 7 Vict. c. 68, the Lord Chamberlain was necessary and sufficient, as the Inner Temple is 'within the Parliamentary boundary of the city of London.'

From the letter of the sub-treasurer it appears that the County Council never interfered at all! The writer of the paragraph in your last issue seems to think that the County Council has power to interfere under 41 & 42 Vict. c. 32. This is obviously not the case: first, the provisions of that Act as to licensing apply only to permanent structures; and, secondly, section 26 exempts the Inner Temple and other places from its operation.

JAMES ROBERTS.

New Court, Temple: June 29.

[See our remarks elsewhere.—ED. L.J.]

## THE BENCH AND THE BAR.

SIR,—When I was called to the bar, over twenty years ago, it was the custom for the bar to talk and the bench to listen. We have changed all that, and it is now the custom for the bench to talk and for the bar to listen.

In these days counsel are not even usually allowed, when they are arguing *in banco*, to state their case, but it is extracted from them by cross-examination, with the result that what would be a clear, consistent statement is rendered too often confused, while important matters are kept in the background, and those which are quite unimportant are dragged prominently forward.

Can anything be more deplorable than the scene which constantly takes place in Appeal Court I., where it frequently happens that counsel, having carefully got up their arguments, are not allowed to deliver them?

To use sporting language, it is an even chance that at any moment one judge will be talking, it is a six to one chance that two will be talking, while it would be practically safe to bet fifty to one that all three judges are talking together.

I only mention this Court as affording the most flagrant instance; but this degradation of manners has unhappily spread to nearly all the Courts that sit *in banco*.

Such scenes as take place now would have been impossible twenty or thirty years ago, when four judges usually sat together, in grave, dignified, courteous silence, carefully considering the arguments addressed to them, and no more capable of rudely or unnecessarily interrupting counsel than they would be capable of such conduct towards any other gentleman who was speaking to them.

I am not one of those who think that the judges of to-day are inferior to the judges of old times; and I look upon the incessant talking which takes place on the bench as a bad habit which has spread from one judge to another.

I am, however, convinced that the fact that an enormous number of cases are overruled is due to the habit which judges have got into of forming a hasty conclusion, sometimes without having given counsel a chance of properly stating the case; that instead of listening to counsel they spend their time in talking and arguing themselves, and that they frequently snub and browbeat counsel, who are as able as themselves, and frequently decide cases without giving counsel an opportunity of addressing a real argument to them. I write this letter not with the mere intention of finding fault, but in the hope that the bench will learn from your columns what is the feeling of the bar on the subject, and that they will take to heart the lesson that it would be a great saving of time, and conducive to decency, propriety, and justice, if the bench would learn to listen and would cease talking.

A PRACTISING BARRISTER.

## CLAIMS FOR PAST INCOME-TAX.

SIR,—We would call your attention, and that of your readers, to certain illegal claims for income-tax which the Inland Revenue are now very busy in making on executors, and through them the widow and orphan. There exists at Somerset House a clerk whose special province it is to look up cases where income-tax has not been paid in the past, and to cause application to be made for its payment. In the instances we speak of the *modus operandi* is as follows: The clerk examines the probates of wills lately proved, and possibly discovers an item which he suspects has not paid income-tax; this may be, for instance, interest on deposit at a bank. The executor is written to, and requested to give a statement of the interest thus received by the deceased for any number of years which the surveyor of taxes (who is the go-between) may fix upon. The term is generally ten years previous to the death of the testator. Should the executor, in his ignorance of the law, accede to this request, he is called upon to pay for the whole of that period; and should he pay it he is wronged. If he refuse to give a statement, or offer one for a less period than that asked for, he is threatened with law proceedings and amazing penalties, the solicitor to the Inland Revenue not infrequently sending forth his *brutum fulmen*. Possibly the executor, reflecting that he will not have to pay the tax out of his own

pocket, gives in, in which case again illegally obtained money goes to the Treasury. The attempted extortion does not always succeed however. In numerous instances we have been asked to assist the intended victim, and in all of them we have successfully resisted the claim; the time for claiming back duty being strictly limited to one year, and every charge for a longer period being illegal, subjecting the surveyor making them to a penalty of 100*l.* fine and dismissal.

'THE INCOME-TAX REPAYMENT AGENCY.'

25 Colville Terrace, W.

# Unreported Cases.

## NISI PRIUS.

CONTRACT—SUPPLY OF GRAINS.

THE case of *Hamlyn & Co.* v. *Wood & Co.* was heard before Mr. Justice Mathew and a special jury on June 26. This was an action for alleged breach of contract made in writing between the plaintiffs and the defendants in July, 1885. By the contract the defendants agreed to sell to the plaintiffs all the grains made by the former at the current rates charged by Messrs. Truman, Hanbury, Buxton & Co., Barclay, Perkins & Co., Coombe & Co., Watney & Sons, and Reid & Co., from July 10, 1885, until September 31, 1895, inclusive. In the event of there being any difference in the rates charged by those firms, the average prices charged were to be taken as the current rate. The quantity of grains was to be calculated monthly, and charged for according to the number of quarters of malt put in the mash-tun, and all grains were to be considered as ale grains when brewed without black malt. The contract was duly performed on either side from July, 1885, down to the end of July, 1890, but in August of that year the defendants sold their business as brewers to Messrs. Watney & Sons, and, according to the plaintiffs' case, refused to continue to perform the agreement by supplying the grains. The plaintiffs said that by reason of this breach of contract they had been deprived of profits which they would have realised by the defendants continuing to perform the agreement, and they estimated these profits at 300*l.* a year, being for the five years a total of 1,500*l.*—The defendants denied breach of contract on their part and damage suffered by the plaintiffs. They admitted that at the time mentioned they sold to Messrs. Watney & Sons the goodwill of their business as brewers, but not the brewery premises where the business had been carried on, nor the goodwill of the King's Arms, adjoining the brewery; and they denied that by reason of the sale they were unable to supply the plaintiffs with more grains. The defendants said that by the contract they did not undertake to carry on their business for any definite time, nor, while they did carry it on, to make any particular quantity of grains.—The following authorities were referred to: *M'Intyre* v. *Belcher*, 11 C. B. (N.S.) 654; *Stirling* v. *Maitland*, 34 Law J. Rep. Q. B. 1; 5 B. & S. 840; *Rhodes* v. *Forwood*, L. R. 1 App. Cas. 256; and *Turner* v. *Goldsmith*, 60 Law J. Rep. Q. B. 247; L. R. 1 Q. B. 1891, p. 544.—On behalf of the defendants it was contended, as a matter of law, that there being no agreement, express or implied, to carry on the business for any definite time or to make any definite quantity of grains, the action was not maintainable, and that, even if it were maintainable, they would only be liable for nominal damages. Counsel said it could hardly be supposed that these people, with a business worth the capital sum of 240,000*l.*, ever intended to agree that for ten years they would not only not sell that business, but would continue to carry it on as it had been carried on before, or was being carried on at the date of the contract. There was no such agreement expressed in the contract, and no such covenant could be implied.—Mr. Justice Mathew said that if the parties had made an oral agreement, the question of their meaning would have been a question of fact for the jury; but as they had reduced the agreement to writing, the question was one of law to be determined by the Court. It was for him to say what the agreement meant. His conclusion was that the agreement was an agreement on the part of the defendants to supply the grains to the plaintiffs for ten years. His lordship, however, left the question of the intention of the parties to the jury, who found a verdict for the plaintiffs, with 350*l.* damages. His lordship accordingly gave judgment for the plaintiffs for the damages, less an admitted counterclaim; but, on the application of the defendants' counsel, stayed execution in view of an appeal.—Mr. Reid, Q.C., Mr. J. G. Witt, and Mr. C. Hamlyn were counsel for the plaintiffs; Mr. Jelf, Q.C., and Mr. Sills for the defendants.

## RULES OF THE SUPREME COURT, JUNE, 1891.

ORDER XLII. RULE 33A.

1. IMPOUNDED documents while in the custody of the Court are not to be parted with; and are not to be inspected, except on a written order signed by the judge on whose order they were impounded and by the president of the division in which they are impounded; or in case of documents impounded on the order of the Court of Appeal by an order of that Court. Such documents shall not be delivered out of the custody of the Court except upon an order made on motion in open Court.

ORDER XLVI. RULE 1A.

2. Every summons by a separate judgment creditor of a partner for an order charging his interest in the partnership property and profits under section 23 of the Partnership Act, 1890 (53 & 54 Vict. c. 39), and for such other orders as are thereby authorised to be made, shall be served in the case of a partnership other than a cost-book company on the judgment debtor and on his partners, or such of them as are within the jurisdiction, or, in the case of a cost-book company, on the judgment debtor and the purser of the company; and such service shall be good service on all the partners or on the cost-book company as the case may be, and all orders made on such summons shall be similarly served.

ORDER XLVI. RULE 1B.

3. Every application which shall be made by any partner of the judgment debtor under the same section shall be made by summons, and such summons shall be served in the case of a partnership other than a cost-book company on the judgment creditor and on the judgment debtor, and on such of the partners as shall not concur in the application and as shall be within the jurisdiction, or, in the case of a cost-book company, on the judgment creditor and on the judgment debtor and on the purser of the company, and such service shall be good service on all the partners or on the cost-book company as the case may be, and all orders made on such summons shall be similarly served.

ORDER XLVIIIA.

4. Order VII., rule 2, Order IX., rules 6 and 7, Order XII., rules 15 and 16, Order XVI., rules 14 and 15, Order XLII., rule 10, and Order XLV., rule 10, are hereby repealed, and the following rules (1) to (11) shall stand as a separate order in lieu thereof.

*Actions by and against Firms and Persons carrying on Business in Names other than their Own.*

(1) Any two or more persons claiming or being liable as co-partners, and carrying on business within the jurisdiction, may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action; and any party to an action may in such case apply by summons to a judge for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the judge may direct.

(2) When a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitors shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the action is brought. And if the plaintiffs or their solicitors shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the Court or a judge may direct. And when the names of the partners are so declared, the action shall proceed in the same manner, and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the writ. But all the proceedings shall, nevertheless, continue in the name of the firm.

(3) Where persons are sued as partners in the name of their firm under rule (1), the writ shall be served either upon any one or more of the partners or at the principal place, within the jurisdiction, of the business of the partnership upon any person having at the time of service the control or management of the partnership business there; and, subject to these rules, such service shall be deemed good service upon the firm so sued, whether any of the members thereof are out of the jurisdiction or not, and no leave to issue a writ against them shall be necessary: provided that in the case of a co-partnership which has been dissolved to the knowledge of the plaintiff before the commencement of the action, the writ of summons shall be served upon every person within the jurisdiction sought to be made liable.

(4) Where a writ is issued against a firm, and is served as directed by rule (3), every person upon whom it is served shall be informed by notice in writing given at the time of such service whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters. In default of such notice, the person served shall be deemed to be served as a partner.

(5) Where persons are sued as partners in the name of their firm, they shall appear individually in their own names; but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

(6) Where a writ is served under rule (3) upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a member of the firm sued.

(7) Any person served as a partner under rule (3) may enter an appearance under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving the firm and obtaining judgment against the firm in default of appearance if no partner has entered an appearance in the ordinary form.

(8) Where a judgment or order is against a firm, execution may issue—

(*a*) Against any property of the partnership within the jurisdiction;

(*b*) Against any person who has appeared in his own name under rule (5) or (6), or who has admitted on the pleadings that he is, or who has been adjudged to be a partner;

(*c*) Against any person who has been individually served, as a partner, with the writ of summons, and has failed to appear.

If the party who has obtained judgment or an order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a judge for leave so to do; and the Court or judge may give such leave if the liability be not disputed, or if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in any action may be tried and determined. But except as against any property of the partnership, a judgment against a firm shall not render liable, release, or otherwise affect any member thereof, who was out of the jurisdiction when the writ was issued, and who has not appeared to the writ unless he has been made a party to the action under Order XI., or has been served within the jurisdiction after the writ in the action was issued.

(9) Debts owing from a firm carrying on business within the jurisdiction may be attached under Order XLV., although one or more members of such firm may be resident abroad: provided that any person having the control or management of the partnership business or any member of the firm within the jurisdiction is served with the garnishee order. An appearance by any member pursuant to an order shall be a sufficient appearance by the firm.

(10) The above rules shall apply to actions between a firm and one or more of its members, and to actions between firms having one or more members in common, provided such firm or firms carry on business within the jurisdiction, but no execution shall be issued in such actions without leave of the Court or a judge, and on an application for leave to issue such execution all such accounts and inquiries may be directed to be taken and made, and directions given, as may be just.

(11) Any person carrying on business within the jurisdiction in a name or style other than his own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all rules relating to proceedings against firms shall apply.

ORDER LIV. RULE 4A.

5. Order LIV., rule 4, shall be read as if the following words were added thereto: 'Provided that in the case of summonses for time only, the summons may be served on the day previous to the return thereof.'

6. These rules may be cited as the Rules of the Supreme Court, June, 1891; and each rule may be cited separately according to the heading thereof with reference to the Rules of the Supreme Court, 1883. They shall come into operation on July 1, 1891.

Dated June 19, 1891.

(Signed) HALSBURY, C.
COLERIDGE, C.J.
ESHER, M.R.
NATH. LINDLEY, L.J.
E. E. KAY, L.J.
C. E. POLLOCK, B.
A. L. SMITH, J.

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THE 'MASKE OF FLOWERS.'—The second performance of the 'Maske of Flowers,' in aid of the funds of St. Michael's Convalescent Home, Westgate-on-Sea, which was originally fixed for last Tuesday night, will be given at 8.30 P.M. on Monday next, in the Hall of the Inner Temple, the necessary license having been obtained from the Lord Chamberlain. Tickets may be obtained from Lady Halsbury, 4 Ennismore Gardens; Lady Jeune, 79 Harley Street; and the sub-treasurer of the Inner Temple.

## ORDER OF TRANSFER.

Monday, June 22, 1891.

WHEREAS, from the present state of the business before Mr. Justice Chitty, Mr. Justice North, Mr. Justice Stirling, Mr. Justice Kekewich, and Mr. Justice Romer respectively, it is expedient that a portion of the causes assigned to Mr. Justice Chitty, Mr. Justice North, Mr. Justice Stirling, and Mr. Justice Kekewich should for the purpose only of hearing or of trial be transferred to Mr. Justice Romer; now I, the Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, do hereby order that the several causes and matters set forth in the schedules hereto be accordingly transferred from the said Mr. Justice Chitty, Mr. Justice North, Mr. Justice Stirling, and Mr. Justice Kekewich to Mr. Justice Romer, for the purpose only of hearing or of trial, and be marked in the Cause-books accordingly. And this order is to be drawn up by the registrar and set up in the several offices of the Chancery Division of the High Court of Justice.

### FIRST SCHEDULE.

*From* MR. JUSTICE CHITTY.

Landseer v. Zeffert—1890 L. 1,166
Von Buch v. Watson
Percival & Churchyard v. Von Buch—1890 V. 394
Pechey v. Serle—1890 P. 1,925
New Wire Wove Roofing Co. (Lim.) v. Humpage—1890 N. 1,349
Haymen v. Cooper—1890 H. 1,645
Clark v. Smith—1890 C. 1,011
Carter v. Walter—1890 C. 4,367
Ward v. Keen—1890 W. 3,806
Sutton v. Gillings—1890 S. 4,665
Kite v. Bell—1891 K. 42
S. Kidd & Co. (Lim.) v. Perry—1891 S. 3,038
Allen v. Clydesdale Bank (Lim.)—1889 A. 1,375
In re Swain
Swain v. Bringeman—1890 S. 2,707
Bew v. Gale—1890 B. 4,274
Webster v. Puleston—1889 W. 602
Meek v. Traver—1890 M. 1,690
Spalding v. FitzGeorge—1890 S. 3,888
Devallé v. Palmer—1891 D. 387
Green v. Wyatt—1890 G. 799
Molineux v. Gartside—1890 M. 3,193
Soppitt v. Whiting—1891 S. 286
Layton v. Patent Lithographic Zinc Plate Co. (Lim.)—1890 L. 2,165
Uniacke v. Scott
Scott v. Uniacke—1890 U. 831
In re Aders
Meakin v. Plimmer—1891 A. 211
Ellissen v. Surrey Machinists Co. (Lim.)
Surrey Machinists Co. (Lim.) v. Ellissen—1891 E. 18
Watts v. Paynter—1891 W. 51
Sanders v. Eaton—1891 S. 396
Witt v. Calderon—1890 W. 2,349
Hill v. Winfield—1890 H. 3,926
In re Heinrich's Registered Design and Patents Act
Compton v. Bagley—1891 C. 253
Spence v. Schiedweiler—1890 S. 2,564
Engelhart v. Gaydon—1890 E. 858
Marshall v. Glover—1889 M. 2,344; 1890 A. 493
Wright v. Richmond—1890 W. 2,268
West India Shipping Co. (Lim.) v. Callender—1890 W. 1,822
Thomson v. Stewart—1890 T. 2,078
Hughes Hallet v. Kent—1890 H. 2,791
Nicholson v. Eyre—1891 N. 759
Mappin Bros. v. Mappin & Webb—1891 M. 346

### SECOND SCHEDULE.

*From* MR. JUSTICE NORTH.

Attorney-General (at the relation of the Local Board for the District of Friern Barnet) v. Vestry of St. James and St. John, Clerkenwell—1890 A. 1,159
In re J. H. Boyce
Boyce v. England—1890 B. 5,351
G. A. Baird v. East Riding Club and Race Course Co. (Lim.)—1889 B. 3,676
In re Raisbeck
Keenlyside v. Leefe—1891 R. 114
Law Property Assurance and Trust Society v. Wilson—1890 L. 2,040
Pegler v. Drake-West—1890 P. 2,620
In re Coningham
Coningham v. Coningham—1890 C. 2,978
Choudens Fils v. Lago—1890 C. 4,098
Rothwell v. Abrahams—1891 R. 132
Vennell v. Meakin—1891 V. 19
Universal Stock Exchange (Lim.) v. Stevens
Stevens v. Universal Stock Exchange (Lim.)—1890 U. 289
In re W. Beckett
Lyons v. Hart—1890 B. 1,488
Brewers Investment Corporation (Lim.) v. Rowlands
Rowlands v. Brewers Investment Corporation (Lim.)
Bell v. Same—1890 B. 1,787
Willoughby v. Kirby—1890 W. 3,805
Murton v. City Bank (Lim.)—1890 M. 2,954
Williams v. Williams—1890 W. 3,408
Day v. Gregory—1890 D. 1,436
In re Seager
West v. Seager—1890 S. 3,323
London Association of Shipowners and Brokers (Lim.) v. London and India Docks Joint Committee—1891 L. 215
Barker v. Webber—1890 B. 6,623

### THIRD SCHEDULE.

*From* MR. JUSTICE STIRLING.

Fritchley v. Marshall—1890 F. 922
In re Edgar
Edgar v. Edgar—1890 E. 664
Alexander v. Miller—1890 A. 1,047
Pearson v. Petrovitch—1890 P. 1,659
In re Bridger
Jones v. Armfield—1890 B. 1,296
Reade v. Hall—1890 R. 1,038
Wood v. Hamblet—1889 W. 3,857
Earl de la Warr v. King—1890 D. 1,776
Schreiner v. Bounard—1890 S. 513
Holdsworth, &c. Co. v. Hull, Barnsley, &c. Railway—1886 H. 2,423; 1890 H. 2,499
Freeman v. Penn—1890 F. 450
President of St. George's Hospital v. Rumney—1890 S. 4,395
Svertchkoff v. Huth—1890 S. 2,147
Lord de Ramsay v. Powell—1890 D. 2,103
Brown v. Vince—1890 B. 1,152
Brown v. Brown—1890 B. 3,639
West of England Paper Mills Co. (Lim.) v. Gilbert—1889 W. 3,113
Ranson, Bouverie & Co. v. Whitby—1890 R. 1,593
In re Cash
Cash v. Hancock—1890 C. 679
In re Laurence
Kiddle v. Laurence—1890 L. 2,530
Harris v. Harris—1890 H. 3,393
Bevan v. Webb—1890 B. 1,410
Folkard v. Carter
Carter v. Folkard—1890 F. 759
White v. Swaine—1890 W. 3,017
In re Gas Lighting Improvement Co. (Lim.) &c.—adjd. summs.
Meux v. Thomas—1890 M. 3,150
Nelson v. Worssam—1890 N. 1,296
Goodrham v. Goodrham—1890 G. 1,953
Beddoe v. James—1889 B. 2,855
Isaacs v. Isaacs (action)—1890 I. 1,457

### FOURTH SCHEDULE.

*From* MR. JUSTICE KEKEWICH.

In re Hewit
Lawson v. Duncan—1890 H. 2,567
Dyke v. Rutherford—1890 D. 1,664
Edison & Swan, &c. Co. (Lim.) v. Woodhouse & Rawson United (Lim.)—1890 E. 426
Smyrke v. De Peyer—1890 S. 361
Provan v. Paterson—1886 P. 2,931
Castle v. Stone—1890 C. 1,524
Upton v. National Mercantile Bank—1890 U. 718
Matthews v. Wells—1889 M. 2,095
Perry v. White—1890 P. 2,513
Tavner v. Martin—1889 T. 2,222
Clinch v. Clinch
Same v. Same—1840 C. 1,135
Cipri v. Metal Recovery Co. (Lim.)—1890 C. 887
Mackenzie v. Sanders—1890 M. 2,738
Van Hench v. Isaacs—1890 V. 740
Hickman v. Harris—1888 H. 4,230
M'Dowell v. Sanders—1890 M. 2,781
Dale v. Fortescue—1890 D. 2,049
Cowney v. Thomson—1889 C. 1,576
Watling v. Watling—1890 W. 3,395
Banks v. Scovell—1890 B. 4,972
Jope v. Pountain—1890 J. 40
Jahncke v. R. Bell & Co. (Lim.)—1889 J. 1,011
Mapleson v. Lago—1890 M. 3,381
Williams v. Jones—1890 W. 1,932
Petre v. Ferrers—1890 P. 2,751
Nettlefolds (Lim.) v. Reynolds—1890 N. 15
Same v. Same—1890 N. 809
Hazlehurst v. Rylands—1890 H. 1,193
Burdett & Harris v. Gorton—1891 B. 381
Robertson v. Robertson—1891 R. 309
Hall v. Hall—1890 H. 4,335
Driggs Ordnance Co. v. Driggs Schroeder Ordnance Co. (Lim.)—1890 D. 1,883
Falk v. Falk—1891 F. 131
New Skegby Colliery Co. (Lim.) v. Dodsley—1890 N. 1,042
Cowood v. Vernon—1890 C. 1,143
Howell v. Broomhead—1890 H. 4,245
Lane Fox v. Kensington, &c. Lighting Co.—1890 L. 2,713
Davey v. Hugill—1891 D. 315
Kelsey v. Hodgkinson—1891 K. 129
In re Big Golden Quarry Mining Co. (Lim.) ex parte Newman

HALSBURY, *C.*

N.B.—The parties concerned in the above causes and matters must be ready for trial on and after Monday next, June 29, 1891. N. WARD, Senr. Regr.

## *SHARP* v. *WAKEFIELD*

SIR WILFRID LAWSON writes to the *Times* as follows:—

Very nearly 500 years ago justices of the peace were intrusted with the direct veto on the liquor traffic. They were enjoined, in the year 1496, 'to put away ale-selling at their discretion and to take surety of others of their good behaviour.' Fifty years later, 'for the redress of the intolerable hurts which increase through the disorder in common ale-houses,' &c., they were 'given full power and authority to remove, discharge, and put away common selling of ale and beer and tippling-houses in such town or towns and places where they shall think meet and convenient.'

These statutes were the origin and basis of what we now call our licensing system. As years went on the justices of the peace appear to have come to the conclusion that it was more desirable for them to establish these drinking-houses, with all their 'intolerable hurts,' than to prohibit them. The idea also grew up that the justices, having once granted a license, were obliged every year to renew such license, unless the holder thereof should in some way have proved himself to be unworthy and unfit to hold it any longer. This idea was sedulously nurtured by 'the trade,' by many justices' clerks, and by certain legal authorities.

It has now been blown to the winds by the decision of the House of Lords in the famous case of *Sharp* v. *Wakefield*. That decision settles once for all, 'beyond the possibility of a doubt,' as Lord Macnaghten expressed it, that 'the licensing justices' possess 'the same discretion in the case of an application for what is now termed a renewal as in the case of a person applying for a license for the first time.' Whether the magistrates will exercise the power which it is now made manifest to them that they possess, for the protection of their fellow-citizens from the liquor traffic, remains to be seen. But all lovers of law, order, peace, and prosperity must rejoice that legal machinery has been proved to exist which may be used for the preservation of the public from the 'intolerable hurts' alluded to in the ancient statutes.

My object in writing this letter is to point out the persons to whom it is primarily owing that this gratifying and authoritative declaration of the law has been obtained. It is due, in the first instance, to a bench of magistrates in Westmoreland, who decided to withhold the license from a public-house (the Low Bridge Inn, Kentmere) on account of its 'remoteness from police supervision and the character and necessities of the neighbourhood in which it was situated.' This decision was appealed against, and during three years the case was carried from Court to Court, until at last, on March 20, 1891, the House of Lords gave the judgment which I have already mentioned—a judgment which will be for ever memorable in the history of the movement for the overthrow of the liquor traffic.

Now these legal proceedings, conducted by the Westmoreland Licensing Bench against all the resources of one of the richest and most powerful vested interests in the world, have involved them in costs which come to about 550*l*. Their brother-magistrates and friends in the neighbourhood have raised about 290*l*. Friends of my own, who realise the importance of the Lords' judgment, have, in various sums, promised me about 150*l*. This leaves still a balance to which the licensing bench in question are liable.

I think it probable that many persons would like to join in liquidating this balance, and if any such persons feel inclined within a short time to send any subscription for this object, they will be very gladly received and acknowledged either by myself or by Mr. Joshua Rowntree, M.P.

A similar case can never occur again, as the Lords' decision is final, and it does seem right that these justices, who, by their sensible and independent course, have been instrumental in procuring a great national advantage, should have this conduct recognised by those who take an interest in our national welfare and progress.

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SOUTHEND AND THE MUNICIPAL CORPORATIONS ACT.—The *London Gazette* of June 26 contains a notice to the effect that a petition has been presented to Her Majesty in Council by certain inhabitants of Southend praying that a charter of incorporation may be granted to the town.

# House of Lords Register.

THURSDAY, JUNE 25.

*Dewar* v. *Wotherspoon* (incapacity—partial insanity—*curator bonis*—appointment on petition—necessity of cognition—reported 28 Scot. Law Rep. p. 85).—Dismissed.

*Mutual Shipping and Trading Company* v. *Hawthorn, Leslie & Co.* (claim for work and labour done—materials provided—moneys paid under a contract).—Part heard.

FRIDAY, JUNE 26.

*Eastern Steamship Company* v. *Smith*; *The Vandalia* (collision—lights whether or not observed—apportionment of blame).—Dismissed with costs.—Their LORDSHIPS (LORD HERSCHELL, LORD BRAMWELL, LORD MACNAGHTEN, and LORD HANNEN) were equally divided.

*The Berkeley Peerage Case* (Claimants: *R. M. F. Berkeley* and *Lord Fitzhardinge*).—Adjourned *sine die*.

MONDAY, JUNE 29.

*Mutual Shipping and Trading Company* v. *Hawthorn, Leslie & Co.*—Dismissed.

*Butchard* v. *Northfleet Coal and Ballast Company* (construction of lease).—Dismissed.

TUESDAY, JUNE 30.

*Meyer* v. *Decroix* (bill of exchange—negotiability—general or qualified acceptance—reported 59 Law J. Rep. Q. B. 538).—*Cur. adv. vult.*

# Court of Appeal Register.

## APPEAL COURT I.

Before THE MASTER OF THE ROLLS, BOWEN, L.J., and KAY, L.J.

THURSDAY, JUNE 25.

*Pinto and another* v. *Trott & Co.* (application of defendants from judgment of Day, J., dated January 22, at trial with special jury in Middlesex).—Allowed.

*Brown* v. *Hawkes* (Q.B. *Crown Side*) (appeal of defendant from judgment of Cave, J., and Smith, J., dated January 28, affirming judgment of Clerkenwell County Court).—Allowed.

FRIDAY, JUNE 26.

*In re The Agricultural Holdings (England) Act*, 1883—*Gough and others (petitioners)*—*Gough and others (respondents)* (Q.B. *Crown Side*) (appeal of petitioners from Cave, J., and Williams, J., dated April 14, affirming dismissal of petition by County Court judge under Agricultural Holdings Act, 1883).—Allowed.

*Hooper* v. *Large (late Goodwin)* (application of defendant for new trial on appeal from judgment of Grantham, J., dated May 19, 1890, at trial without a jury in Middlesex).—Refused.

SATURDAY, JUNE 27.

*Hirst* v. *Sadler* (appeal of defendant from judgment of Day, J., dated February 2, at trial without a jury in Middlesex).—Allowed.

*Acland and others* v. *Simpson* (appeal of plaintiff from judgment of Lawrance, J., dated April 25, at trial without a jury in Middlesex).—Allowed.

MONDAY, JUNE 29.

*Alldred* v. *West Metropolitan Tramways Company* (*Vestry of Hammersmith, third parties*) (application of plaintiff for new trial on appeal from verdict and judgment, dated April 18, at trial before Hawkins, J., and special jury in Middlesex).—Refused.

*Smith and Wife* v. *Bailey* (application of plaintiffs for judgment or new trial on appeal from verdict and judgment, dated April 22, at trial before Wills, J., and a special jury in Middlesex).—Refused.

*Lowry* v. *Humbert* (application of plaintiff for judgment or new trial on appeal from verdict and judgment, dated May 6, at trial before Denman, J., and a special jury in Middlesex).—Refused.

TUESDAY, JUNE 30.

*Keeley* v. *Appleby* (application of defendants (except J. Dugdale) for judgment or new trial on appeal from verdict and judgment, dated May 1, at trial before Grantham, J., and a special jury at Manchester).—Allowed.

*Heitzmann* v. *Gowenlock* (application of defendant for judgment or new trial on appeal from verdict and judgment on claim and counterclaim, dated May 11, at trial before Smith, J., and a common jury in Middlesex).—Dismissed.

*Banks* v. *Kelly & Grundy* (*trading, &c.*) (application of defendants for judgment or new trial on appeal from verdict and judgment, dated May 12, at trial before Wills, J., and a common jury in Middlesex and notice of contention by plaintiff).—Varied.

WEDNESDAY, JULY 1.

*Atherton Local Board* v. *Manly and others* (application of defendants for judgment or new trial on appeal from verdict and judgment, dated April 30, at trial before Grantham, J., with special jury at Manchester).—Refused.

*Marchioness of Huntly* v. *Bedford Hotel Company* (*Lim.*) (application of plaintiff for judgment or new trial on appeal from verdict and judgment, dated April 25, at trial before Wills, J., and special jury in Middlesex).—Part heard.

## APPEAL COURT II.

Before LINDLEY, L.J., FRY, L.J., and LOPES, L.J.

THURSDAY, JUNE 25.

*Cross* v. *Roberts* (appeal of defendant from judgment of Lawrance, J., dated February 18, at trial without a jury in Middlesex and cross notice of contention by plaintiff).—Dismissed.

*Thomas* v. *Searles and another* (*first issue*) (appeal of defendants from judgment of Smith, J., dated February 16, at trial without a jury in Middlesex). *Thomas* v. *Searles and another* (*second issue*) (appeal of defendants from judgment of Smith, J., dated February 16, at trial without a jury in Middlesex).—Dismissed.

FRIDAY, JUNE 26.

*Kirkman* v. *British Shipowners' Mutual Protection Association* (*Lim.*) (appeal of defendants from judgment of Grantham, J., dated January 16, at trial without a jury in Middlesex).—Allowed.

*Le Messurier* v. *Taylor* (appeal of defendant from judgment of Grantham, J., dated March 12, at trial without a jury in Middlesex).—Allowed.

SATURDAY, JUNE 27.

*Edmunds* v. *Gilbert* (appeal of defendant from judgment of Charles, J., dated March 21, at trial without a jury at Birmingham).—Dismissed.

MONDAY, JUNE 29.

*Deep Navigation Collieries* (*Lim.*) v. *Rhymney Railway Company* (appeal of defendants from judgment of Lawrance, J., dated January 21, at trial without a jury in Middlesex).—Dismissed.

TUESDAY, JUNE 30.

*Broadbent* v. *Smedley* (appeal of defendant from judgment of Smith, J., dated March 21, at trial without a jury at Leeds).—Dismissed.

*Halpin* v. *M'Laren* (appeal of plaintiff from judgment of Wright, J., dated January 17, at trial without a jury in Middlesex).—Dismissed.

*Bryan* v. *Atlantic Patent Fuel Company* (Q. B. *Crown Side*) (appeal of plaintiff from judgment of Day, J., and Lawrance, J., dated April 16, on appeal from judge of County Court).—Part heard.

WEDNESDAY, JULY 1.

*In re Percy Armstrong, an infant, by Fanny Armstrong, his next friend* (appeal of infant from order of Kekewich, J., dated June 1, refusing application of mother for maintenance of infant).—Allowed.

*Turrell* v. *Brown* (appeal of defendants from refusal by North, J., dated June 8, of order for delivery of particulars).—Dismissed.

*Avery* v. *Wood & Sons* (appeal of defendants from order of North, J., dated June 22, refusing allowance of objections to taxation).—Dismissed.

*Dobell & Co.* v. *Watts, Ward & Co. and others* (appeal of defendants from directions entered, dated April 11, at trial by Wills, J., and a special jury in Middlesex).—Part heard.

## NOTICES FOR THE WEEK.

ROTA OF REGISTRARS.

MONDAY, July 6.—Court of Appeal No. 2: Mr. Farmer. Mr. Justice Chitty: Mr. Ward. Mr. Justice North: Mr. Beal. Mr. Justice Stirling: Mr. Leach. Mr. Justice Kekewich: Mr. Jackson. Mr. Justice Romer: Mr. Carrington.

Tuesday, July 7.—Court of Appeal No. 2: Mr. Rolt. Mr. Justice Chitty: Mr. Pemberton. Mr. Justice North: Mr. Pugh. Mr. Justice Stirling: Mr. Godfrey. Mr. Justice Kekewich: Mr. Clowes. Mr. Justice Romer: Mr. Lavie.

Wednesday, July 8.—Court of Appeal No. 2: Mr. Farmer. Mr. Justice Chitty: Mr. Ward. Mr. Justice North: Mr. Beal. Mr. Justice Stirling: Mr. Leach. Mr. Justice Kekewich: Mr. Jackson. Mr. Justice Romer: Mr. Carrington.

Thursday, July 9.—Court of Appeal No. 2: Mr. Rolt. Mr. Justice Chitty: Mr. Pemberton. Mr. Justice North: Mr. Pugh. Mr. Justice Stirling: Mr. Godfrey. Mr. Justice Kekewich: Mr. Clowes. Mr. Justice Romer: Mr. Lavie.

Friday, July 10.—Court of Appeal No. 2: Mr. Farmer. Mr. Justice Chitty: Mr. Ward. Mr. Justice North: Mr. Beal. Mr. Justice Stirling: Mr. Leach. Mr. Justice Kekewich: Mr. Jackson. Mr. Justice Romer: Mr. Carrington.

Saturday, July 11.—Court of Appeal No. 2: Mr. Rolt. Mr. Justice Chitty: Mr. Pemberton. Mr. Justice North: Mr. Pugh. Mr. Justice Stirling: Mr. Godfrey. Mr. Justice Kekewich: Mr. Clowes. Mr. Justice Romer: Mr. Lavie.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## CALENDAR OF THE COUNTY COURTS.

FROM JULY 6 TO JULY 11.

| No. of Circuit | His Honour | July 6 | July 7 | July 8 | July 9 | July 10 | July 11 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Birkenhead | — | — | Leigh | — |
| 8 | Judge Heywood | — | Salford | Salford | Salford | Salford | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | Middlesbrough | York | Tadcaster | Easingwold | Knaresborough | Ripon |
| 19 | Judge Barber | Derby | Derby | Belper | Chesterfield | Chesterfield | — |
| 28 | Judge Jordan | Stoke | Newcastle | Hanley | Hanley | Tunstall | Cheadle |
| 47 | Judge Powell | — | Lambeth | Woolwich | Lambeth | Greenwich | — |
| 54 | Judge Metcalfe | Bristol | Bristol | Bristol | Bristol | Bristol | — |
| 55 | Judge Machonochie | Shaftesbury | Wincanton | Crewkerne | Yeovil | Salisbury | — |
| 57 | Judge Paterson | — | Taunton | Langport | Bridgwater | Wellington | Barnstaple |
| 58 | Judge Edge | — | Exeter | Exeter | Exeter | Newton Abbot | Torquay |

## HONOURS AND APPOINTMENTS.

COLONEL EDWIN HUGHES, M.P., of 6 Lancaster Place, Strand, 38 Green's End, Woolwich, and Plumstead, has been elected President of the Kent Law Society. Colonel Hughes was admitted in 1860.

Mr. Joseph Solomon (of the firm of J. & M. Solomon), of 58 Finsbury Pavement, E.C., has been appointed a Commissioner for Oaths. Mr. Solomon was admitted in 1884.

Mr. William Montgomery White, of the Outer Temple, Strand, W.C., has been appointed a Commissioner for Oaths. Mr. White was admitted in 1885.

Mr. Charles Frank Andrews (of the firm of Lane, Fagge & Andrews), of Fitzalan House, Arundel Street, Strand, W.C., has been appointed a Commissioner for Oaths. Mr. Andrews was admitted in 1881.

Mr. George Lennox, of 3 Verulam Buildings, Gray's Inn, W.C., has been appointed a Commissioner for Oaths. Mr. Lennox was admitted in 1884.

Mr. Charles James Cooper (of the firm of Cooper & Sons), of King Street, Manchester, has been appointed a Notary for Manchester and a district of ten miles thereof. Mr. Cooper was admitted in 1876.

SOLICITORS' BENEVOLENT ASSOCIATION.—The thirty-first anniversary festival of this association was held on Friday night, June 26, at the Albion Tavern, Aldersgate Street. Mr. Robert Cunliffe (president of the Incorporated Law Society) occupied the chair, and was supported by Mr. Justice Wills, Mr. G. W. Hemming, Q.C., Mr. Staveley Hill, Q.C., M.P., Mr. T. H. Stephens (Cardiff, chairman of the board of directors), Mr. Grinham Keen, Mr. Richard Pennington, Mr. H. M. Cotton, Mr. J. F. Milne (president of the Manchester Law Society), Mr. John Hunter (deputy-chairman of the board), Mr. C. R. Hancock (president of the Bristol Law Society), and others. In proposing the toast of the evening, 'The Solicitors' Benevolent Association, and may prosperity continue to attend it,' the chairman stated that the object of the society was to relieve poor and necessitous solicitors and proctors in England and Wales, and their wives, widows, and families. Only about 1,700*l.* a year was received from subscriptions, and many deserving persons were left unrelieved because the society had not sufficient funds. He could assure them that the funds subscribed went to the benefit of those for whom they were intended, for the expenses of the association were very small, and there was no waste. Their desire was to obtain additional members, in order that they might have more annual subscriptions, and not be so dependent on their festivals. During the evening subscriptions and donations amounting to 700*l.* were announced.

CENTRAL OFFICE.—The Master of the Rolls has appointed Mr. A. J. Penny to a Clerkship in the Central Office of the Supreme Court of Judicature, in succession to the late Mr. W. M. Porter.

THE PUBLICANS' COMPENSATION APPEAL.—There has been such a prompt response to Sir Wilfrid Lawson's suggestion for raising a fund to relieve the Westmoreland licensing justices of their costs in the *Sharp* v. *Wakefield* appeal case that no further subscriptions will be needed.

LADY MACDONALD.—The Queen has been pleased to confer the dignity of a peerage of the United Kingdom upon Lady Macdonald in recognition of the long and distinguished public service of the late Sir John Macdonald. Susan Agnes, Lady Macdonald, was the second wife of the late Sir John Macdonald, whom she married in 1867. She is a daughter of the late Hon. T. J. Bernard, a member of the Privy Council of Jamaica.

THE LAW COURTS.—When Mr. Justice Collins sits in the Probate, Divorce, and Admiralty Division, in the place of Sir Charles Butt, one of the Queen's Bench judges will have to take his place at judges' chambers, while another will be called upon to replace him on the South Wales Circuit, whereon he had been appointed to go. When all the circuits are on, two Queen's Bench judges only—Mr. Justice Denman and Mr. Justice Charles—remain in town, and if the above arrangement was carried out their services would be absorbed, and the Queen's Bench Division would be practically left without a judge. It is very probable, however, that a royal commissioner of assize will be appointed to go on circuit in place of Mr. Justice Collins, which would leave one judge at least in town.

## BIRTHS.

On June 27, at 14 Burlington Road, Redland, Bristol, the wife of R. W. Clifton, Barrister-at-Law, formerly of West Dulwich, of a son.

## MARRIAGES.

On June 24, at St. Peter's Church, Bayswater, Alexander Pulling, of the Inner Temple, Barrister-at-Law, elder son of Mr. Serjeant Pulling, to Margaret Ellen, third daughter of Samuel Bealey, of 20 Pembridge Gardens, W., and of Canterbury, New Zealand.

## DEATHS.

On June 10, at Lyons, Charles Lambert Ferdinands, District Judge of Colombo, Ceylon, aged 62.

On June 12, at her residence, Chicago, U.S.A., Kate, widow of the late E. R. Griffiths, formerly Magistrate, Falkland Islands.

On June 22, on board s.s. Brazilian, homeward bound from Montreal, Ralph John, elder son of John E. Palmer, of the Inner Temple and Kensington, Barrister-at-Law, aged 20.

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# The Law Journal.

*SATURDAY, JULY* 11, 1891.


## 'OBITER DICTA.'

THE Lord Chief Justice presided in Court of Appeal No. I. on Friday, the 3rd inst., in place of the Master of the Rolls, who was sitting with the Judicial Committee of the Privy Council hearing the Bishop of Lincoln's case. The Court did not sit on Saturday or Monday last, as Lord Coleridge had other engagements. On Tuesday and Wednesday, however, his lordship again presided, and the Court resumed the hearing of new trials, with which good progress has been made.

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WITH our REPORTS of this month we print, with their accompanying forms, four important sets of rules. First comes a general order of the Board of Trade under rules 126 and 127 of the Companies (Winding-up) Rules, 1890, with reference to 'statements by liquidators in pending liquidations to the registrar of joint-stock companies;' next, two sets of rules by the Board of Trade, with the concurrence of the Lord Chancellor, under section 26 of the same Act; and, finally, the better known 'Tithe Rent-charge Recovery Rules, 1891.' These latter are no less than fifty-eight in number, and are followed by thirty-one forms. We direct the particular attention of practitioners to rule 36, which directs that 'where an occupier of land has failed to serve an occupier's liability notice' (see rule 3), 'and wishes to obtain a certificate from the Court under subsection 6 of section 2 of the Act, he shall send an application to the registrar according to the form in the appendix' (see form 28), 'and shall at the same time send a copy or duplicate of the application to the occupier in respect of whose liability to pay the tithe rent-charge the notice has not been served.' This and the two following rules should be carefully read with section 2, subsection 6 of the Act.

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THE 'Maske of Flowers' has been again and finally represented with marked success, the license (see *ante*, p. 448) being granted by the Lord Chamberlain to Mr. Arthur à Beckett, of Gray's Inn, as the 'actual and responsible manager.' This was done in pursuance of section 7 of the Theatres Act (6 & 7 Vict. c. 68), by which 'no license for a theatre shall be granted by the Lord Chamberlain to any person except the actual and responsible manager of the theatre in respect of which the license shall be granted, and the name and place of abode of such manager shall be printed on every play-bill announcing any representation at such theatre.' The jurisdiction of the Lord Chamberlain in the metropolis to grant licenses for theatres is absolutely discretionary, as is the jurisdiction of the county councils elsewhere, under section 7 of the Local Government Act, 1888, by section 28, subsection 2 of which, however, the county councils may, 'without prejudice to any other power whether to appoint committees or otherwise,' delegate the licensing power transferred to them by section 7 'to the justices of the county sitting in petty sessions.'

---

MR. MANSON'S article on Marital Authority in the *Law Quarterly* is more amusing than instructive. 'Whether there are any circumstances,' writes he, 'under which a husband may coerce his wife short of her wanting to throw herself out of window, and if so, what they are, the Court' (in *Jackson's Case*) 'has wisely left undefined. Even if, like Mr. Pelham, in Lord Lytton's novel, a husband met his wife on the stairs in the act of eloping, it is not clear that he could detain her, *though he might accompany her*. She is not committing a felony, or any other act with which, as a good citizen, he would be bound to interfere. And this seems the sole logical criterion. *Cochrane's Case* was against the whole current of authority, and a retrograde step,' &c.

---

*Shepherd* v. *Berger*, which we report this month, 60 Law J. Rep. Q. B. 395, should be carefully studied by all interested in the law of landlord and tenant. The proviso for re-entry in a lease was framed to operate 'if and whenever' any one quarter's rent should be in

arrear and no sufficient distress could be had. Three quarters' rent being in arrear, the plaintiff distrained, but only realised enough to satisfy two quarters' arrears. The plaintiff then sued in ejectment before a fourth quarter's rent had become due, and a Divisional Court, reversing the judgment of the Recorder of London, gave judgment for the defendant on the ground that the plaintiff by putting in the distress had waived the forfeiture in respect of the third quarter's arrears. But the Court of Appeal has reversed this judgment, and decided for the plaintiff 'on the true construction of the proviso for re-entry.' The words 'if and whenever' were said by the Court to 'carry the case beyond the time of putting in the distress to any time after, so that when the plaintiff appropriated the proceeds of the distress to the first two quarters' arrears there still remained another quarter in arrear. The case is a puzzling one, looking to *Ward* v. *Day*, 33 Law J. Rep. Q. B. 11, but we think that the judgment of the Court of Appeal is correct, though it is unfortunate that the Court found it unnecessary to discuss any authorities.

---

THE important question of the extent to which a servant can render his master liable by giving a person into custody was fully considered by the Court of Appeal in the recent case of *Abrahams* v. *Deakin*, 60 Law J. Rep. Q. B. 238. The plaintiff and a friend went to the defendant's public-house, and, having ordered some refreshment, the plaintiff's friend by mistake tendered a German gold ten-mark piece in payment. The manager refused to take it, and the plaintiff's friend then handed him a half-sovereign and received the change, but upon the plaintiff and his companion leaving the house the manager followed them, and gave them into custody upon a charge of attempting to pass bad coin. The Court held, on these facts, that an action for false imprisonment was not maintainable against the defendant, the manager having no implied authority from him to arrest persons under such circumstances. The Court approved and adopted the principle acted on by Mr. Justice Blackburn in *Allen* v. *The London and South-Western Railway Company*, 40 Law J. Rep. Q.B. 55—viz. that there is an implied authority in such cases to do all acts that are necessary for the protection of the property entrusted to a person or for fulfilling the duty which he has to perform. The Court, however, thought that the plaintiff's arrest after the supposed attempt had ceased and he had left the house was wholly unnecessary, and that the case did not therefore come within the above principle.

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LYDIA HARVEY, 'a widow,' having been summoned under the Sunday Observance Acts (29 Car. II. c. 7, and 34 & 35 Vict. c. 87) for selling newspapers on Sunday and fined half-a-crown (the maximum penalty being 5s.), Mr. Cobb asked the Secretary of State whether he would direct the fine to be remitted. Mr. Matthews, however, replied that, though he regretted the prosecution and its results, 'he should go beyond his duty if he were practically to declare that the provisions of the Act are to have no effect,' especially where a local representative body (the Horfield Local Board, who have no statutory *locus standi* in the matter) and two justices of the peace (whose consent to a prosecution, or that of a chief officer of police, is necessary under 34 & 35 Vict. c. 87) had supported their application. Mr. Cobb then asked whether the Government would include the Act of Charles II. in the schedule of Acts to be repealed by the Statute Law Revision Bill; but Mr. W. H. Smith declined to answer, on the ground that 'it is the duty of the Statute Law Revision Committee to examine the statutes and ascertain which of them are perfectly obsolete.' An Act amended so recently as 1871 is certainly not perfectly obsolete, and it would be for Parliament, and not for the Statute Law Revision Committee, to consider whether and how far the Act of Charles II. requires further amendment or whether its repeal is desirable. Nothing in that Act, we may observe (see s. 3), extends 'to the crying or selling of milk before nine of the clock in the morning or after four o'clock in the afternoon;' and perhaps it might be desirable to amend it by giving newspapers a similar protection. But the Sunday Acts, as we have more than once observed in connection with prosecutions of newspaper-boys of Brighton (see LAW JOURNAL for 1890, pp. 291, 341), are in a very curious state, requiring more amendments than one, Sunday cattle-driving, extra parochial cricket-playing, and even absence from church, each still constituting an offence in law.

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OVER and over again (see, *e.g.*, *ante*, at p. 209) we have protested in these columns against the judgment of the majority of the Court of Appeal in *Read* v. *Anderson*, in which Lord Justice Bowen, with the silent concurrence of Lord Justice Fry, and notwithstanding the emphatic dissent of Lord Esher, M.R., laid down that the authority of a turf commission agent to make a bet cannot be revoked by the principal after the bet has once been made. It is, therefore, with no small satisfaction that we read in the article of Sir James Stephen in the current number of the *Nineteenth Century*, on 'Gambling and the Law,' a demonstration of the unsoundness of that judgment, which, by legalising the profession of the turf commission agent, has so greatly facilitated betting since 1884. 'The existence of such a person as a betting agent,' writes Sir James, 'appears to me to be an insult to the law. It is a mere abuse that such a person should exist at all; and a fragment of legislation' (see 8 & 9 Vict. c. 109, s. 18, as interpreted in *Read* v. *Anderson*) 'which enables him to carry on his business, and for which no excuse is proposed except that it does so enable him, is in itself absurd. It is impossible to prove more clearly that it exists in defiance of the general body of the law. Lord Justice Bowen assumes in *Read* v. *Anderson* that a betting agent is as much entitled to be regarded as is a legitimate agent in any other branch of trade; this is, in fact, no more than a *petitio principii*. If the statute had been supposed to leave a loophole open for bets made through agents, the loophole would certainly have been closed.' The remedy which Sir James Stephen proposes is that contracts by way of gaming or wagering should be made illegal, instead of being only void, and he also proposes to enact that a principal should be enabled to revoke an authority to pay a bet at any time whatever.

---

IN *Dobell & Co.* v. *Watts, Ward & Co.* the Court of Appeal was called upon to construe the rule of the Supreme Court of August, 1890, made upon the passing of Mr. Finlay's Act. The appellants moved under Order XL., rule 4, to set aside a judgment given after

trial with a jury, on the ground that upon the finding as entered the judgment was wrong. On the part of the respondents the preliminary objection was taken that notice of the appeal motion had not been given within eight days of the trial. This would be the limit of time if the rule of August, 1890, applied; but it was contended for the appellants that that rule did not extend to motions under Order XL., rules 3, 4, when not accompanied by applications for new trial. Such motions are not affected by Mr. Finlay's Act, since before it passed they went direct to the Court of Appeal. The object of the Act clearly was to deal with cases falling under Order XXXIX., rule 1, and the rule of August, 1890, following the exact words of Order XXXIX., rule 1, applies to 'every motion for a new trial or to set aside a verdict, finding, or judgment where there has been a trial thereof, or of any issue thereon with a jury.' Though it is true that these words literally construed do include all cases falling within Order XL., rules 3, 4, yet the literal construction of the same words in Order XXXIX., rule 1, was certainly incorrect. They did not include cases where, there being no application for a new trial, the only question was whether the judgment was in accordance with the findings. Was there any insuperable difficulty in holding that the new rule likewise did not include such cases? As was pointed out, it would in regard to them be unworkable, since the eight days for giving notice run from the trial, and the judgment objected to might not be given till after the time had expired. The Court of Appeal, while admitting the absurdity of the result, held itself bound to decide in accordance with the literal sense of the rule. Perhaps it is as well that the decision should be this way if it leads, as Lord Justice Lindley promised that it should, to a revision of the rule.

---

A CLERGYMAN who had walked with a soldier in uniform from Shorncliffe to Folkestone having been refused admission to the coffee-room of a Folkestone hotel, where he had ordered luncheon for two, on the ground that his companion was a soldier in uniform, Lord Wolmer has asked Mr. Stanhope whether he proposed to take any steps in the matter. Mr. Stanhope 'assured his noble friend that he fully sympathised,' but said that hotels were subject to the 'general law of the land,' and he had no power to interfere in their management. He added, however, that he would consider the question of bringing the matter before the licensing justices on the annual renewal of the license to the hotel in question. Of course, under the special provisions of the Licensing Acts, as interpreted in *Sharp* v. *Wakefield*, the renewal of an innkeeper's license may be refused for any reason good, bad, or indifferent, and it may be well to point out that 'under the general law of the land' also an innkeeper is liable to be indicted at common law for refusing to entertain a traveller. (See *Regina* v. *Ivens*, 7 C. & P. 213, and *Regina* v. *Rhymer*, 46 Law J. Rep. M. C. 108.) In the latter case the Court of Criminal Appeal no doubt quashed the conviction of an innkeeper for refusing to supply refreshment, but this was because the 'carlton' or refreshment bar of the inn was not a part of the inn itself, because the prosecutor was not a traveller or wayfarer, and because he claimed to have a large dog with him to stay as long as he did himself; any of which reasons would have been sufficient to invalidate the conviction. The general rule, however, that an innkeeper is bound to entertain all travellers, and cannot, as the vice-chairman of the Sussex Sessions put it to the jury, 'select his customers, or reject any from caprice or dislike,' was assumed to be perfectly sound law by the whole of the Court, and unless a soldier in uniform is as bad a companion as a dangerous dog, to reject a wayfarer for being accompanied by such soldier is beyond all doubt indictable and punishable by fine or imprisonment or both, at the discretion of the Court before whom the offender is tried.

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IN connection with the rumoured movement in Wales for the establishment therein of a capital with a Lord Mayor, attention may be directed to the question whether Acts of Parliament extend to Wales without express mention of it. At first sight this may seem somewhat doubtful. The Interpretation Act of 1889 is silent on the point. In the Inland Revenue Regulation Act of 1890 it is expressly provided by section 38 that 'in that Act and in every other Act relating to Inland Revenue, whether passed before or after the commencement of that Act, expressions referring to England shall be construed as applying also to Wales.' Finally, in the Government Evidence Bill of the present session, England, Wales, and Ireland are more than once strung together (see, *e.g.*, clauses 26–28) as if they were three separate kingdoms. All doubt, however, on the subject is removed by a certain 'Act to enforce the execution of an Act for granting to His Majesty several rates and duties upon houses, windows, or lights' (20 Geo. II. c. 42), by section 3 of which, 'in all cases where the kingdom of England, or that part of Great Britain called England, hath been or *shall be* mentioned in any Act of Parliament, the same has been and shall from henceforth be deemed and taken to comprehend and include the dominion of Wales.' This being so, it may be suggested that Wales should disappear as a separate expression in the Acts of Parliament of the future, unless it be necessary to pass some enactment peculiar thereto.

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A RECENT number of the *Indian Jurist* calls attention to a shocking miscarriage of justice in the trial of prisoners charged with a murder of the most atrocious character in the city of Hyderabad (Deccan). Mumtaz Bi, wife of Sadalla, a Munshi and professing Christian, was decoyed into a house and 'there done to death, partly with the handkerchief of the Thug, partly with the rice pounder of the ryot.' The body was stripped of its jewels and packed in a wooden case, and then taken to the railway station to be forwarded to Lahore. Fortunately suspicions were aroused at the station, inquiry was made, and four persons were arrested. Three of these made statements of a self-criminatory character, the Commissioner of the City Police seemed to be active, and yet no one has been convicted of the crime. Every hindrance seems to have been put in the way by the native Court, which insisted on hearing the case in five days' time, before the evidence could possibly have been prepared, and then virtually discharged one of the prisoners who was most strongly suspected of the crime. One of the oddest parts of the proceedings was that the judge actually sent a sort of apology to the *Hyderabad Record* for discharging this man. It is true that one of the other three accused persons was convicted of attempting to make away with the body and sentenced to seven

years' imprisonment, a sentence which was subsequently revised by imprisonment for life. The reason assigned by the *Indian Jurist* for these extraordinary proceedings is that Abdul Wahid, the discharged prisoner, was brother of one official of the Government and brother-in-law of a much higher official. The case of the prosecution does not appear to have been honestly conducted, and the judge actually declined to admit the scientific examination of the blood on Abdul Wahid's clothes. The whole scandal, however, would have been hushed up but for the intervention of Mr. J. H. Nelson, an English barrister, and former member of the India Civil Service, who demanded British justice on the ground that Abdul Wahid and his servants were subjects of the Queen. The Hyderabad Government took alarm at this, and issued an extraordinary resolution, which is published in the *Indian Jurist*, dealing elaborately with various theories of the crime, and ordering the re-arrest of Abdul Wahid, who is to be kept in custody, if arrested, unless he can find bail to the extent of 10,000 rupees. It would, of course, according to our ideas, be monstrous if a man charged with murder were to be let out on bail at all. In the meantime the accused has escaped. We are not free from responsibility for the decent government of native states under our protection, and if the story in the *Indian Jurist* is substantially accurate Mr. Nelson should lose no time in communicating with the Secretary of State on the subject.

---

IT is, of course, a well-settled rule that an executor may retain a debt due to the testator out of a pecuniary legacy or share of residuary personal estate bequeathed to the debtor. In *Ackerman* v. *Ackerman*, reported in our Notes of Cases for this week, Mr. Justice Kekewich applied this rule to a case where real and personal estate were given to trustees (who were the same persons as the executors) upon trust for sale and conversion, holding that in the case of a mixed residuary fund like this the debtor must pay his debt before sharing in the proceeds of sale of the residuary real as well as personal estate. His lordship said that the principle was that 'a person who owes an estate money, that is, who is bound to increase the general mass by a contribution of his own, cannot claim his aliquot share of the mass without first making the contribution which completes it,' and that this principle applied to the case of a residuary mixed fund made up of the proceeds of sale of real as well as personal estate. There can, we think, be no doubt as to the correctness of the decision. The same circumstances, we may add, appear to have existed in *Hodgson* v. *Fox*, 48 Law J. Rep. Chanc. 52; L. R. 9 Chanc. Div. 673, where the fund was similarly composed of the proceeds of sale of real and personal estate, but in that case, the legatee having become bankrupt before the death of the testatrix, Vice-Chancellor Hall on that ground decided against the right of retainer altogether.

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SECTION 26 of the Copyright Act, 1842 (5 & 6 Vict. c. 45), enacts that in any action brought against any person for doing or causing to be done anything in pursuance of that Act a verdict shall be given for the defendant, or the plaintiff shall become nonsuited or discontinue his action; then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law has. A similar provision appeared in section 8 of 8 Anne, c. 19, the earliest statute relating to copyright, which remained in force, as modified by 41 Geo. III. c. 107, and 54 Geo. III. c. 156, until 1842, when it was repealed by the Copyright Act of that year. Curiously enough, until the decision of the Court of Appeal last week in *Avery* v. *Wood* (Notes of Cases, p. 118), the meaning of the expression 'full costs' in those statutes —whether 'solicitor and client' or 'party and party' costs—had never been judicially determined.

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THE meaning of full costs was, in *Trevelyan* v. *Jamieson*, 10 Exch. 748, decided in 1855, declared to be 'ordinary costs as between party and party;' and in *Irvine* v. *Reddish*, 5 B. & Ald. 796, it was decided in 1822 that there was no distinction in law between costs and full costs. It is true that in *Doe* d. *Hyde* v. *The Mayor of Manchester*, 12 C. B. 474, a wider interpretation was, in 1852, placed upon the words 'full costs,' which were held to mean a complete indemnity. That case was, however, decided under 8 & 9 Vict. c. 18, and must, moreover, be regarded as overruled by *Trevelyan* v. *Jamieson* (*ubi sup.*). It was upon the authority of *Trevelyan* v. *Jamieson* and *Irvine* v. *Reddish*, which show what the well-established practice in the common law Courts has been, that the Court of Appeal, in *Avery* v. *Wood*, held (affirming Mr. Justice North) that full costs in copyright actions meant party and party costs, notwithstanding the contention that the defendants in that case were entitled to be fully indemnified against the costs incurred by them in resisting a claim to copyright that had failed. The defendants argued that, the plaintiffs' claim to copyright having been dismissed, the defendants were entitled to have and recover solicitor and client costs. This contention, however, did not prevail with the Court of Appeal.

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IT is noticeable that section 10 of the Copyright Act, 1842, which is much the same as section 5 of the Act of Anne, gives costs in certain other matters as between 'attorney and client.' It may be fairly supposed, therefore, that the Legislature would have used those words in section 26 instead of 'full costs' if it had been intended to give more than party and party costs. At any rate, the decision of the Court of Appeal in the present case may be taken to have finally settled this small point.

---

IF a single Court of Appeal were to be established there would be fully twenty judges, all, as the *Law Quarterly* proposes, Lords of Parliament. To these might be added retired Indian and colonial judges of eminence, whose presence would not only increase the confidence of India and the colonies in the decisions given on final appeal, but would serve to unite the colonies more closely to the mother country. There is, however, a danger in this scheme of discouraging appeals when comparatively small sums are involved. An appeal to the Court of Appeal is, as regards costs, a very different matter from an appeal to the House of Lords; and there would, under the proposed reform, have to be as much elaboration and as much printing as there now is for an appeal to the House of Lords. Moreover, apart from the eminence of the men who

constitute it, the House of Lords has one supreme merit; there are rarely more than two cases down for hearing on one day. The case is thoroughly thrashed out in a leisurely way, so that it is almost impossible that any point can have been overlooked. Then it is questionable whether the final and irreversible character of any decision would be recognised as the judgments of the House of Lords are now recognised. There would in our jurisprudence be no 'Roma locuta est, causa finita est.' To many minds this may seem an advantage rather than the reverse; and it does sometimes happen that the Court of Appeal is really a stronger one than the House of Lords, as it is occasionally constituted. If there were but one Court of Appeal, all members of the House of Lords, its different divisions might all sit at Westminster, and thereby contribute to the solution of the ever-recurring difficulty of space, as two more Courts would be permanently available in Carey Street.

## WARDS OF COURT.

THE Crown is *parens patriæ*, and a ward of Court is under the protection of its constitutional parent, that protection being extended to the infant through the persons to whom the Crown has delegated its authority. In Snell's 'Principles of Equity' it is stated (7th edit. p. 414) that 'the origin of the jurisdiction in Chancery to appoint a guardian over infants is to be found in the prerogative of the Crown, which is under a general duty as *parens patriæ*, and has a corresponding power to protect those who have no other lawful protector, and the jurisdiction is exercised in Chancery as a branch of the *general jurisdiction* originally confided in and delegated to that Court.' *In the Matter of Gills, Minors*, L. R. Ir. 27 Chanc. Div. 129, the Lord Chancellor of Ireland has had to exercise his authority under somewhat interesting circumstances. Three wards of Court (two boys and a girl) were entitled under their grandfather's will to a sum of 8,000*l.* in equal shares, provided that the shares of each of them should not be payable until he or she attained thirty, or married with the consent of the trustees. In the will there was a power given to the trustees in their discretion, in case the girl became a professed nun, to pay to the lady superior of the religious house to which she belonged part of the 8,000*l.*, not exceeding 1,000*l.*, and after such payment the girl was to have no further claim on the 8,000*l.* The grandfather there showed a not uncommon aversion to his money being swallowed up by communities in which he had no interest, though he permitted a portion of it to be devoted to the religious house which his granddaughter might join. In June, 1879, an order was made for the maintenance of the minors. The two boys attained twenty-one, but in 1890 the girl, being then in her twentieth year, entered a convent and soon became a novice, but took no vows. The period of the novitiate would have lasted two years, so that before she became a professed nun she would have attained her majority and ceased to be a ward of Court. The guardian of the person and fortune of the minors took out a summons asking (*inter alia*) that the maintenance order might be continued, and that he might be repaid the sum of 32*l.*, being the amount expended by him as the entrance fee of the girl into the novitiate and for her outfit. The Lord Chancellor acceded to the application for the continuance of the maintenance, as it was necessary that the wards of Court should be duly maintained, but disallowed the 32*l.* on the ground that it had been spent without the sanction of or notice to the Court, and contrary to its practice. As regards the practice of the Court, the Lord Chancellor's judgment represents not only what is done in Ireland, but also in England, for on p. 134 his lordship says: 'I also communicated with England to ascertain the practice there, and I am informed by Mr. Justice Chitty, after communicating with the other judges of the Chancery Division and his senior chief clerk, who had been twenty-seven years in office, that there is no record of any sanction being given or even applied for to a female ward of Court under age entering on a novitiate or (to use Mr. Justice Chitty's words) "taking any positive step leading to an irrevocable vow." The importance, the seriousness of the step is obvious.' From the practice revealed by the English evidence it would seem that a ward of Court would not be permitted to become a novice in a convent, but must postpone that step until she has become her own mistress by attaining her majority. From that time she is, of course, free to do as she likes, though the Court might view with suspicion any acts of the kind performed by her soon after twenty-one. In a recent case, where a petition was presented for the payment of money out of Court soon after an infant's coming of age, and it appeared that he had heavily incumbered his property directly he had entered into manhood, Mr. Justice Chitty allowed him to have the privilege of a ward and have the petition heard *in camerâ*, so that any necessary explanations as to the incumbrances might be given. The Lord Chancellor of Ireland in *In re Gills* did not remove the girl from the convent, as it appeared from the evidence that she was in a delicate state of health, and any thwarting of her wishes might develop 'swift and deadly disease.' Contracts in restraint of marriage have always been deemed contrary to the policy of the law, and, of course, the life of a nun does presuppose that marriage will never be the lot of the person who has entered a convent. Possibly this policy of the law is a survival of the days when parents were considered fortunate in having a large number of children, when the psalmist could say with sincere feeling, 'Happy is the man that has his quiver full of them.' In a thickly populated country it might seem to be the wiser policy of the law to favour contracts in restraint of marriage, but there cannot be a doubt that it is right to discountenance any irretrievable steps taken by those who are not old enough to know their own minds. When the novitiate was over the ward in question might turn her back on her conventual life and be free, but the influences and customs of those two years, and the habits of obedience thus formed to the convent authorities, might make this difficult for a girl just entering on womanhood. Guardians, who dread their wards entering monastic houses or convents, can thus, by making their charges wards of Court, prevent such a step being taken. In Simpson's 'Law of Infants' (2nd edit. p. 145) an unreported case, where such a course was pursued, is thus referred to: 'In *Todd* v. *Lynes* a young man of seventeen was persuaded by the defendant to leave his father and go to a monastery under the charge of the defendant. The father made himself a trustee of 100*l.* Consols for the infant, and filed a bill to make him a ward of Court. He then applied for an order to restrain the defendant from letting the son take monastic vows, to deliver him to the custody of the father, and, if necessary, to attend

the judge personally. The order was made, but the defendant taking no notice of it, the serjeant-at-arms was sent to fetch the infant. On the defendant's appearance he was reprimanded by the judge, and would have been made to pay the costs if asked for; and the judge said he might have been committed for contempt. The boy was delivered to the father.' It is satisfactory to find in the Irish case that the lady superior did not know that the girl was a ward of Court.

## UNWRITTEN CHAPTERS ON THE LAW OF DESIGNS.

### II.

SUMMARY OF LEGISLATION RELATING TO DESIGNS.

THE earliest Act of Parliament dealing with copyright in designs was 27 Geo. III. c. 38. It provided that from and after June 1, 1787, the proprietor of any new and original pattern for printing linens, calicoes, cottons, and muslins should have the sole right of printing it for *two months* from the day of the first publication thereof, and that infringers should be liable to an action for damages, which was required to be commenced within six months from the commission of the offence in respect of which redress was claimed. This Act extended to Scotland, and was to continue in force for one year. The only points of *legal* interest connected with it are the implied definitions, which it contained, of 'proprietor' and 'infringer.' (1) The statutory copyright is vested in 'every person who shall invent, design, and print, or cause to be invented, designed, or printed, *and become the proprietor of*,' any new and original pattern, &c. (2) An infringer under this Act is every person whatsoever who during the existence of the statutory copyright in any design 'shall print, work, or copy,' 'or cause to be printed, worked, or copied,' the original pattern of the design, 'or shall print or reprint or cause to be printed or reprinted,' any such pattern, 'and shall publish, sell, or expose to sale or in any other manner dispose of, or cause to be published, sold, or in any other manner disposed of, any linen, cotton, callicoe (*sic*) or muslin so printed without the consent of the proprietor or proprietors thereof, first had and obtained in writing, signed by him or them respectively, in the presence of two or more creditable witnesses, knowing the same to be so printed or reprinted without the consent of the proprietor or proprietors.'

It is useless to speculate about the scope, or to analyse the terms, of these clauses. They belong to the infancy of Parliamentary drafting.

The next three Designs Acts may be disposed of very shortly: 39 Geo. III. c. 19, continued 37 Geo. III. c. 38 to July 1, 1794; 34 Geo. III. c. 23, made it perpetual, and extended the period of copyright to three months; 2 & 3 Vict. c. 13, extended these Acts to Ireland and applied their provisions to (*a*) fabrics composed of wool, silk, or hair, and (*b*) mixed fabrics composed of any two or more of the following materials: linen, cotton, wool, silk, or hair.

Meanwhile two concurrent streams of legislation had covered (1) designs for articles of manufacture other than lace and the fabrics included in the Acts above mentioned (2 Vict. c. 17), by which the period of copyright was fixed at twelve months in the case of designs for articles of manufacture generally, and three years in the case of designs applied to articles of manufacture 'being of any metal or mixed metals,' and (2) all forms of sculpture (38 Geo. III. c. 71, and 54 Geo. III. c. 55) under which the copyright lasted for fourteen years.

The material contents of the next batch of design statutes may be summarised under a few heads:

1. Copyright in designs for sculpture was definitely excluded from the purview of the Designs Acts (5 & 6 Vict. c. 100, s. 3, and 6 & 7 Vict. c. 65, s. 2), except as regards provisional registration (13 & 14 Vict. c. 104, s. 15).

2. A distinction was drawn between ornamental and useful designs. The former were divided into thirteen classes, and were made the subject of copyright for periods ranging from nine months to three years (5 & 6 Vict. c. 100, s. 3, and 21 & 22 Vict. c. 70). The latter were protected for three years (6 & 7 Vict. c. 65, s. 2).

3. A system of compulsory registration was established, and the statutory protection was made to run from the date of registration, and not, as under the Georgian Act, from the date of publication (5 & 6 Vict. c. 100, s. 4; 6 & 7 Vict. c. 65, s. 2). The registrar of designs was at one time appointed by the Board of Trade (5 & 6 Vict. c. 100, s. 14; 6 & 7 Vict. c. 65, s. 7), but the Copyright of Designs Act, 1875 (38 & 39 Vict. c. 93) transferred the powers of the Board of Trade under the old Designs Acts to the Commissioners of Patents.

4. 13 & 14 Vict. c. 104, enabled the registrar of designs to register *provisionally* for the period of one year any design within the meaning of the Designs Acts or the Sculpture of Copyright Act, 1814 (54 Geo. III. c. 56). Provisional registration gave to the proprietor of a design the same remedies as complete registration, but it was liable to be defeated if he exposed for sale the design or any article to which it was applied during the existence of the provisional protection. This protection did not, however, extend to (*a*) publication at exhibitions previously certified by the Board of Trade, or (*b*) the sale or transfer of the right and property in the design itself.

5. Any person that acquired a design for good and valuable consideration was deemed to be its 'proprietor' (5 & 6 Vict. c. 100, s. 5).

The Designs Acts, 1883–1888, have modified the old law in several particulars. But the law of copyright in sculpture is still excluded from the general law of designs (section 60), and the definition of 'proprietor' remains unchanged. But the cumbrous distinction between ornamental and useful designs has been got rid of (section 60). Provisional registration has disappeared, and a uniform period of copyright—five years—has been adopted. In the following papers we shall consider some of the leading cases under the Designs Acts.

*(To be continued.)*

## LEGISLATIVE PROGRESS.

IN the House of Lords.

The royal assent was given by commission to the following bills:—

Consolidated Fund (No. 2) Bill.
Customs and Inland Revenue Bill.
Pollen Fisheries (Ireland) Bill.
Savings Banks Bill.
Museums and Gymnasiums Bill.
Reformatory and Industrial Schools (Children) Bill.

Russian Dutch Loan Bill.
Public Accounts and Charges Bill.
Herring Branding (Northumberland) Bill.
Thames Deep Water Dock Bill.
London Overhead Wires Bill.
London Sky Signs Bill.

Bills read a third time and passed:—
Fisheries Bill.
Mail Ships Bill.
Roads and Streets in Police Burghs (Scotland) Bill.

Bills through committee:—
Land Purchase (Ireland) Bill.
Schools for Science and Art Bill.
Mortmain and Charitable Uses Amendment Bill.
Allotments Rating Exemption Bill.
Municipal Registration (Dublin and Belfast) Bill.

Second readings:—
Returning Officers (Scotland) Bill.
Penal Servitude Bill.
Public Health (London) Bill.

New bills:—
Lunacy Act Amendment Bill.

In the House of Commons.

Third readings:—
Local Registration of Title (Ireland) Bill.
Stamp Duties Bill.
Stamp Management Duties Bill.
Ranges Bill.
Metalliferous Mines (Isle of Man) Bill.
Free Education Bill.
County Councils Elections Bill.
Consular Salaries and Fees Bill.
Crofters' Common Grazings (Scotland) Bill.

Bill through Committee:—
Turbary (Ireland) Bill.
Post Office Acts Amendment Bill.
Western Highlands and Islands (Scotland) Works Bill.
Public Health (Scotland) Acts Amendment Bill.
Highways and Bridges Bill.

Second readings:—
Highways and Bridges Bill.
Evidence Bill.
Wild Birds' Protection Act, 1880, Amendment Bill.
Statute Law Revision Bill—referred to Select Committee.
Training Colleges (Ireland) Bill.

New Bill:—
To give Facilities to Industrial and Provident Societies to acquire the Fee-simple of their Holdings.

Bills withdrawn:—
Local Government (Scotland) Act, 1889, Amendment Bill.
Child-life Insurance Registration (Scotland) Bill.
Valuation of Lands (Scotland) Bill.

THE SOUTH WALES CIRCUIT.—Mr. H. M. Bompas, Q.C., of the Western Circuit, has been appointed a Royal Commissioner of Assize, to go on the South Wales Circuit in place of Mr. Justice Collins, who is sitting in the Probate and Admiralty Division for Sir Charles Butt. The learned commissioner will proceed on the South Wales Circuit alone until Chester is reached, when he will be joined by Mr. Justice Lawrance.

# Reviews.

## EMDEN ON WINDING-UP.

*The Practice and Forms in Winding-up Companies.* A Concise and Practical Treatise upon the Law and Practice relating to the Winding up of Companies from the Commencement of the Winding-up Proceedings to Dissolution. With a Chapter on Reconstruction, &c. By ALFRED EMDEN, Barrister-at-Law. Fourth Edition. London: Wm. Clowes & Sons (Lim.). 1891.

THE author of this work has achieved a well-deserved reputation as a writer of text-books, and the volume now before us is calculated to add to his laurels. The fact that it is a fourth edition affords proof of its utility and of the high estimation in which it is held. The book is now brought well down to date by the incorporation of the recent legislation and rules affecting that branch of company law with which it deals. Mr. Emden is thoroughly practical, and company lawyers may therefore turn with confidence to his pages for help when in doubt; and the book is so well arranged that the practitioner will generally have but little difficulty in obtaining the assistance which he seeks. A new and very useful chapter has been added, on 'Reconstruction,' and the whole book has been thoroughly and carefully revised. References are given to all the reports, and every case appears to have been duly noted up. The size of the volume is again slightly increased, but, having regard to the nature of the subject with which it deals, we are surprised that the increase is not still greater, and that the book remains as handy as it is.

## CHALMERS ON BILLS OF EXCHANGE.

*A Digest of the Law of Bills of Exchange, Promissory Notes, Cheques, and Negotiable Securities.* By his Honour Judge CHALMERS. Fourth Edition. London: Stevens & Sons (Lim.). 1891.

THE last edition of this work was published in 1887, and in the present edition all the cases bearing upon the subject which have been decided in the interval will be found inserted in their place, while the notes appended to the various sections of the Act have in many instances been rewritten and enlarged. The author scarcely does justice to his industry when, in his paternal solicitude for the welfare of the Bills of Exchange Act, 1882, of which he was the draughtsman, he claims that the decision of the House of Lords in *Vagliano Brothers* v. *The Bank of England*, delivered on March 5 last, and reported in the April number of the LAW JOURNAL REPORTS (60 Law J. Rep. Q. B. 145), is the only really important case upon the Act which has occurred during the last four years. In spite of this, more than one hundred additional cases will be found to be cited in the new edition, the bulk of which is swollen to the extent of twenty pages, exclusive of two entirely new chapters dealing the one with the payment of debts by bills, notes, or cheques, and the other with negotiable or quasi-negotiable securities for money other than those previously treated of, such as foreign notes to bearer, circular notes, debentures, dividend warrants, exchequer bills, post-office orders, scrip and share certificates and transfers. This latter chapter

is scarcely complete in its present form, and, indeed, can hardly be intended to be from the number of subjects alluded to in so short a space. In dealing, for instance, with share certificates, the important case of *In re The Bahia and San Francisco Railway Company*, 37 Law J. Rep. Q.B. 176, should scarcely have been omitted. As for the main part of the work, the intimate connection of the author with the subject for so many years is a guarantee of its value and completeness. We regret, however, that the error of giving a single reference only to the cases cited has been repeated in this edition.

# Correspondence.

## THE LATE MR. TAXING-MASTER SKIRROW.

SIR,—The regret which was felt by the legal profession on the retirement of the late Mr. Taxing-Master Skirrow from official life in 1889 was mitigated by the hope that he might for many years enjoy the rest and ease to which he was so justly entitled; but, now that he is no more, that regret gives place to a sense of loss which it would be unbecoming not to attempt to express in suitable language. I trust I may be permitted to say a few parting words in memory of one for whom I am sure the legal profession felt so much esteem. It seems only the other day that he retired from public life, and received those testimonials from his private friends, professional brothers, and solicitors, who only knew him as taxing-master, which we all know he prized so much. I think it should be thoroughly well known that during the twenty-seven years of this gentleman's official life as Chancery taxing-master neither he nor his staff nor the offices in which day by day he worked with such assiduity over the bills of costs referred to him for taxation ever cost the country a single farthing, so considerable was the amount of fees earned by him and his clerks in the course of their work, owing to the rapidity with which he despatched his business. This was to suitors and solicitors alike a considerable boon. So far from costing the country anything, the fee fund gained a very large profit on the work done by him; for instance, when in January, 1878, I was urging the necessity of the appointment of an additional Chancery taxing-master, I made a calculation from the judicial statistics, and from them proved that this profit for one year (that ending October 31, 1876) amounted to 2,047*l.* 10*s.*, made up thus:—

| | £ | s. | d. |
|---|---|---|---|
| Total fees earned by Mr. Skirrow and staff in that year . . . | 4,947 | 10 | 0 |
| Amount of salaries of the master and his two clerks and estimated proportion of rent of office . | 2,900 | 0 | 0 |
| Profit . . . | 2,047 | 10 | 0 |

(See my letter which appeared in the *Times* of Saturday, January 19, 1878.) But there was a decrease of business in 1876, and the fees were comparatively few. In 1881 the fees earned by Mr. Skirrow and his staff amounted to 6,794*l.* 18*s.*, and in 1882 to 5,504*l.* 10*s.*, so that his average profit was much larger than that for the year 1876. However, simply taking the profit earned by this gentleman and his staff at 2,000*l.* a year, he, in his twenty-seven years of official life, not only cost the country nothing, but earned for it profit amounting to 54,000*l.*

None of the Chancery taxing-masters cost the country anything, and all return a profit to the fee fund; but I am not dealing with that, I am only paying a parting tribute to Mr. Skirrow, whose official work is worthy of special recognition; and I am sure that it will be a matter of no small satisfaction to the legal profession to know that his portrait, painted by his friend the eminent artist Professor Herkomer, will pass on to posterity the remembrance of this eminently worthy gentleman, whose loss we all so much deplore.

Passing from his professional to his private life, it is only necessary to call attention to the fact that the subscribers to the 'Skirrow testimonial' embraced such names as Lord Wolseley, K.T., Robert Browning (the poet), privy councillors, lords justices, barristers, solicitors, eminent actors, journalists, and numerous friends, to show how widespread was the affection felt for him.

He was born on July 1, 1820; died June 25, 1891, and was buried at Kensal Green on June 30, 1891, on which day he would have completed his seventy-first year.

JAMES RAWLINSON.

Upper Holloway, N.: July 7.

# Unreported Cases.

## POLICE.

### ILLEGAL DETENTION OF MILITARY PENSION PAPERS.

AT Lambeth, on July 4, a man belonging to the Army Reserve force was brought before the Court by Warrant-officer Moore. He informed the magistrate that the complainant had deposited his pension paper with a money-lender, who refused to part with it, as he had advanced money upon the document as security. Sergeant Moore stated further that there had been several complaints of a like description, where lodging-house keepers and money-lenders had kept certificates of pensioners. Mr. Hopkins asked what the applicant complained of, and he stated that a certain money-lender had, as a security for debt, detained his life-certificate, which was necessary for him to produce before he could obtain the amount of his pension.—Mr. Hopkins said it was a matter that should certainly be looked into. He referred to section 9 of the Army (Annual) Act, 1891 (54 Vict. c. 5), which section enacted: 'That every person who receives, detains, or has in his possession the identity-certificate or life-certificate of a person entitled to a military pension, or to receive pay as a pledge or security for debt, or with a view to obtain payment from the pensioner, shall be liable on summary jurisdiction to the like penalty as under subsection 1 of this section; and the certificate shall be deemed to be property within the meaning of the section.' Mr. Hopkins said it was a very important question, as the penalty against offenders was heavy. After consulting the various sections of the Act, he decided to issue a summons against the party who was alleged to have illegally detained the papers and certificates of the army pensioner.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d.* DR VERE & CO., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## SUCCESSFUL CANDIDATES.

THE following candidates (whose names are in alphabetical order) were successful at the Final and Intermediate Examinations of the Incorporated Law Society held on June 16, 17, and 18, 1891:—

### FINAL EXAMINATION, JUNE 16 AND 17.

Adderley, Rupert Thomas
Amphlett, James
Andrew, Sidney
Armitage, William
Ash, William Shipley
Baker, Herbert Kendra
Bale, Arthur Edwin
Barlow, Thomas
Barnes, Nicolas Edmund
Barrow, Richard Sowton
Bennett, Anthony Henry Armitage
Bennett, Frank Clayton
Berkeley, Charles Walter
Berridge, Harry Morpott
Biddle, George William
Birkett, John Stanwell, B.A.
Blazeby, Horace Henry
Blunt, Arthur Giraud
Boulton, Frederic James
Brabner, George Harold
Bradby, Edward Hugh Falkwine, B.A.
Brandreth, Colvin, B.A.
Bransbury, John, B.A.
Brewis, Bertram
Brigstocke, Augustus, B.A.
Brutton, George Kingston Hall
Bryan, Frank Smith
Bunnett, George Radclyffe
Burr, Frederick John, B.A.
Caldecott, Leicester
Canham, Alfred Henry
Capes, Robert
Carlisle, Ernest James, B.A.
Carr, Edward
Carter, Henry Wilfred
Chalk, John Henry
Champion, Edward Frank, LL.B.
Clarke, Arthur
Clarke, Arthur Edwin
Cohen, Baruch
Conway, Philip Charles
Cooper, Arthur Savage
Cooper, John Richmond
Coote, John
Coulson, Henry Lewis
Crellin, Henry, B.A.
Cuff, Arthur William
Culross, William
Davidson, Norman
Davies, Colin Rees
Davies, Jonah
Davies-Colley, Thomas Henry, B.A.
Davies, William Richards
Dodd, Cyril
Donisthorpe, Edmund Russell, B.A.
Draper, Harold Irving
Dunning, Humphrey Percy
Dunster, Edward Luis
Eagleton, Leonard Osborne
Eaton, Frank Ernest
Eddison, John Arthur, B.A.
Edgley, Walter
Eisdell, Joseph Carter
Emanuel, Charles Ansell
Emanuel, Jonas Jacobs
Evans, Arthur Acton
Evans, Richard Gwynne
Evans, Thomas
Firth, William
Fisher, Theodore
Frater, Frederic Moses
Furneaux, John Mudge
Gardiner, Walter Douglas
Geake, Arthur
Gibson, Edward Morris
Gibson, Richard Ernest Hooper
Gocher, Leonard
Gofton, William Smith
Gonin, Alphonse Willett
Gostling, Charles
Gould, Arthur
Grave, Foster
Gray, Charles Herbert
Greenish, Samuel Knethell
Gregson, William Eugene
Gustard, Walter Stafford
Haines, George Warden
Hales, Frederick William
Hall, Matthew Anderson
Halsey, Bernard Edward
Hamer, Arthur
Harratt, Arthur Frederick, B.A.
Harris, William Nelson
Harrison, Ernest
Harrison, Robert George
Hay-Chapman, Francis Frederick Angerstein
Henderson, Henry Beatty
Hickson, George William
Hill, Henry Egan, B.A., LL.B.
Hilleary, Leicester Mount, B.A.
Hind, Jesse William, B.A.
Hodges, Francis Nowell
Homer, Alfred
Hopkins, Henry Russell
Howard, Allen
Hoyle, Theodore
Hudson, Robert
Hughes, Edward Percival Whitley
Hurd, Samuel Martin
Ingle, William Brouncker
Jackson, Edward M'Donald Caunter
Jackson, John Herbert
Jackson, William, B.A.
Joblin, Francis Edward
Johnson, Arthur Palmer, B.A.
Johnson, Joseph Edwin
Jones, James Edmund Woodstock, B.A.
Jones, Owen Tudor
Jones, William Percival, B.A.
Kay, Arthur
Kay, James Sellers
Knight, Edward Boards
Knowles, John
Langley, Henry Gilchrist
Smith, Hamilton Lavers, B.A.
Leake, John Hasleham
Leesmith, Bryan Lee, B.A.
Legender, William Pearson
Ley, Frank Ernest Rooke
Liddle, Charles Gordon
Linnell, Herbert
Lloyd, John Richard
Long, Alexander John Wakeman
Macnaghten, Frederic Fergus, B.A.
Magee, George Michael
Magniac, Charles Vernon
Mansford, Henry
Martin, Harold, M.A.
Martineau, Gerald, LL.B.
Martyn, John Ley Kemthorne
Martin, Reginald Yelf
Mason, George Percival
Mathews, Henry Noble
Mawby, Frederick Tusting
Mawdesley, Thomas Smith, LL.B.
Maxwell, James Graham, B.A.
Maynard, Samuel Tomkins
Mayo, Thomas Worsfold
Meakin, James Robinson
Menneer, William Henry
Michelmore, Philip, B.A.
Mills, Albert Thomas
Moore, Arthur Collin, B.A.
Moore, Robert Newbold
Mosley, Godfrey, B.A.
Muddiman, Joseph G., B.A.
Mullens, Harold Arthur
Musgrove, Arthur
Mylchreest, Claude Wathew
Neate, Rayner Maurice, LL.M., B.A.
Newbegin, Ernest Warne
Nicholls, Percy James
Nicholson, Charles Lothian
Nimmo, David
Norton, Theodore
Oldham, Ernest Fitzjohn
Osborne, Algernon Willoughby, B.A.
Ouvry, Ernest Canington
Parkinson, Joseph
Pearson, John Dawson
Peet, Henry
Peet, Thomas Ernest, LL.B.
Pickin, William John
Pierce-Lewis, John
Pollock, Robert Gordon
Porter, Leonard Lachlan
Porter, Roderick
Postlethwaite, George Burrow, B.A.
Powell, George Gordon, B.A.
Price, John
Pye, George
Rackham, Thomas Charles Martelli
Radcliffe, Vincent
Reddish, Henry Lupton
Redgate, William Herbert
Rehder, Ernst Adolf
Rhodes, Arthur Elliot
Rhodes, James Furness
Ritson, Cecil Spark
Ritson, George Spark
Roberts, Edwyn Turner
Roberts, Elias
Roberts, George Cecil
Robinson, Charles
Robson, Alexander
Robson, Leonard Gray
Roscoe, Henry Lincoln, B.A.
Ruff, John Pinn
Sale, Frederic William Reed
Sandford, Leslie Gordon
Saunders, Ernest Henry
Scammell, Stephen Malcolm
Simmonds, George May
Skelton, John Ambrose
Slade, Evan Martin
Slocock, Arthur Edmund Oliver, M.A.
Smith, Arthur
Smith, William Hubert, B.A.
Southwell, Harry Glanville
Steele, Henry Squire
Stooke, Charles
Stowell, Richard Tatham
Stuart, Hubert Langham
Sugden, Herbert Stanley
Taylor, Frederick Percy
Thomas, Sidney Herbert
Thompson, James Richard
Traill, Walter Sinclair
Treasure, Frank
Tucker, William Robey
Tweed, Robert Peers Fenn
Veitch, Harry Morgan
Wagner, Albert James
Walker, Albert William Joseph
Walton, Herbert Henry Bishop, B.A.
Watkins, Charles
Watson, Samuel
Watts, Henry Walter
Wedlake, Charles Noel
Wheatley, James Byers
Wheeler, George Gabriel Glasspool
White, Edward Aubrey
Whiteley, Frederic James
Williams, John Lee Bromley
Wilson, Brereton Knyvet
Wilson, John
Windus, John Edward
Woolnough, Charles Walter
Worth, Stanley Baldwin
Wright, Arthur Ernest

INTERMEDIATE EXAMINATION, JUNE 18.

Addison, George Bramsdon
Alcock, Frank Morley
Alston, Robert Graham Fitzgerald
Andrews, George Wilton
Archer, Francis William
Arnison, Nathan Henry
Baker, Henry Mills, B.A.
Baxter, Joseph Henry
Bertram, Julius, B.A.
Blackhurst, Alfred
Blakemore, Arthur Villiers, B.A.
Bloxam, William Richard
Bristow, Arnold Wilson
Brown, Henry Percy
Brown, Oswald Charles Bernard
Butt, Samuel Alford
Campbell, Donald
Carrick, Ernest
Chapman, Arthur
Chapman, Thomas
Chatwin, Herbert Freeman
Cheeseman, Charlie
Clark, George Riley
Clarke, Joseph Robert
Clay, Sidney Herbert
Clayton, George Alfred
Clinton, Norman
Cockshott, Arthur
Coleman, William Arthur
Cosway, Percy Lee
Cowley, Frederic John
Craven, Mark Herbert
Cumberland, William Bentick
Cundall, Alfred William
Davies, Myles Fenton, B.A.
Davies, Ottley Wilding
Davies, William James
Dawson, Conrad Edward
Draycott, Arthur
Driver, Newton Graeme
Durrant, Arthur Ernest
Ellis, Cecil Flower
Farrer, Noel Maitland, B.A.
Fell, Basil Haig, LL.B.
Fletcher, Carteret Ernest, B.A.
Francis, Arthur Edward
Fraser, Henry Edwin
Frost, William
Gibbs, Joseph Archibald Youngman
Gill, Henry Howes Courtenay
Gold, Philip, B.A.
Goode, William Winter
Granger, Thomas Henry
Greening, Claude
Hallam, Robert
Hawes, Robert Porson, B.A.
Heilmann, Peter Joseph
Herington, George Alfred
Hiatt, Charles Thomas John
Hildesheim, Paul, B.A.
Hills, Gerald Hewett French
Hinchcliffe, Arthur Edward Townend
Holden, Alfred Philip
Horten, William Hurlstone
Hossell, Herbert
Howell, Edmund Gwynne
Howell, Marmaduke Gwynne
Hubbard, Nathaniel William
Hudson, Frank Russell
Hunter, Charles Herbert B.A.
Huntsman, George Alexander Irvine, B.A.
Jackson, Cyril Hugh, B.A.
Jarvis, John Sidney
Jones, Edward Owen
Jones, Frederick Graham
Jones, Harry
Joy, Richard Eustace, B.A.
Kidson, Arthur Frederic
Kirk, Thomas Laurence
Knee, Alfred William Colston
Lamb, Thomas Edgar
Lancaster, Eric Allport, B.A., LL.B.
Laurie, Walter David, B.A.
Levick, William Parry
Lewis, Robert Ajax
Litchfield, Arthur Erasmus, B.A.
Lodge, Joseph
Lydall, Herbert Wykeham
Mackay, William Gayer Starbuck
Makin, Thomas
Marsh, Ernest John, B.A.
Martin, Herbert Magub
Maxwell, William George
Maycock, Bernard Joseph, B.A.
Mayo, Charles Joseph
Meikle, James Edward
Miles, Gilbert
Miller, George Cospatrick Muirhead
Mills, Walter Wilgress, B.A.
Milward, Etienne Harding
Molony, James Rowland Hamilton, B.A.
Moon, Walter
Moresby, Charles
Morgan, Charlton Elliot
Morrish, Harold Gabriel, B.A.
Nicholl, Francis William
Nixon, Arthur Cooper, B.A.
Norrish, John Sydney
Ovington, Cecil Ohren, B.A.
Paddison, Alfred
Payn, Sydenham Armstrong
Pearse, Theed
Pearson, Frank
Perry, Arthur William
Piercy, George Hugh
Pigott, William
Plummer, Lambert
Porter, Hugh de Bock
Press, Edward Payne
Pugsley, John Follett
Reed, Frederick
Riley, Alfred
Rix, Wilton John
Roberts, Frank Owen, B.A., LL.B.
Roberts, Nathaniel
Sale, Reginald William, B.A.
Sapte, Fitzroy
Saville, Harry, B.A.
Sedgwick, Ernest Howard
Serpell, Charles Robert
Shapland, Frederick George Westacott
Simey, George Iliff, B.A.
Simon, George Alfred
Smith, Alfred Gerald
Smith, Charles
Smith, George Newham
Speeding, James Habersham
Sprott, Herbert
Squire, Charles
Stainer, Herbert
Steavenson, Henry Gordon
Steel, Arthur Dyne, B.A.
Stevens, Headland
Sturtan, Walter Harold
Tangye, Allan
Tarn, Frank Gerard
Taylor, Joseph Turner
Thomas, Herbert Francis
Thompson, David
Thompson, Thomas Reuben
Turnbull, Thomas
Vickers, Charles Ernest
Waddington, Henry Heywood
Wadsworth, Henry Hodgson
Wallace, Frank
Wareham, Frederick William
Warmington, Harold Henry
Wheeler, Henry Nicholas
Wigg, Leslie Weston
Wigram, Robert Ainger, B.A.
Williams, Henry William
Williamson, James Brindley, B.A.
Williamson, William M'Connell
Wilson, John

## THE BAR COMMITTEE.

THE following report of a sub-committee, consisting of Mr. Forbes, Q.C., Mr. Bucknill, Q.C., Mr. W. R. Kennedy, Q.C., and Messrs. K. E. Digby, W. English Harrison, and Joseph Walton, respecting interrogatories and inspection in common law actions, has just been adopted by the Bar Committee:—

'Your sub-committee have carefully considered the question raised by the observations of the Master of the Rolls in the House of Lords on July 17, 1890, with regard to the practice of administering interrogatories and obtaining discovery of documents in the Queen's Bench Division. They agree with the view that the powers of obtaining discovery under the existing rules are often abused, and the costs of an action thereby needlessly increased, but they do not think that it is desirable or even possible to dispense altogether in the Queen's Bench Division either with interrogatories or with discovery of documents. They conceive that the object to be arrived at is to remove the abuses of the present practice, while rendering more effective the important instrument of discovery which is supplied by both methods.

'They consider that there is in general a great difference in point of importance between interrogatories and discovery of documents. If either side is in possession of any document relevant to the case, it seems clear that, in the interests of justice and economy, there should be no delay in the disclosure of it to the other side. Nothing tends so much to stop unnecessary litigation as the earliest possible disclosure of the strength or weakness of a case. They think that the existing rule which requires a deposit of 5*l.* to be paid before discovery can be obtained is objectionable in principle and ineffectual in practice. It often operates in the case of a poor litigant to prevent discovery in a case where discovery is required, while it has no operation where the party seeking discovery is possessed of means. The costs recoverable on taxation upon the paying in and taking out of the 5*l.* are wholly disproportionate, and amount to more than 25 per cent. on the security. They recommend the abolition of the rule contained in Order XXXI., rule 26, and, with regard to discovery of documents generally, they recommend:—

'1. That the defendant by endorsement on his statement of defence and the plaintiff by endorsement on his

reply, or either party by notice delivered subsequently, should be entitled to claim the usual affidavit of discovery, and that thereupon the opposite party should within ten days after delivery of the endorsed pleading or of the notice file such affidavit, subject to the power of the Court or a judge to order such affidavit to be filed at any other stage of the action.

'2. In the case of any proceedings being taken by any party to an action in regard to the sufficiency of the opportunity given by his opponent for inspecting and taking copies of documents for which no privilege is claimed, or in regard to claims of privilege in respect of any document, the costs of such proceedings, in the absence of special circumstances, should always follow the event of the application.

'With regard to interrogatories, the case is, they think, different. They agree with the view that in very many of the cases in which they are administered little or no result is obtained, except a considerable increase of cost and delay. But they think there are, on the other hand, cases where it is essential that interrogatories should be administered. For instance, when a party to an action has himself no knowledge of the circumstances, as is the case of a personal representative or a surety, as a general rule, the litigant should have the power of administering interrogatories. There are again other cases incapable of classification, in which the exercise of such a power is useful, even though not absolutely necessary. Often incidental advantages arise, although the interrogatories and answers may not be put in evidence at the trial. Sometimes interrogatories, or the answers to them, stop an action; and, more often still, they elicit information which materially narrows the issues to be tried. Your sub-committee think that these considerations point to the advisability, not of the abolition, but of the more effective control of the power of administering interrogatories.

'They think that the objections to the 5*l.* rule apply to the case of interrogatories as well as to the case of discovery of documents. They recommend in this case also the abolition of the rule, and they are inclined to think that, in order to provide an effective check upon unnecessary or unreasonable interrogatories, it would be desirable to revert to the former practice—viz. that the judge or master in chambers should consider and decide, not merely whether the case is one in which interrogatories may properly be administered, but also whether the particular interrogatories proposed should be allowed. They think that, in order to give the party to be interrogated a fair opportunity of challenging any particular interrogatory, a copy of the proposed interrogatories should be served with the summons.

'They think that the party interrogated, if the judge or the master allows the proposed interrogatories, should not be permitted to raise any objection in his affidavit in answer, except on the ground that answering may tend to incriminate him.

'They think further that in many cases the necessity for interrogatories might be obviated if a more stringent rule were adopted with regard to the necessity of delivering proper particulars. It was apparently the original intention of the framers of the Judicature Rules that the pleadings should in each case contain particulars sufficient to render an application for particulars or for further particulars unnecessary. This intention has not been fulfilled in practice, and a great deal of unnecessary expense and delay is at present caused by applications for particulars, and for further and better particulars, which should have been given with the pleading in the action. They, therefore, think that a plaintiff and a defendant respectively should be found to deliver with his pleadings all requisite particulars; and that in the event of an order being made for particulars, or for further or better particulars, the cost of obtaining such order should, in the absence of special circumstances, be paid by the party whose failure to give any, or any sufficient, particulars with his pleading has rendered such order necessary. If an order is refused the party who took out the summons should pay the costs attending the same.'

## MIDDLESEX REGISTRY.

*Notice as to Fees in respect of Memorials.*

1. THE registrar directs the attention of solicitors and others using the registry to the legal scale of fees for the registration of memorials, which is as follows:—

| | *s.* | *d.* |
|---|---|---|
| For entering a memorial not exceeding 200 words in length | 1 | 0 |
| For every further 100 words or part of 100 words | 0 | 6 |
| For indorsing a certificate of registration as an instrument | 1 | 0 |
| For administering the oath and signing a certificate of the same indorsed on a memorial (where the oath is taken in the office) | 2 | 6 |

2. The number of words in each memorial should be counted and distinctly marked in figures at the left-hand bottom corner of the memorial before it is brought for registration.

3. The above fees will alone be receivable in the registry in respect of memorials.

Dated the 8th day of July, 1891.

(Signed) ROBERT HALLETT HOLT,
Registrar.

## LAW AND PROFESSIONAL NOTES.

By T. F. UTTLEY, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### MAGISTRATES AND SMALL FINES AND COSTS.

A QUESTION of interest to magistrates who have to enforce the provisions of the Vaccination Acts was recently asked in Parliament. The Home Secretary was questioned as to whether he had made further inquiries into the case of Lydia Cook, sentenced by the Southend bench of magistrates to a fine of 1*s.* and 1*l.* 3*s.* 6*d.* costs, or, in default, to seven days' imprisonment; whether the offence alleged against Lydia Cook was her objection to the taking of lymph from her child for purposes of vaccination on the ground that her husband did not wish it because their family was consumptive; whether it is the fact that the police informed the defendant that she would be taken to prison for the non-payment of the sum of 1*l.* 4*s.* 6*d.* (the husband's wages being said to be 19*s.* a week), the wife having several children ill at the time, and an infant which has since died; whether there was any justification for inflicting costs to the extent of 1*l.* 3*s.* 6*d.* upon a fine of 1*s.* contrary to the provisions of the Summary Jurisdiction Act, 1879, s. 8, by which it is enacted that when a fine does not exceed 5*s.* no costs shall be inflicted 'except so far as the Court may think fit to expressly order otherwise,' and what grounds there were in such case for 'expressly ordering' the imposition of such costs; and whether the attention of benches of magistrates and their clerks would be called to this provision in the law and its frequent violation. The Home Secretary, in reply, said he had received a further report with regard to this case. The defendant pleaded guilty to not allowing lymph to be taken from the child on the ground that there was consumption in collateral branches of her husband's family. The bench considered that there was no evidence on behalf of the suggestion, and

that it was opposed to the sworn evidence of the medical officer. The report of the justices did not show that there was sufficient ground for the imposition of the costs, although they took the amount of costs into consideration in fixing the amount of the fine, which was 1*s.* Section 8 of the Summary Jurisdiction Act is sometimes overlooked by magistrates. In March of this year a circular was issued pointing out to magistrates that the course which would ordinarily be followed when the fine was not more than 5*s.* was to impose no costs, and that an express order to the contrary could only be made when the justices had some special reason for so doing. In the present case the costs have been paid without a levy and without any imprisonment of the defendant. The attention of the bench would be drawn to the above-named circular, and it would be recommended that they should remit and repay the costs.

QUARTER SESSIONS.

The charges of the chairmen to grand juries at quarter sessions are always replete with interest, as also are their views on other matters—*e.g.* the licensing problem. At the Lancaster quarter sessions the chairman in his charge congratulated the grand jury that the business was extremely light, there being no serious cases. It was gratifying to find that in that part of Lancashire crime had decreased, and he hoped it would continue to do so. Referring to two cases in which, he said, the statements made by the prisoners were not inconsistent with innocence, the chairman said the committing magistrates might have discharged them with a caution, and proceeded to say that the grand jury would be aware that the Court below had very little power to exercise any discretion where prisoners had committed crime previously. If an indictable offence was established against a prisoner the magistrates were bound to commit for trial, it was a duty obligatory upon them. It was extremely desirable, therefore, that the law should to some extent be altered, in order to give magistrates a discretionary power in such cases. At the Cheshire Quarter Sessions the chairman said the number of prisoners for trial was a little higher than was ordinarily expected in that end of the county. At the other end of the county there were only twelve prisoners for trial, while here there were fifteen. This was the first time within his recollection that this end of the county had beaten the other in the number of its criminals. This, to a certain extent, was only temporary, and was due to the large works that had been in progress in the division, such as the ship canal, which had been productive of a good deal of crime. He was not far wrong in saying that eight out of the fourteen prisoners for trial that day came from that source. That source of crime, however, would shortly be diminished, and he hoped that the state of crime in that division of the county would go back to its normal condition. The magistrates then retired to consider a report to examine into the state and effect of the law relating to the licensing of houses for the sale of intoxicating liquor, when the reappointment of the committee was moved, with instructions to frame general recommendations, and to report to an adjourned Court of Quarter Sessions. It was stated that the report of the committee would consist of recommendations framed by men whom they had chosen to investigate the matter founded on a careful study of the whole question, and could not in any sense be regarded as a command. It was pointed out, however, that there was some danger in the words 'to frame general recommendations.' What were those recommendations for? To influence and guide the justices at the licensing sessions. But the law said they were not to be guided by anything beyond their absolute judicial discretion on the evidence at their investigations. That was clearly shown by the case *Regina* v. *Walsall*, 3 C. L. R. 100. It was suggested, therefore, that instead of using the words 'frame general recommendations' they should amend the motion 'to state their conclusions,' and thus avoid the suspicion of attempting to dictate to the justices. The amendment was accepted, the committee, it was further added, had omitted from the return all reference as to whether the tenant was a *bonâ fide* tenant or merely a manager, because the *bona fides* of a tenant is a judicial question, and not one for settlement by a policeman calling to make inquiries. In Cheshire the proportion of licensed houses is one to 223 of the population. In connection with quarter sessions business, reference may be made to a protest of the bar at the Preston Quarter Sessions, where attention was called to the fact that these sessions contained the names of only sixteen prisoners, and to deal with them there had been called together five juries, comprising sixty persons, a grand jury of twenty-three persons, and a large body of counsel and justices. The Court should consider whether it was reasonable under the circumstances to hold intermediate sessions, which the bar, who were united on the point, considered a great waste of public time. The chairman observed that one reason why the prisoners at Preston Quarter Sessions had decreased so much was due to the borough of Blackburn now disposing of its own business. After consultation with the other magistrates on the bench, he said the case was not one for the Court to deal with, but one for the magistrates. They might make a trial upon the Summer Sessions, and he thought he could promise that there would be no intermediate sessions at Preston when the next were due.

OUR JUDGES.

'Amidst the enormous effervescence of thoughtlessness, vulgarity, and claptrap which is a necessary consequence of democratic development, the judicial bench has been and is, perhaps, more free from the prevalent weaknesses of the time than any other public institution. Nothing can be more desirable than that the bench should preserve this characteristic, for it is in many ways the most important of all our institutions. All civil government derives its force ultimately from Courts of law, and it would be a misfortune of the first magnitude if they failed to command respect and confidence. If, therefore, there is any set of men who ought to avoid talking claptrap, scheming to secure popular applause, and all advertisements of themselves as friends of any particular class or mass of their fellow-subjects, it is Her Majesty's judges. It is to assist their independence that they are made practically irremovable and rewarded magnificently, in dignity, consideration, and emolument for the services they render to the State.' Thus writes Mr. Frederick Greenwood in a recent article on the Lord Chief Justice in the *Anti-Jacobin*, which then proceeds to deal very severely with his lordship in connection with the action where Colonel North's architect sought to recover damages. The article continues: 'We take it for granted that a judge is no respecter of persons. He administers justice indifferently to all suitors alike, on an understanding that it is no particular merit to do so. He is put in a position of secure splendour on purpose that he may neglect everything but his duty, and be no more tempted to make eyes at a mob than at a marquis or a millionaire. A very special consideration for him should be that he is not merely to administer law indifferently, but to administer law and nothing else. He is not, or should not be, either a preacher or a lecturer. The reputation of the English bench for good sense and for minding its own business has grown *pari passu* with its inaccessibility to corrupt motive. There have been times when it was not so incorruptible, and they were also times when judges would express with extreme freedom their personal (and irrelevant) opinions

about those who came before them. One of the ablest, and probably the most unscrupulous, of Lord Coleridge's predecessors, Lord Chief Justice Jeffreys, frequently expressed himself in the most violent terms as to the behaviour of witnesses and prisoners with whom he had to do. His method was to call them bloody villains and perjured knaves, and was as remarkable for directness as for force.' Certainly one cannot but say that Mr. Greenwood's remarks on the bench are commendable for their directness and force. It is not often the judges are so vigorously dealt with. One is more inclined to treat them with reverent respect, as being on a pedestal above one; and, as a rule, an English judge combines equally the *suaviter in modo* with the *fortiter in re*.

### A GAMBLING CONTRACT.

Two young City clerks who had been friends speculated on the Stock Exchange. They agreed to buy shares in certain mines, but on the first settling-day there was a loss. Their shares were carried over, and continued to fall. Of this loss one friend contended that the other had consented to pay half, and some of it had been paid by instalments; and of course money had been taken when there had been any favourable balance. Some dispute had arisen about these speculations, and the plaintiff, who was in the employment of his father, now sought in the Lord Mayor's Court to recover from the defendant the balance of an account for such transactions. A stockbroker proved that the transactions had been entered into and the money paid, though he had dealt with the plaintiff's father, in whose name all the business was done, because the regulations of the Stock Exchange prohibited any dealings with clerks. The agreement to speculate was admitted by the defendant; but when he found the stocks were going down he asked the plaintiff to close the account and open a 'bear' account. The plaintiff declined to do that, because he said he was certain that the stocks would recover. Defendant then withdrew altogether and paid the amount which was due from him. The recorder held that the Gambling Acts applied here. Both parties were principals, and it was different to a claim by a broker against a principal. This was a pure gambling contract, like a horserace or wagering on two drops of rain running down a window-pane, and he accordingly nonsuited the plaintiff. This case should be a warning to clerks to eschew Stock Exchange transactions.

### LANDLORD AND TENANT.

A curious anomaly of the law has been pointed out —viz. that though a lodger can leave a householder on a mere week's notice, a householder cannot get rid of the lodger under five weeks. Before a lodger can be turned out he has to be served with a week's notice; then a summons must be issued for him to appear before a magistrate at the end of seven days, and then, if an order for ejectment is obtained, three weeks must elapse before its execution. During the whole of this time the landlord cannot take any rent, for to do so would be to create a fresh tenancy, with another five weeks of dilatory proceedings. Most tenants consider the law of landlord and tenant is too much in favour of landlords, notably in the case of repairs; it is perhaps new to them that landlords have cause of complaint too.

### CANADIAN AND FRENCH LAWYERS.

The law is a remunerative profession in Canada, for, owing to its cheapness, it is accessible to everybody. A lawyer there, or in the United States, it is averred, can write twenty to thirty letters to different clients per day, which, costing 2*s.* to 4*s.* each, will yield as much or more profit as by the English method of spending the whole day in examining the correspondence, documents, &c., and putting all the expenses upon one client. A *docteur en droit* in Paris states that the fees for drawing and executing a power of attorney (*procuration*) in France are eight to twelve francs, which is even cheaper than the Canadian charges. This *docteur en droit*, it appears, has spent several years in tracing all human law to one principle, and is about to publish a work on the subject. Mr. W. A. Macdonald, in his work on 'Humanitism,' which was recently dealt with in these Notes, also traced all law (human law included) to one principle. As this work is likely to be translated into French, we shall doubtless learn by-and-by the French views on the matter.

## ADDITIONAL CAUSE LIST.

HIGH COURT OF JUSTICE.—QUEEN'S BENCH DIVISION.

*Trinity Sittings*, 1891.

### ADDENDA TO THE CROWN PAPER.

Middlesex (Westminster)—Ruston *v.* Bonham and another (Hicks and another, claimants)
Essex—Regina *v.* Vicar of All Saints, Prittlewell
Lancashire (Blackburn)—Cunliffe and another *v.* Tipping
Surrey (Croydon)—Hawkins *v.* Ford
Lancashire—Taylor *v.* Wilkinson
Surrey (Camberwell)—Fernie *v.* Spaeven
Warwickshire—Flint *v.* Miller
Middlesex (Bloomsbury)—Coupe Co. *v.* Maddick
Middlesex (Brompton)—Hunt *v.* Halford
Yorkshire (Skipton)—Birdsall *v.* Townsend
Bedfordshire (Leighton Buzzard)—How *v.* London and North-Western Railway Co.
Middlesex (Bow)—Faulkner *v.* Patent Electric Fire Light Co.
Middlesex (Westminster)—Macfarlane *v.* Westley, Richards & Co.
Worcestershire (Bromsgrove)—Lord Shrewsbury *v.* Garfield
Monmouthshire (Abergavenny)—Prosser *v.* Price and another
Staffordshire (Walsall)—Horton *v.* London and North-Western Railway Co.
Yorkshire (Halifax)—Brook *v.* Refuge Assurance Co.
Metropolitan Police District—Smith *v.* Bushell
Ipswich—Spurling *v.* Bantoft
Ipswich—Same *v.* Same
London—Regina *v.* Gladman and others
Kent (Bromley)—Wedderburn *v.* Davis
Shropshire (Shrewsbury)—Wardle *v.* Wanstall and another
Cardiganshire (Lampeter)—Tucker *v.* James
Surrey—Regina *v.* Churchwardens, &c. of Merton
In re Merthyr Unity Philanthropic Institution
Middlesex—Kearley and another *v.* Tyler
Worcestershire—Copeland *v.* Walker
Salop—Owen *v.* Langford
Salop—Morhale *v.* Same
Middlesex (Westminster)—Powell and another *v.* Clarke
Middlesex (Shoreditch)—Meek *v.* Witherington
Middlesex (Marylebone)—Colyer *v.* Dando
Middlesex (Clerkenwell)—Lewis and another *v.* Wickens
Middlesex (Westminster)—Felberman *v.* Rayner
Yorkshire (Doncaster)—Grice *v.* Watson
Harwich—Fulcher *v.* Lucas
Somersetshire (Yeovil)—Wilmot *v.* Darby and another
Yorkshire (Otley)—Bellerby *v.* Northrop
Lancashire (Manchester)—Trigg *v.* Manchester, &c. Railway
Worcestershire (Evesham)—Davis *v.* Davis
Lancashire (Manchester)—Wright *v.* Lancashire, &c. Railway Co.
Yorkshire (Leeds)—Read *v.* Edwards
Surrey (Lambeth)—Waterworth and others *v.* Rogers
Derbyshire (Chesterfield)—Botham *v.* Botham
Leicestershire (Leicester)—Drinkwater *v.* Band
Kent—Regina *v.* Overseers of Bromley
Middlesex (Bloomsbury)—Goodliff *v.* Ellis
Yorkshire (Sheffield)—Clarke *v.* Barnsley Brewery Co.
England—Regina *v.* Rourke
Devonshire (East Stonehouse)—Regina *v.* Judge of County Court at East Stonehouse and How
Yorkshire, W.—Constantine *v.* Illingworth
Middlesex (Clerkenwell)—Bilton and another *v.* Goldman (Blackaby, claimant)
Sussex—Allman *v.* Grist
Lancashire—Taylor *v.* Wilkinson
Yorkshire (Leeds)—Myers and others *v.* Wilson
Cornwall—Harvey & Co. *v.* Hesketh
Surrey—Regina *v.* Blenkinsop, Esq. and others, Justices, &c. and London and South-Western Railway Co.
Derbyshire (Derby)—Grundy *v.* Slack
Warwickshire (Birmingham)—Cohen *v.* Higgins (Collins, claimant)
Warwickshire (Birmingham)—Jones *v.* Same (Same)
Brecknockshire (Crickhowell)—Taylor *v.* Taylor and another
Bedford—Thompson *v.* Rose
Middlesex (Clerkenwell)—Ashton *v.* Hartley

## CALENDAR OF THE COUNTY COURTS.

FROM JULY 13 TO JULY 18.

| No. of Circuit | His Honour | July 13 | July 14 | July 15 | July 16 | July 17 | July 18 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | — | Northwich | Warrington | Birkenhead | — |
| 8 | Judge Heywood | — | Manchester | Manchester | Manchester | Manchester | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | Middlesbrough | Stockton-on-Tees | Darlington | Leyburn | Stokesley | Northallerton |
| 19 | Judge Barber | — | Alfreton | Matlock | Ashbourne | — | — |
| 22 | Judge Harington | Stratford-on-Avon | Coventry | Warwick | Rugby | Daventry | Southam |
| 26 | Judge Jordan | Burslem | Lichfield | Tamworth | Rugeley | — | — |
| 47 | Judge Powell | — | Lambeth | Greenwich | Lambeth | Lambeth | — |
| 54 | Judge Metcalfe | Weston-supr-Mare | Wells | Axbridge | — | — | — |
| 55 | Judge Machonochie | Fordingbridge | Dorchester | Bridport | Weymouth | Blandford | — |
| 57 | Judge Paterson | Tiverton | Barnstaple | Axminster | Honiton | Chard | — |
| 58 | Judge Edge | East Stonehouse | East Stonehouse | East Stonehouse | East Stonehouse | East Stonehouse | Tavistock |

# House of Lords Register.

THURSDAY, JULY 2.

*M'Inroy* v. *Duke of Athole* (servitude—right of way—prescription—possession—interruption of possession within prescribed period. Appeal from the Court of Session in Scotland).—Dismissed.

*North British Railway Company* v. *Wood* (*pauper*) (railway accident—personal injuries—agreement signed in satisfaction. Appeal from Court of Session in Scotland).—Allowed.

*Clarke* (*pauper*) v. *Carfin Coal Company* (whether the mother of an illegitimate son can sue for damages for his death).—Part heard.

FRIDAY, JULY 3.

*Clarke* (*pauper*) v. *Carfin Coal Company*.—*Cur. adv. vult.*

*Walker-Munro* v. *M'Casland* (business—construction of will—capital or income).—Dismissed.

MONDAY, JULY 6.

*Crook* v. *Morley* (bankruptcy—construction of letter to creditors—suspension of payment. Reported L. R. 24 Chanc. Div. 320).—Part heard.

TUESDAY, JULY 7.

*Crook* v. *Morley*.—Dismissed.

# Court of Appeal Register.

## APPEAL COURT I.

Before the LORD CHIEF JUSTICE, BOWEN, L.J., and KAY, L.J.

THURSDAY, JULY 2.

*Nelson* v. *Chapman* (application of plaintiff for judgment or new trial on appeal from verdict and judgment, dated May 26, at trial before Smith, J., with a special jury in Middlesex).—Dismissed.

*Dickers* v. *Lacons, Youell & Co.* (application of defendants for judgment or new trial on appeal from verdict and judgment at trial before Smith, J., with a special jury in Middlesex).—Dismissed.

*Naylor* v. *Stanley and others* (application of plaintiff for judgment or new trial on appeal from verdict and judgment at trial before Grantham, J., with a common jury in Middlesex).—Dismissed.

*Marcussen* v. *Hilton and others* (application of plaintiff for judgment or new trial on appeal from verdict and judgment at new trial before Mathew, J., with a special jury in Middlesex).—Dismissed.

FRIDAY, JULY 3.

*Jeffrey* v. *Crawford* (application of plaintiff for judgment or new trial on appeal from verdict and judgment at trial before Denman, J. (for Kekewich, J.), with a special jury in Middlesex).—Refused.

*Clark* v. *Cutforth* (application of defendant for judgment or new trial on appeal from verdict and judgment, dated June 11, at trial before Grantham, J., and a common jury in Middlesex).—Damages reduced.

SATURDAY, JULY 4.

No sitting.

MONDAY, JULY 6.

No sitting.

TUESDAY, JULY 7.

*Clarke* v. *Ramuz* (application of defendant for judgment or new trial on appeal from verdict and judgment at trial before Grantham, J., with a common jury in Middlesex).—Dismissed.

*Folkard* v. *Crosby Lockwood & Son* (application of plaintiff for judgment or new trial on appeal from verdict and judgment at trial before Smith, J., and a special jury in Middlesex).—Dismissed by consent.

WEDNESDAY, JULY 8.

*Wiedemann* v. *Walpole* (*new trial motion*) (application of Messrs. Atkinson & Dresser for leave to be heard in opposition to motion for new trial).—Refused.

*Langmead* v. *Winter* (application of defendants for judgment or new trial on appeal from verdict and judgment, dated June 9, at trial before Day, J., and a special jury in Middlesex).—Refused.

Before the MASTER OF THE ROLLS, BOWEN, L.J., and KAY, L.J.

*Brown* v. *Weaver* (application of defendant for judgment or new trial on appeal from verdict and judgment at trial before Day, J., with a common jury in Middlesex). Refused.

*Cowdery* v. *Smith* (application of plaintiff for judgment or new trial on appeal from verdict and judgment at trial before Grantham, J., with a common jury in Middlesex).—Refused.

*Warner* v. *White* (application of defendant for judgment or new trial on appeal from verdict and judgment at trial before Grantham, J., with a common jury in Middlesex).—Refused.

## APPEAL COURT II.

Before LINDLEY, L.J., FRY, L.J., and LOPES, L.J.

THURSDAY, JULY 2.

*Winby* v. *Manchester, Bury, Rochdale, and Oldham Steam Tramways Company* (application of defendants for dismissal of plaintiff's appeal from the judgment of the Vice-Chancellor in default of security ordered March 9).—Application granted.

*In re Higginbotham and Orrell's Settlement Trusts* (*construction*) (appeal of trustees of will of M. T. Higginbotham and another from order of the Vice-Chancellor, dated January 13, refusing to direct transfer of settlement funds).—Allowed.

FRIDAY, JULY 3.

*Mercantile Investment and General Trust Company* (*Lim.*) v. *International Company of Mexico* (appeal of plaintiffs from judgment of Day, J., dated February 4, at trial without a jury in Middlesex; heard June 20).—Allowed.

*Dobell & Co.* v. *Watts, Ward & Co. and others* (appeal of defendants from directions entered, dated April 11, at trial by Wills, J., and a special jury in Middlesex).——Dismissed.

*Moul and another and Groenings and another* (Q. B. *Crown Side*) (appeal of plaintiffs from judgment of Smith, J., and Grantham, J., dated April 24, affirming judgment of judge of County Court).—Dismissed.

SATURDAY, JULY 4.

*Welbury* v. *Payton* (appeal of plaintiff from judgment of Mathew, J., dated March 21, at trial without a jury at Leeds).—Allowed.

*Rendell* v. *Barraclough* (appeal of defendant from judgment of Smith, J., dated April 16, at trial without a jury at Leeds).—Dismissed.

MONDAY, JULY 6.

*Tams* v. *Knowles* (appeal from judgment of Smith, J., and Grantham, J.).—Dismissed, subject to right of plaintiff (if any) to redeem.

TUESDAY, JULY 7.

*Bristol and West of England Bank* (*Lim.*) v. *Midland Railway Company* (appeal of defendants from judgment of the Lord Chief Justice, dated April 18, at trial (jury discharged) at Bristol.)—*Bristol and West of England Bank* (*Lim.*) v. *Midland Railway Company* (application of defendants for new trial on appeal from judgment given on further consideration, dated April 18, after trial before the Lord Chief Justice at Bristol (special jury discharged)—the two appeals for hearing together by order).—Dismissed.

Before LINDLEY, L.J., BOWEN, L.J., and KAY, L.J.

WEDNESDAY, JULY 8.

*Dashwood* v. *Magniac* (appeal of plaintiffs from judgment of Chitty, J., dated January 14; heard March 23).—Dismissed.

Before LINDLEY, L.J., FRY, L.J., and LOPES, L.J.

*Rhymney Railway Company* v. *Bute Docks Company* (appeal of the Rhymney Railway Company from judgment of Wills, J., Sir F. Peel, and Commissioner Price, dated February 12, dismissing application).—Dismissed.

*Brace* v. *The Abercarn Coal Company* (*Lim.*) (Q. B. *Crown Side*) (appeal of defendants from judgment of Pollock, B., and Charles, J., dated January 30, on appeal from County Court at Newport, Mon.).—*Huggins* v. *The London and South Wales Coal Company* (Q. B. *Crown Side*) (appeal of defendants from judgment of Pollock, B., and Charles, J., dated January 30, on appeal from County Court at Newport, Mon.).—Part heard.

## NOTICES FOR THE WEEK.

ROTA OF REGISTRARS.

MONDAY, July 13.—Court of Appeal No. 2: Mr. Ward. Mr. Justice Chitty: Mr. Clowes. Mr. Justice North: Mr. Godfrey. Mr. Justice Stirling: Mr. Rolt. Mr. Justice Kekewich: Mr. Lavie. Mr. Justice Romer: Mr. Pugh.

Tuesday, July 14.—Court of Appeal No. 2: Mr. Pemberton. Mr. Justice Chitty: Mr. Jackson. Mr. Justice North: Mr. Leach. Mr. Justice Stirling: Mr. Farmer. Mr. Justice Kekewich: Mr. Carrington. Mr. Justice Romer: Mr. Beal.

Wednesday, July 15.—Court of Appeal No. 2: Mr. Ward. Mr. Justice Chitty: Mr. Clowes. Mr. Justice North: Mr. Godfrey. Mr. Justice Stirling: Mr. Rolt. Mr. Justice Kekewich: Mr. Lavie. Mr. Justice Romer: Mr. Pugh.

Thursday, July 16.—Court of Appeal No. 2: Mr. Pemberton. Mr. Justice Chitty: Mr. Jackson. Mr. Justice North: Mr. Leach. Mr. Justice Stirling: Mr. Farmer. Mr. Justice Kekewich: Mr. Carrington. Mr. Justice Romer: Mr. Beal.

Friday, July 17.—Court of Appeal No. 2: Mr. Ward. Mr. Justice Chitty: Mr. Clowes. Mr. Justice North: Mr. Godfrey. Mr. Justice Stirling: Mr. Rolt. Mr. Justice Kekewich: Mr. Lavie. Mr. Justice Romer: Mr. Pugh.

Saturday, July 18.—Court of Appeal No. 2: Mr. Pemberton. Mr. Justice Chitty: Mr. Jackson. Mr. Justice North: Mr. Leach. Mr. Justice Stirling: Mr. Farmer. Mr. Justice Kekewich: Mr. Carrington. Mr. Justice Romer: Mr. Beal.

## OBITUARY.

WE regret to announce the death of Mr. MALCOLM PERCY DOUGLAS, barrister, of the Middle Temple and North Wales Circuit, which took place on Monday, July 6, under very painful circumstances. It appears that the deceased gentleman was waiting on the platform at Herne Hill Station, and just before a train came in he was observed to stagger and fall upon the line in front of the engine. On being picked up he was found to be in a terribly mutilated state, and was afterwards taken to St. George's Hospital, where he eventually succumbed to his injuries at 5 o'clock in the evening. The unfortunate gentleman had recently been complaining of great pains in the head. Mr. Douglas had been called to the bar in 1881, and was looked upon as a rising man in his profession. He had been retained to defend Mr. Duncan, who stands committed to the ensuing Carnarvon Assizes upon a charge of committing a murderous assault upon his wife at Bettws-y-Coed a short time ago.

WELSH SUNDAY CLOSING AND SPECIAL DETECTIVES.—At a meeting of the Glamorganshire Joint Standing Committee at Cardiff on June 6, Judge Gwilym Williams presiding, the sub-committee appointed to consider the observance of the Sunday Closing Act of 1881 submitted motions recommending, first, that in cases where publicans had been convicted of Sunday trading, but not deprived of their licenses altogether, the course should be adopted of refusing the seven days' license and offering a six days' license instead; and, secondly, that a special detective force of twenty-five men should be constituted for the purpose of dealing with offences under the Sunday Closing Act. The chairman felt that something stringent must be done to meet the prevalent infringement of the Act. Both suggestions were ultimately adopted. The chief constable reported that last year convictions for Sunday drunkenness in the county numbered 3,636, against 3,190 in 1890.

SOLICITORS' BENEVOLENT ASSOCIATION.—The usual monthly meeting of the board of directors of this association was held at the Law Institution, Chancery Lane, London, on Wednesday, the 8th inst., Mr. Robert Cunliffe in the chair. The other directors present were Messrs. W. B. Brook, H. Morten Cotton, G. B. Gregory, Samuel Harris (Leicester), Edwin Hedger, Henry Roscoe, R. W. Tweedie, W. Melmoth Walters, Frederic T. Woolbert, and J. T. Scott (secretary). A sum of 460*l.* was distributed in grants of relief, fifty new members were admitted to the association, and other general business was transacted.

A UNIQUE ELECTION.—At the Court House, Romford, on July 3, the tenants and inhabitants of the liberty of Havering-atte-Bower assembled to elect a people's magistrate—a unique privilege which they enjoy under the old charter of the liberty. There has not previously been a contested election for fifty-five years, and the vacancy was caused by the death of Mr. C. P. Matthews, of the firm of Ind, Coope & Co. The liberty bench consists of three magistrates—the high steward, who is appointed by the lord or lady of the manor; the deputy-steward, chosen by the high steward; and a third justice, elected by the people. The candidates yesterday were Major Holmes, of Grey Towers, Hornchurch, a councillor and justice of the peace for the county, and Mr. Alfred William Harvey, auctioneer, of Romford. There were seventy-eight votes for Major Holmes and forty-two for Mr. Harvey. The former was declared duly elected by Mr. Fry, the high steward. Notice has been given at the Essex Quarter Sessions to petition the Privy Council for an order to merge the liberty in the county. At present, as far as judicial business is concerned, it constitutes a county in itself.

MAGISTRATES AND LICENSED VICTUALLERS.—Lord Bramwell has just given, respecting the legality of confidential reports by the police concerning licensed victuallers, an opinion which will probably have an important effect upon the decisions to be given at the next licensing sessions. In several boroughs and counties the magistrates have instructed the police to prepare reports as to the general character and conduct of each licensed victualler in the division, with the expressed intention of selecting for suppression those houses which are unfavourably reported upon. It is not proposed that these reports shall be sworn ones, or that their contents shall necessarily be made known to the publicans concerned. The temperance party are urging other magistrates all over the country to take similar steps, and a very serious question has arisen as to whether the magistrates can legally receive and act upon such reports as are suggested. A statement embodying the facts of the case has just been submitted to Lord Bramwell, who, in reply, gives the following written expression of opinion, the publication of which he fully authorises: 'Whatever fact, information, or evidence an English tribunal acts upon, or has for its consideration, should be on oath, and made known to the party affected by it.'

THE BIRKBECK BUILDING SOCIETY.—The fortieth annual meeting of this society was held recently at the offices, 29 and 30 Southampton Buildings, Chancery Lane. The report adopted states that the receipts during the year which ended March 31 last reached 9,519,070*l.*, making a total from the commencement of the society of more than one hundred and forty millions (141,766,177*l.*). The deposits received were 7,993,047*l.*, and the subscriptions 244,927*l.* The gross profits amounted to 284,315*l.* The surplus funds have been augmented by 244,167*l.*, and now stand at 5,098,597*l.*, of which 1,628,240*l.* is invested in Consols and other securities guaranteed by the British Government, and the cash in the hands of the bankers is 317,929*l.* A further sum of 25,000*l.* has been added to the permanent guarantee fund, thus bringing up the amount to 150,000*l.*, and the balance 134,315*l.*, making together 284,315*l.* in excess of the liabilities, the whole amount being invested in Consols. The subscriptions and deposits withdrawable on demand amount to 5,247,712*l.* The thirteenth triennial bonus on investing shares has been allotted, and the amount placed to the credit of all shares in existence at the close of the fortieth year is 33,033*l.* The surplus funds (which are invested in readily convertible securities) are sufficient to pay the depositors 114 per cent. on the amount of their deposits. The new accounts opened during the year were 10,051, and there are, altogether, 60,045 shareholders and depositors on the books. Since its establishment the society has returned to the shareholders and depositors more than one hundred millions (117,071,323*l.*), the whole amount having been repaid upon demand.

THE 'MASKE OF FLOWERS' AT THE INNER TEMPLE.—On Monday, June 6, the second and final performance of the 'Maske of Flowers' was given at the hall of the Inner Temple, before an audience whose curiosity may possibly have been whetted by the difficulties that seem to have occurred in the pursuit of the necessary license. Any uncertainty on this point, however, was removed by a glance at the programme, which afforded the information that the spot had been duly legalised as a place of entertainment by the Lord Chamberlain granting his *fiat* to Mr. Arthur William à Beckett, barrister-at-law, as 'actual and responsible manager.' So we may congratulate that gentleman upon having added a new temple of the drama (in more senses than one) to the long list of London theatres. If every piece went as well as this Jacobean revival last night, the life of a licensee would indeed be happy. From first to last the 'Maske of Flowers' was received with loud applause, and the encores were numerous. Once more the dancing of the old-time measures was the feature of the evening, but the carnival sports in which Invierno (Mr. Arthur à Beckett), Kawasha (Mr. Lewis Coward), and Silenus (Mr. Dundas Gardiner) joined were nearly as popular. Miss Agnes Hull, who again played Primavera, sang her pretty song in the first part with much grace and feeling. At the conclusion of the performance there was a general call for the manager. Lady Halsbury is to be congratulated on the success of her exertions on behalf of St. Michael's Convalescent Home, Westgate-on-Sea, and it is to be hoped that the funds of the institution will not ultimately suffer from the difficulties about the license.

## BIRTHS.

On July 1, at Bryntirion, Sandford Road, Moseley, the wife of Terence Tiernay, Solicitor, of a daughter.

## MARRIAGES.

On June 15, at the Roman Catholic Church at Southport, William Farren, second son of the late George Farren, Barrister-at-Law, to Isabel, daughter of the late Surgeon-Major O'Farrell, A.M.S.

On July 1, at St. Mary's Church, Hampstead, Alfred Hugh Wake, Solicitor, elder son of E. G. Wake, M.D., Lewisham House, Dartmouth Park Hill, N.W., to Edith Caroline, youngest daughter of the late Joseph Timbrell Fisher, of The Grange, Stroud, Gloucester.

On July 1, at Emmanuel Church, Clifton, Bristol, Thomas Norman Arkell, M.A., of Oxford, Solicitor, to Edith Martha, fourth daughter of the late John Crowther Gwynn, of Clifton, Bristol, Solicitor.

## DEATHS.

On June 30, at Ditchling, Sussex, Charles Stewart, Barrister-at-Law, formerly M.P. for Penrhyn, and late of Brunswick Place, Brighton, in his 90th year.

On June 30, at Market Drayton, Eliza, widow of Charles Winser, Barrister-at-Law, aged 82 years.

On July 5, at 50 High Street, Rochester, Mary Ann, the beloved wife of William John M'Lellan, solicitor, aged 49 years.

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# The Law Journal.

*SATURDAY, JULY* 18, 1891.


## 'OBITER DICTA.'

THE partial cessation of business at the Royal Courts on Saturday last, for the purpose of allowing persons employed in legal business to attend the volunteer review at Wimbledon, did not take place under any authority, express or implied, given by any statute or Rules of Court. Rule 2 of Order LXIII. provides that 'it shall not be necessary for the Court of Appeal or the High Court of Justice to sit on the day appointed to be kept as the Queen's birthday,' and rule 6 of the same order closes the offices of the Supreme Court on 'all days appointed by proclamation to be observed as days of general fast, humiliation or thanksgiving'; but no rule has as yet made provision for closing either Courts or offices on special occasions which are not susceptible of a particular designation.

THE Report of the Bar Committee as to discovery, which we printed last week (*ante*, p. 466), recommends the abrogation of Rule 26 of Order XXXI., which requires the deposit of 5*l.* before discovery can be obtained. The committee think this rule objectionable in principle and ineffectual in practice, as 'it often operates in the case of a poor litigant to prevent discovery in a case where discovery is required, while it has no operation where the party seeking the discovery is possessed of means.' It appears further that the costs upon the paying and taking out the 5*l.* actually amount to more than twenty-five per cent. of the security. If nothing else is done in consequence of the report, surely these disproportionate costs ought to be reduced. The committee appear to think that discovery of documents ought to be granted as a matter of course in the majority of cases, but recommend greater strictness in the allowance of interrogatories, though in this matter also they would abolish the '5*l.* rule.' We hope the Rule Committee will give the report the careful consideration which it deserves.

WE commented (see p. 446, *ante*) on the singular impropriety of the licensing justices in *Sharp* v. *Wakefield* having to pay their own costs in supporting their decision before so many Courts. In connection with this subject, reference should be made to the Review of Justices' Decisions Act, 1872 (35 & 36 Vict. c. 26), which goes in the direction of remedying the present state of the law, but does not go nearly far enough. By this Act, after reciting that '*ex parte* proceedings are frequently taken to bring under review the decisions of the justices of the peace acting both in and out of sessions, and there is no fund at the disposal of such justices to defray the expense of appearing by counsel to support their decisions,' it is enacted that whenever the decision of justices is called in question 'by a rule to show cause or other process issued upon an *ex parte* application' the justices may file an affidavit in the High Court showing the grounds of their decision without paying any fee or stamp duty, and thereupon the Court, before making the rule absolute or otherwise overruling the act of the justices, 'shall take into consideration the matter set forth in such affidavit, notwithstanding that no counsel appear on behalf of the said justices.' The inconvenience of this course in cases of any difficulty was remarked on by Mr. Justice Mellor in *Regina* v. *The Justices of Exeter*, 41 Law J. Rep. M. C. 38, and it will be observed that the statute does not even apply to such cases as *Sharp* v. *Wakefield*. Surely it ought to be provided that in all cases where justices appear by counsel to support their own decisions, and the High Court affirms those decisions, the costs of the justices, if not recoverable from the appellant, should be paid out of some public fund.

AT the close of the hearing of *Read* v. *The Bishop of Lincoln* by the Judicial Committee, the Lord Chancellor suggested it as possible that the publication of banns of marriage ought in the morning service to take place after the Nicene Creed and immediately before the

offertory, in accordance with the rubric, and that that part of the Act of George IV. which prescribes publication after the second lesson refers to the evening service only. The words of section 2 of 4 Geo. IV. c. 76 enact that 'banns shall be published according to the form of words prescribed by the rubrick prefixed to the office of matrimony in the Book of Common Prayer, upon three Sundays preceding the solemnisation of marriage, during the time of morning service or of evening service (if there shall be no morning service upon the Sunday upon which such banns shall be so published immediately after the second lesson).' This enactment repeats the corresponding one of Lord Hardwicke's Act (36 Geo. II. c. 33), repealed by 4 Geo. IV. c. 76, and it is no doubt hard to reconcile with the rubric which till 1809 directed the banns to be published 'immediately before the sentences for the offertory.' But in 1809 the curators of the press at Oxford altered the rubric to its present form, so as to make it correspond with what was, in their opinion, the meaning of Lord Hardwicke's Act, and direct publication to be made 'immediately after the second lesson' in morning service, or evening service if there be no morning service. So it is stated in Phillimore's 'Ecclesiastical Law,' vol. i., at p. 761, and also in Blunt's 'Church Law,' 2nd edit., at p. 129 (revised by the present Sir W. Phillimore), where it is said with confidence to be 'decidedly the better opinion that the rubric and the statute must be so construed as to make the two agree if possible, and that, therefore, banns should be published after the second lesson only in the evening service and where there is no morning service.' To what extent, if this 'decidedly better opinion' be correct, an ecclesiastical offence has been committed by a minister following the rubric now printed, and what remedy, if convicted and punished, he would have against the present curators of the Oxford Press, or against the representatives of the curators of 1809, may be interesting questions for the marrying clergy. But for the married laity they have no practical interest, as it is beyond all reasonable doubt that marriages celebrated after a publication of banns so very slightly irregular would be held valid. There is, however, no express decision to this effect, though *Templeton* v. *Tyree*, 41 Law J. Rep. M. C. 86, and similar cases, have gone very far in upholding marriages where only one party is cognisant of an undue publication of banns.

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BARON DE WORMS, in answer to a question by Mr. Boulnois in the House of Commons, has stated, as no doubt is the fact, that the Board of Trade has no power to compel railway companies to publish the forthcoming alteration in their time-tables at any particular time; but that 'the department had already been in communication with them on the subject, and no doubt the question of the honourable member would call attention to it.' It is, perhaps, a little surprising that the serious inconvenience likely to be caused to the public by any delay in bringing out railway time-tables has not long ago been brought to the serious attention of Parliament. The law seems to be absolutely certain that the companies are under no *specific* obligations to publish any time-tables at all. The mere granting, moreover, of a ticket to an intending passenger imposes no duty on the company granting the ticket to have a train ready to start at a definite time (*Hurst* v. *The Great Western Railway Company*, 34 Law J. Rep. C. P. 129), though time-tables, when published, amount to a contract by the publishing company that not only their own trains but the trains of other companies will run in conformity therewith (*Denton* v. *The Great Northern Railway Company*, 25 Law J. Rep. Q. B. 129). If, however, the railway companies were to discontinue issuing time-tables, we incline to think that the Railway and Canal Commission would have jurisdiction to enjoin them to resume the issue as being a 'reasonable facility' for the receiving of traffic; and if this view of the Railway and Canal Traffic Act, 1854, and its amending Acts be a correct one, the view that the commission might interfere to enjoin publication of time-tables within a reasonable time beforehand might possibly turn out to be correct also. The royal commissioners of 1867, we may observe, recommended that a week's notice should be given to the public of any impending alteration of time-tables.

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THE unfortunate Salvation Army disturbances at Eastbourne are not likely to become less rancorous because religion (so-called) is dragged into the conflict. Ambitious politicians are also making capital out of the alleged tyrannical action of the local authorities, and all kinds of theories have been started with reference to the clause in the local Act (see p. 414, *ante*) which forbids noisy processions on Sunday. The true history of the clause is, however, a very simple one, and the admirable letter of Mr. Chambers to the *Standard* of the 14th inst. ought to close the controversy on that point.

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ON the consideration of the Slander of Women Bill by the Standing Committee of the House of Lords, the Lord Chancellor, 'with the view of discouraging actions for slander,' moved that, unless a judge should think there was reasonable cause to the contrary, the costs of an action by a woman for an imputation on her chastity should not exceed the damages, and the motion having been carried the bill passed through committee, and will shortly become law. This amendment of Order LXV., rule 1, which places all costs in the discretion of the Court subject to some very few limitations, to be found in the notes to that rule in the 'Annual Practice,' is in conformity with section 5 of the Judicature Act of 1890, which stereotypes that rule 'subject to the Judicature Acts and the rules thereunder, and the express provisions of any statute whether passed before or *after* the commencement' of that Act. The amendment is in the spirit of the still unrepealed (see 'Revised Statutes,' 2nd edit. vol. iv., at p. 168; 'Chitty's Statutes,' 4th edit. vol. ii. p. 4, tit. 'Costs') 58 Geo. III. c. 30, which applies to inferior Courts only, and of the better known 21 Jac. I. c. 16, s. 6, repealed wholly as to the Supreme Court and almost wholly as to inferior Courts of civil jurisdiction by the Statute Law Revision and Civil Procedure Act, 1883, which applied to all Courts. County Courts have no original jurisdiction in slander (see section 56 of the County Courts Act, 1888), but an action of slander may be remitted from the High Court to a County Court under section 66 of that Act, upon an affidavit by the defendant that the plaintiff has no visible means of paying the costs of the defendant should a verdict be found for the defendant (*Stokes* v. *Stokes*, 56 Law J. Rep. Q. B. 494).

The recent announcements in the daily press that several M.P.s 'intend, on the votes for the salaries of the law officers of the Crown, to draw attention to the position of the Solicitor-General in regard to the baccarat case and of the Attorney-General in the matter of the Hurlbert case,' will doubtless elicit a certain amount of interest in this important question. The Lord Chancellor is not, however, easily disturbed by public opinion, and is very unlikely to advise the Government to make any change in the present arrangements. The argument which has hitherto been considered as unanswerable in support of the law officers continuing private practice is that without this privilege the best available men could not be secured for these appointments. There is a great deal of truth in this, and it certainly holds good in the case of successful orators, such as Sir Edward Clarke and Sir Charles Russell. But it is another question whether able lawyers fully competent to advise the Crown and the Government could not be found who would accept the handsome salaries and relinquish private practice while holding office. The matter should at any rate have very careful consideration, and public convenience have full weight in any decision come to.

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Solicitors have, no doubt, watched with much interest the result of the motion for a new trial in the case of *Langmead* v. *Winter*. The Solicitor-General fought hard, and with his accustomed skill, in support of the motion; but Mr. Candy, Q.C., held his verdict, the damages being, however, reduced considerably. Without expressing any opinion on the merits of this particular case, it certainly affords a striking instance of the danger and risk involved in advising and acting for lady clients. The sex of the plaintiff will always have considerable weight with a jury; and the ordinary amount of discretion and freedom of action and judgment expected from a male client is apparently neither to be assumed nor expected when 'a lady is in the case.' The more literally this rule is acted upon the better for solicitors in all their dealings with the other sex.

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A novel and important point in company law was decided by Mr. Justice Kekewich in *In re The North Australian Territory Company* (*Lim.*), reported in our Notes of Cases for this week, the question being whether a director upon taking his qualification shares can take an indemnity from the promoter in the form of an agreement by the promoter to buy back the shares at par in the event of the director retiring. On behalf of the liquidators, who sought to render the director answerable for the money he afterwards received under the agreement with the promoter, it was contended that the agreement resulted in an improper gain to the director, and that the liquidators were entitled to sue in respect of that gain. Mr. Justice Kekewich, however, held that the agreement having resulted in no loss to the company, section 165 had no application; nor was the case, said his lordship, within the authority of the cases in which an agent was shown to have made a gain for himself in such a way that the money so gained was held by him as trustee for the company. Here it could not be said that the agent had gained anything more than this, that he had sold his shares for the sum he had paid for them. He was no better off than he was before, and the company had lost nothing. On these grounds his lordship held that the director could not be made responsible. If this judgment can be maintained, the example set by the director in this case is one that will probably find many imitators.

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The attention of pleaders should be drawn to *In re Poinons; Sutton* v. *Martin*, reported in our Notes of Cases, p. 120, where a spinster, plaintiff in an originating summons, was not described except by name, and Mr. Justice Kekewich intimated his opinion that a female plaintiff should state her description, whether she is a married woman or a spinster or otherwise, and directed the originating summons to be amended accordingly.

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The attempt to induce the Court to say that where advanced shareholders of an unincorporated building society, which is in course of being wound up under the Companies Act, 1862, are entitled to participate in the surplus profits in respect of their shares, they are consequently liable to contribute to the losses, has been made in cases prior to that of *In re The Britannia, &c., Building Society* (Notes of Cases, p. 115), but has been attended with no better success. And it is satisfactory to notice that Mr. Justice Kekewich was not led away by the argument founded on section 200 of the Companies Act, 1862. That section provides that in the event of an unregistered company — within which category comes an unincorporated building society — being wound up, every person shall be deemed to be a contributory who (among other cases) is liable to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves.

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In the case referred to, advanced shareholders were not, under the rules of the society, liable to contribute to losses, although they were entitled to a fair proportion of surplus profits. The contention urged on behalf of the liquidator was that advanced shareholders, being entitled to share in the surplus profits, were contributories within section 200 of the Companies Act, 1862. However, Mr. Justice Kekewich held, upon the authority of *Brownlie* v. *Russell*, L. R. 8 App. Cas. 235; and *In re The Middlesbrough, &c. Building Society*, 58 Law J. Rep. Chanc. 771, that advanced shareholders were not liable to be placed upon the list of contributories. Those cases showed, he said, that there was a distinction between an ordinary shareholder and an advanced shareholder in such a society as this, and that the money which an advanced shareholder repaid to the society under his mortgage was really paid, not because he was a contributory, but according to the contract relating to his advance. His lordship added that, as regarded such repayment, although calculated in reference to the member's advanced shares, he was a debtor and not a shareholder liable as a contributory.

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This reasoning appears to us to be perfectly sound. In an ordinary case a borrowing member of a building society receives an advance, and covenants to repay the same by periodical instalments. If the rules provide that he shall be entitled to participate in the profits of the society, but shall not be liable to contribute to the

losses, by no possible contortion can he be justly made so. The argument that section 200 of the Companies Act, 1862, brings about a different result seems to us as utterly fallacious as apparently it was regarded by the learned judge to whom it was addressed.

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IN an article on 'The Waste of Judicial Power' in the current number of the *Law Quarterly Review* Mr. Snow deals in a comprehensive spirit with a subject to which attention has been repeatedly drawn in these columns, and on which Mr. Snow himself some weeks ago addressed a letter to this journal. We have ourselves advocated a greater flexibility in the existing judicial machinery, and pointed out the evil which Mr. Snow indicates in a suggestive sentence: 'Between the judicial staff of the Supreme Court and that of the Final Courts of Appeal there exists a great gulf which the Legislature has left unbridged, with the result that no excess of power which may exist on one side of that gulf can ever be brought to the relief of pressure on the other.' In apostolic phrase, the judges on one side cannot call to those on the other, 'Come over and help us.' Mr. Snow advocates a reversion to the principles of the Judicature Act, 1873, by which, as originally framed, there was only to be one appeal from the High Court, and he points out that on the return of the Conservative party to power in 1874 no voice was raised in favour of double appeals, but 'the fight was for the preservation of the appellate jurisdiction of the House of Lords,' a fight which, he says, would probably never have been engaged in if the principle of life peerages, established in the following year (1876) had then been recognised. We recently pointed out that, even without interfering with the double appeal, immense economy of judicial power might be effected. By an oversight Mr. Snow includes the late Mr. Barnes Peacock as still available for the Privy Council, and omits the name of Mr. (Lord) Shand. To the long list of judges competent to sit in the two final Courts, or in one of them, might be added retired Scotch and Irish judges and the acting appeal judges of those countries who on great occasions might be called in aid. It has already been observed in the LAW JOURNAL that the interval between the hearing in the Court of Appeal and that in the House of Lords has tended in the last few years to increase rather than diminish.

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THE Customs and Inland Revenue Act, 1891 (54 & 55 Vict. c. 25), which has recently received the royal assent, is an unusually short one of its kind. The only section of any practical importance is section 4, which amends the law as to inhabited house duty on dwellings of small annual value. The Act of 1890 (53 Vict. c. 8), by section 26, subsection 2, exempts from house duty houses 'let in separate dwellings at not more than 7*s.* 6*d.* per week for each dwelling, and occupied only by persons paying such rents.' The new Act substitutes an annual value of less than 20*l.* as the test of a title to exemption; and further, in the case of a house let in separate dwellings, of an annual value of not more than 40*l.* each, confines the assessment for house duty to the annual value of the house exclusive of every dwelling therein of an annual value below 20*l.*, and reduces the duty to 3*d.*

## ACTIONS AGAINST FOREIGN PARTNERSHIPS.

CONSIDERABLE attention has recently been attracted by the decisions on the subject of service upon foreign partnerships carrying on business in this country, and the change which has just been introduced by the new rules will doubtless be hailed with satisfaction.

In order to understand the question it will be necessary to consider the provisions of the Judicature Rules on the subject, as they existed before the recent change. Order IX., rule 6, provides as follows: 'Where persons are sued as partners in the name of their firm the writ shall be served either upon any one or more of the partners or at the principal place within the jurisdiction of the business of the partnership, upon any person having at the time of service the control or management of the partnership business there, and, subject to these rules, such service shall be deemed good service upon the firm.' Rule 7 of the same order is as follows: 'Where one person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the firm name, the writ may be served at the principal place within the jurisdiction of the business so carried on upon any person having at the time of service the control or management of the business there, and such service, if sufficient in other respects, shall be deemed good service on the person so sued.'

In *O'Neil* v. *Clason*, 46 Law J. Rep. Q. B. 191, which was decided in 1876, the question was whether service of a writ of summons on the manager in London of the defendant, who resided in Germany, and carried on business under the name of Clason & Co., ought to be set aside. The Divisional Court decided that it ought not, and Lord Coleridge, in delivering judgment, after pointing out that the rule dealt with the case of a man carrying on business with the words '& Co.' after his name when there was nothing to represent these words, in fact, proceeded as follows: 'The rule purposely deals with such a person differently, according as he assumes that name or not; where there is such a person who uses the mystic words, and he is sued in that form, then the writ may be served at the principal place within the jurisdiction of the business so carried on upon any person having, at the time of service, the control or management of the business there.' The case of *Pollexfen & Co.* v. *Sibson & Co.* 55 Law J. Rep. Q. B. 294; L. R. 16 Q. B. Div. 792, was to much the same effect, but those cases were overruled by various decisions, the last of which, prior to that which we shall next notice, was *The Western National Bank of City of New York* v. *Triana*, 60 Law J. Rep. Q. B. 272; L. R. 1891, 1 Q. B. 304.

The most recent case upon the subject (*Heineman & Co.* v. *Hale & Co.*) was decided last month by the Court of Appeal. The defendants were a firm at Buenos Ayres, and the action was brought upon certain acceptances drawn on the plaintiffs in London and payable in London. The writ was served upon one of the partners who had for some time been residing in London, and occupying an office for the firm. The Divisional Court decided that, as the contract was one made in this country, and to be carried out here, the service was good. The Court of Appeal, however, reversed this decision, and decided that the service of the writ was of no avail against any of the partners—of no avail against the partners out of the jurisdiction on the ground that

no leave had been obtained; of no avail against the partner in London because the writ was in such a form that judgment upon it could only be against the firm.

It will thus be seen that the subject was in very great confusion, and few who have studied it will disagree with the view expressed by Lord Justice Bowen in *The Western National Bank of City of New York* v. *Triana*, that he had arrived, as the result of some experience and observation, at 'an opinion of the necessity of redrafting the rules under the Judicature Acts so far as they affect partnership.'

The new order, which is to be cited as Order XLVIII*a*., repeals (*inter alia*) Order IX., rules 6 and 7, and substitutes a series of eleven rules. The following are the portions of these new rules which deal with the subject now before us:—

Rule 1 provides that 'Any two or more persons claiming, or being liable as co-partners, and carrying on business within the jurisdiction, may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause or action.'

Rule 3 provides as follows: 'Where persons are sued as partners in the name of their firm under rule (1), the writ shall be served either upon any one or more of the partners, or at the principal place within the jurisdiction of the business of the partnership, upon any person having at the time of service the control or management of the partnership business there, and, subject to these rules, such service shall be deemed good service upon the firm so sued, whether any of the members thereof are out of the jurisdiction or not, and no leave to issue a writ against them shall be necessary.

A provision in rule 4 on this subject is also worthy of notice. It provides that when a writ is served under rule 3 notice in writing must be given at the time, whether the person so served is served as partner or manager, or in both characters. In default of such notice the person served is to be deemed to be served as a partner. It will thus be seen that the new rules introduce very considerable changes on this subject.

## UNWRITTEN CHAPTERS IN THE LAW OF DESIGNS.

### III.

(*Continued from p.* 462.)

HOLDSWORTH *v.* M'CREA. M'CREA *v.* HOLDSWORTH.*

UNDER the Designs Acts of 1842 and 1843 (5 & 6 Vict. c. 100, and 6 & 7 Vict. c. 65) a person that registered a design was obliged to give a certain description of it either in writing or by a drawing or plan. The Designs Act of 1858 (21 & 22 Vict. c. 70) introduced an alternative procedure. Section 5 of that statute provided that 'the registration of any pattern or portion of an article of manufacture to which a design is applied, instead or in lieu of a copy drawing, print, specification, or description in writing, shall be as valid and effectual, to all intents and purposes, as if such copy drawing, print, specification, or description in writing had been furnished to the registrar under the Copyright of Designs Acts.

In accordance with this section M'Crea had registered, without any accompanying description, a pattern of a design which consisted of a piece of *Pekin cloth*, showing on both sides a figured chainwork ground, called the 'Albert chain pattern,' and a six-pointed star. Holdsworth was using a design substantially identical in size and general appearance, but having the position of the star reversed. M'Crea sued Holdsworth both at law and in equity; the suit in equity, after the old practice, was ordered to stand over till the plaintiff had established his right at law, and the action at law came on for trial before Chief Justice Cockburn and a jury at the Guildhall sittings. The jury found, under the direction of the Chief Justice, that the grounding of the plaintiff's design was old, that the stars were new, that the combination was new, that the defendant had infringed, and that the plaintiff was entitled to 40*s.* damages. The verdict was upheld by the Court of Queen's Bench, the Court of Exchequer Chamber, and the House of Lords, in succession.

The primary question raised by this case was whether the pattern sufficiently described the nature of the design. It was contended, on behalf of the defendants, that the registration was bad in point of law, because it could not be collected with reasonable certainty from the article of manufacture which the plaintiff furnished to the registrar what the design was which the plaintiff intended to register as applicable to it; and because the registration enabled the plaintiff at his option to claim one or other of several designs, and not one design only. In support of the contention the defendant referred to *Norton* v. *Nicholls*, 1859, 1 E. & E. 761. This was an action for the infringement of a design applicable to shawls. The plaintiff, by way of indicating to the registrar what his design was, had simply left with him a sample of his shawls with the design upon it. At the trial he contended that there were five points in respect of which his shawl was new, so that, if the defendants had imitated any one of them, he was entitled to recover. These were (1) a reversible cloth with the two sides of different texture; (2) a scollop pattern on parts of the shawl; (3) a particular border round the shawl; (4) a particular configuration of the corners of the shawl; (5) a newly invented fringe to surround the shawl. The jury found that each of these five points was old, but that the combination was new and that the defendants had infringed. Upon this verdict the Court of Queen's Bench entered judgment for the defendants on the grounds (1) that the combination registered was not a design but a multiplicity of designs, and (2) that *in such a case* the mere deposit of an article manufactured according to the combination relied on did not sufficiently disclose the claim of the proprietor.

In *Holdsworth* v. *M'Crea*, however, *Norton* v. *Nicholls* was 'distinguished.' The objection of ambiguity, said Chief Justice Cockburn, in effect, with greater ingenuity than soundness, is easily disposed of. Not only have the jury found that there is no ambiguity, but the very fact that a multiplicity of designs is not registrable as a combination is a clear intimation to all men that what the plaintiff claims as his design is the pattern, the whole pattern, and nothing but the pattern! In the House of Lords a better *ratio decidendi* was adopted. An applicant for the registration of a design, said Lord Colonsay, 'has a choice of two courses to pursue: one to content himself with giving in a pattern and remaining silent; the other, giving a description of that which he claims as his invention. There is risk in either way. There is a risk in the latter case of there being a mis-

* 1864–67, 5 B. & S. 495; 33 Law J. Rep. Q. B. 329; L. R. 1 Q. B. Div. 284; L. R. 2 H. L. 380; 1870, L. R. 6 Chanc. 418.

description of his claim. . . . Then, again, where the party exercises the option of silence, and merely produces the pattern of his invention, he is exposed to this, that in order to claim his protection he requires to maintain that he claimed the entirety of what is exhibited on the face of that pattern, and if only a part is used in a different combination he is without the protection which he otherwise would have had.' Their lordships held, therefore, that what M'Crea had registered was the design upon the pattern as an entirety; but were careful to point out that a mere formal compliance with the statute by the deposit of a pattern would not prevent the question of the sufficiency of the pattern as a disclosure of the applicant's claim from being raised. This decision is, therefore, consistent with *Norton* v. *Nicholls*.

Having fairly established his rights at law, M'Crea resumed proceedings in equity. He was at once met by a most ingenious objection on the part of the defendant. 'You have chosen to register by pattern; according to the judgment of the House of Lords, only your *entire* pattern is protected; now there is a difference between our pattern and yours; we reverse the position of the stars; therefore we have not infringed, and you are not entitled to any damages at all.'

Lord Hatherley, however, repelled this objection, and put a valuable gloss upon the language used by Lord Colonsay in *Holdsworth* v. *M'Crea*. 'The designer is not bound, as in a patent case, to distinguish the new from the old, and is allowed to register his pattern without distinguishing what is new from what is old; but if he chooses to put it in that way it will not be protected as against the public in case they choose to use any portion in any manner substantially differing from the registered design. If the designs are used in exactly the same manner as I hold they are in this case, and have the same effect, or nearly the same effect, then of course the shifting or turning round of a star, as in this particular case, cannot be allowed to protect the defendants from the consequences of the piracy.'

*Mutatis mutandis*, the points established by *Holdsworth* v. *M'Crea* and *M'Crea* v. *Holdsworth* apply to the 'statement of the nature' of a design proposed for registration, which is required by section 47, subsection 3 of the Designs Acts, 1883–88.

(*To be continued.*)

## LEGISLATIVE PROGRESS.

IN the House of Lords.

The following bills were read a third time and passed:—

Local Authorities (Scotland) Loans Bill.
Allotments Rating Exemption Bill.
Trustee Bill.
Bills of Sale Act (1890) Amendment Bill.
Forged Transfers (No. 2) Bill.
Schools for Science and Art Bill.
Land Purchase (Ireland) Bill.
Mortmain and Charitable Uses Amendment Bill.

Bills beyond second reading:—

Public Health (London) Bill.
Returning Officers (Scotland) Bill.
Brine Pumping (Compensation for) Subsidence Bill: report of amendments agreed to.
Land Registry (Middlesex Deeds) Bill.

Bill through committee:—

Factories and Workshops Bill.

Second readings:—

Local Registration of Title (Ireland) Bill.
County Councils Elections Bill.
Lunacy Bill.
Ranges Bill.
Crofters' Common Grazings (Scotland) Bill.
Stamp Duties Bill.
Stamp Duties Management Bill.
Consular Salaries and Fees Bill.

First reading:—

Elementary Education Bill (from the Commons).

In the House of Commons.

Third readings:—

Public Health (Scotland) Acts Amendment Bill.
Fisheries Bill.
Highways and Bridges Bill.

Bill through committee:—

Statutory Rules Procedure Bill.

New Bills:—

London County Council (Money) Bill.

To Appoint a Secretary for Wales, to Constitute a Welsh Education Department, and to create a National Council in Wales.

To Amend the Law with regard to Assistant County Surveyors (Ireland).

Bills withdrawn:—

Cathedral Churches Bill.
Movable Dwellings Bill.

## Reviews.

### RAWSON'S PROFIT-SHARING PRECEDENTS.

*Profit-Sharing Precedents.* With Notes. By HENRY G. RAWSON, of the Inner Temple, Barrister-at-Law. London: Stevens & Sons. 1891.

THE author of this work has been encouraged to undertake his task by the interest recently evinced in Parliament in the subject of profit-sharing, which has resulted in the report lately issued by the Board of Trade. He has accordingly given us here a collection of precedents which he trusts 'will enable anyone desirous of introducing profit-sharing into his business to select, without much difficulty, the particular method which will best suit his circumstances.' The suspicion of workmen is, in Mr. Rawson's opinion, one of the chief obstacles which an employer has to overcome in launching a profit-sharing scheme, unless in those fortunate cases where the men employed are above the average in intelligence. The author, therefore, recommends that a well-considered scheme, and preferably one which has already been successfully worked, should be employed. Alterations and modifications in a scheme have a tendency to shake the confidence, and usually result in discouragement to the employer. Most of the precedents given appear to have been in practical operation already. Among them may be noticed clauses in the memorandum and articles of association of a limited company authorising it to adopt a scheme of profit-sharing at p. 59, and alternative forms which are given

at p. 61 *et seq.* The conception of the work is good, and the precedents will be found useful to those who desire to try the profit-sharing system.

## COMMERCIAL LAW.

*The Principles of Commercial Law.* With an Appendix of Statutes annotated by Means of References to the Text. By JOSEPH HURST and LORD ROBERT CECIL, of the Inner Temple, Barristers-at-Law. London: Stevens & Haynes. 1891.

THE object of the authors of this work, they tell us in their preface, is to state within a moderate compass the principles of commercial law. Very considerable pains have obviously been expended on the task, and the book is in many respects a very serviceable one. The subjects discussed are to a great extent the same as those considered in Smith's 'Mercantile Law;' but we have noticed that some subjects which would certainly seem deserving of a place in a treatise on commercial law are scarcely dealt with at all, or dealt with in an inadequate manner. Thus we should certainly have expected some exposition of the law as to bills of sale. There is an allusion to the Bills of Sale Act, 1890, but in p. 344 we find the following note: 'The provisions of the Bills of Sale Acts, 1878 and 1882, and the numerous decisions on them, are not dealt with herein.' Similarly the law of bankruptcy would seem a fit subject for discussion in a book of this description, but here it is not even mentioned in the index. On the other hand, several subjects would seem to be treated at undue length. The Bills of Exchange Act is set forth at length, and so in the Appendix are the Railway and Canal Traffic Acts of 1873 and 1888 and the Merchandise Marks Act, 1887. Surely the space thus employed might in a treatise of such moderate dimensions as this have been much better employed. The Factors Act, also reprinted in full, was extended to Scotland by 58 & 54 Vict. c. 40, but this fact is not noticed. The Partnership Act, 1890, is set forth at length in the concluding chapter. Here the author, after alluding to the previous works on the subject, says: 'Although it may be improper "where a statute is expressly said to codify the law, to go outside the code so created, because before the existence of that code another law prevailed," it is submitted that reference may usefully be made to such works as those above mentioned as illustrating the provisions of the Act and to cases which may be explanatory of its principles.' The quotation here is from the Lord Chancellor's judgment in the *Vagliano Case*, and we agree that authorities prior to a codifying Act may be of service, but the reader will require to be very cautious in applying them to the present law.

# Correspondence.

## THE LATE MR. TAXING-MASTER SKIRROW.

SIR,—I have read with much interest and appreciation the able and well-deserved panegyric of Mr. James Rawlinson upon the late Mr. Taxing-Master Skirrow.

Without detracting in the least from the merits of this eminent gentleman's career, the record of his life seemingly gives rise to the reflection that in order for a taxing-master, or taxing-masters generally, to achieve such splendid results someone must have suffered. Assuming the correctness of this reflection, the question is, *Who* has suffered? Is not the answer: The suitors, the public generally, the bar, and last, though not least, the solicitors? The suitors, by being called upon to pay more fees on taxation than are needed for the expenses of the taxing offices; the public, by suffering the partial denial of justice involved in justice being made too dear; and the bar and the solicitors, by the loss of business caused by the natural aversion of the people to too dear law.

Looking at the figures in Mr. Skirrow's case, it seems to me that the taxing fees have been nearly double the amount necessary for carrying on the office. I do not say the taxing officers are the only or the chief offenders in this respect. I do not think they are, but I do think that these excessive official fees are a great blot upon our judicial system. In my humble opinion the dispensing of justice ought to be paid for, to a great extent, by the nation at large, and not by the individuals who from time to time are compelled to seek the aid of the Courts.

I might refer to the County Courts as flagrant instances of much too heavy Court fees being charged did time and space permit, but will for the present content myself with the above remarks.

Liverpool: July 13. H. C. REYNOLDS.

## COLONIAL AND FOREIGN COMMISSIONS FOR OATHS IN ENGLAND.

SIR,—A notion exists that affidavits for use in the Supreme Courts of the various British colonies may be properly taken before a commissioner for oaths in the Supreme Court of Judicature in England, but it would seem that it is inaccurate. Such affidavits are returned to be sworn before a commissioner of the Supreme Court of the colony particularised. As the various books on oaths do not treat of the subject of such colonial commissions, and it is probably but little known, it may perhaps be useful to those who are professionally interested therein if some material information connected therewith is stated, and I would ask you, therefore, to give me an opportunity for the purpose. It is, perhaps, unnecessary to premise that the Lord Chancellor has no jurisdiction or authority to grant such commissions for the colonies. The power thereunto is derived from numerous Acts and ordinances of each colonial Legislature, and, stated generally, is vested by these statutes in either the chief justice or the Supreme Court of each colony, except in the various provinces of the Dominion of Canada, where it is exercised by the lieutenant-governor in council, and where the appointment partakes rather of the nature of a public Government one. In America it is vested in the governor of each State of the Union.

It may be noticed that in the larger number of instances these colonial commissions are not merely to administer oaths; they embrace, sometimes, the equivalent duties of a perpetual commissioner, of an examiner of witnesses, and of verifying documents and instruments for record and registration. American commissions, too, include some notarial acts. Thus the powers of the commissioner are of a very diverse character. Commissions for England are commonly granted to practising solicitors and notaries public only; but it must not be assumed that they are

granted as of course, or that they are procured with as much ease as here; there are strict requirements to be complied with by applicants. It does not appear however to be an invariable requisite-precedent that the applicant should be of a minimum number of years' standing in his profession.

To summarise in a general form, within the limits of this communication, the procedure necessary to lead to the grant of such a commission, it may be stated that the application should be made by way of petition to the chief justice of the colony for which the appointment is desired, or to the Supreme Court thereof, as the case may require; or if for a Canadian commission, to the lieutenant-governor of the province in council. It should state the applicant's name, address, and description or quality, in the heading thereof, and it should be divided into paragraphs setting forth (*a*) the applicant's professional standing and experience, (*b*) the facts showing the necessity for the appointment, and (*c*) any material statements which may be reasonably considered to support the prayer of the petition.

It is preferable, as a general rule, that the petition should be lodged through a local agent, but it may be presented by the applicant direct, who in that case should enclose it to the registrar of the Supreme Court of the particular colony, or, if for a Canadian commission, to the secretary of the province, but preferably through the agent-general of the province, whose recommendation is sometimes required. Accompanying it there should be a statutory declaration or affidavit intituled 'In the matter of the petition,' which should be exhibited or annexed thereto, verifying the statements contained therein. The oath or declaration should be taken or made before one of the commissioners of the colonial Court; the deponent or declarant should take care to be identified before the commissioner, who will add his certificate of the fact. This latter is a precaution which may obviate delay and correspondence.

It appears to be considered absolutely essential that the petition should be also accompanied by the signed recommendation of one of Her Majesty's judges of the Supreme Court here (probably the High Court of Justice is meant), or of the president for the time being of the Incorporated Law Society, or of a well-known Queen's counsel, and sometimes of a leading barrister also, or of the agent-general, to the effect that the applicant is of good repute, fully qualified to execute the duties of a commissioner, and a fit and proper person to receive the appointment; together with a document signed by a person of position certifying the public necessity for the appointment desired. For Canadian commissions, and American commissions also, the recommendations of a Government official here of high standing is sometimes accepted, other things being equal. Delay in the granting of commissions for some of the colonial Supreme Courts sometimes occurs, as the petition and documents in support are filed to be dealt with in turn on a vacancy occurring, the number of commissioners being limited.

The fees payable on the issue of the commission vary very much; in some colonies there is no fee. The smallest fee charged is 10*s.*, in the Supreme Court of South Australia; the largest is believed to be thirteen dollars = 2*l.* 13*s.* 4*d.* sterling, in the province of Ontario, Canada. In the large majority of instances where a fee is payable it may be assumed that it is usually 2*l.* or under. The issue or refusal of the grant is in due course officially notified to the applicant; in many cases the appointment is also announced in the Government *Gazette*.

A tabular list of the chief Supreme Courts, with particular information for each one, would, it is feared, occupy too much space, but enough has been, perhaps, stated to indicate the initial steps to be taken.

Geo. E. Solomon.

16 Narcissus Road, West Hampstead, N.W.
July 11.

## FEMALE PLAINTIFFS.

Sir,—In Notes of Cases in your last week's edition, Mr. Justice Kekewich is reported to have intimated his opinion that a female plaintiff in an originating summons 'should state her description, whether she is a married woman or a spinster or otherwise.' With all respect to the learned judge, there seems to be no conceivable reason why such a description should be given, nor any purpose which it can serve except, perhaps, that of inquisitiveness, which, however, might possibly be more gratified by an explanation of what the lady plaintiff being 'otherwise' may indicate.

Curiosus.

# Unreported Cases.

## ASSIZE CASE.

### FALSE DECLARATION UNDER THE REGISTRATION ACT.

At Lincoln, on July 13, before Mr. Justice Williams, Daniel M'Kenzie Steedman was indicted for making a false declaration under the Registration Act (6 & 7 Wm. IV. c. 6). The facts of this case were remarkable. The defendant had studied at Dublin in medicine, but left without taking a degree, and possessed no medical qualification. In 1882 he was employed as assistant to a Dr. Bailey at Grantham, and there he made the acquaintance of Robert Macredy, who was assistant to another medical man in the same town and himself a qualified practitioner. The two became intimate and acquainted with each other's affairs. After a time Macredy fell into a state of bad health, retired to his home in Northumberland, and ceased for a time to follow his profession. The notion then occurred to Steedman of stepping into Macredy's skin. Accordingly, under Macredy's name, he obtained an engagement as assistant to a medical man named Couldry, at Sainthorpe, distant about forty miles from Grantham. He ultimately became Couldry's partner, and in 1887 married his sister. On the occasion of this marriage he described himself as Macredy, gave his father's name as Macredy, and alleged that he possessed the medical qualifications which the true Macredy possessed. It was with this offence that he was now charged. The remarkable thing was that the deception under the above circumstances was carried out for eight years without any suspicion on the part of anybody. Ultimately, Macredy's name having been eliminated from the 'Irish Medical Register,' in consequence of his not answering letters addressed to him, the defendant wrote for the purpose of getting the name reinstated. Unfortunately for him, the real Macredy wrote about the same time with the same object. Inquiries were consequently instituted, and the true state of affairs discovered. It was submitted for the defence that the prosecution must fail owing to the fact that it had been instituted more than three years after the alleged offence. The prosecution was under the Registration Act (6 & 7 Wm. IV. c. 86), which Act contained no section of limitation. However, in cap. 85 of the same

year there was a section 'that every prosecution commenced under this Act shall be commenced within the space of three years after the offence committed,' and another section 'that this Act shall be taken to be part of cap. 86 as fully and effectually as if incorporated therewith.' It was, therefore, contended that the limitation section of cap. 85 applied to prosecutions instituted under cap. 86. The learned judge was of this opinion, and accordingly he directed a verdict of Not guilty. There was another charge against the defendant of having attempted to get himself put on the 'Medical Register' by false statements. In this, however, application was made by the defendant's counsel to quash the indictment on the ground that it did not sufficiently disclose an offence under the Medical Registration Act, and that certain material allegations had not been set forth. The application was successful, and thus the defendant escaped altogether.—Mr. Appleton and Mr. Bonner were for the prosecution; Mr. Dugdale, Q.C., and Mr. Garrett for the defence.

## POLICE.

### THE BETTING ACT AND PUBLIC-HOUSES.

At Guildhall, on July 13, Daniel Dawson, a bookmaker at the White Swan, New Street Square, was summoned for using a certain room in that house for betting purposes.—Mr. H. H. Crawford, the City solicitor, prosecuted.—Mr. Colam, for the defence, said the defendant elected to be tried at that Court. This would be essentially a point of law, and if the Court found against the defendant he should ask for a case.—Mr. Crawford said he proceeded against the defendant for having contravened section 13 of the Betting Act, 1853. It would be shown that he had used the White Swan public-house entirely for betting purposes. Mr. Crawford wished to point out that there was a great difference between occasionally using a house for the purpose of making a bet and using it for nothing else or nearly so. This was an important case. Counsel had said that if it went against him he should ask for a case, and he need hardly say that, should the alderman decide against him, he should adopt a similar course. Evidence was given to prove that betting was carried on by the defendant, and that the house was little used for the purpose of obtaining refreshment. Mr. Colam contended that this was a case on all-fours with the case of *Whitehurst and Flincher*, which showed that to come within the meaning of the section a person must have a permanent interest in the house. In this case such interest was not shown. Ordinary customers could come into this particular bar as they went to the other bars. It was not a private place used by the defendant only. This was demonstrable by evidence that persons did come in for refreshment. Mr. Colam called witnesses who said that they used this house, that they had had meals in this bar, and that they did not bet.—Alderman G. Faudel Phillips held that defendant did not occupy any particular part of the house, and that he had no interest in the house, therefore he dismissed the summons.—Mr. Crawford asked for a case, which was granted.

## INCORPORATED LAW SOCIETY.

THE annual meeting was held on July 10, the President, Mr. Cunliffe, in the chair.

Mr. W. M. Walters and Mr. R. Pennington were elected president and vice-president for the ensuing year.

The members of the Council retiring by rotation were re-elected, and for the vacancy caused by the withdrawal of Mr. Jevons there were two candidates—Mr. Gray Hill and Mr. F. K. Munton. The President being about to read the names, Mr. Munton announced that when his nomination, signed by four eminent members of the profession, was sent in, there was an impression that Mr. Gray Hill, owing to severe domestic affliction and other causes, might be unable to serve, but now that that gentleman had assured him that he was ready and willing to accept office he (Mr. Munton) desired unreservedly to withdraw his name. He said he need not apologise for his interposition, as the names of those who had nominated him and the feeling shown were an ample assurance that his activity for many years might not make him an unacceptable candidate at an appropriate moment. Mr. Gray Hill was thereupon declared to be elected.

The Chairman moved the adoption of the Society's accounts and the annual report, and a long discussion took place thereon, in which Mr. Ford, Mr. Pennington, Mr. Melvil Green, Mr. Woolbert, Mr. F. R. Parker, Mr. Addison, and Mr. Walters took part, and the accounts and report were accepted.

In the course of the debate Mr. Ford characterised the *conversazione* in April as a failure, to which statement Mr. Walters and Mr. Munton took exception, both declaring that had Mr. Ford been present and seen the way in which the entertainment passed off, upwards of a thousand persons being there, he would have seen that it was eminently successful.

The President, however, in reply to questions, said that the *conversazione* was not a precedent, and that the usual business meeting would take place in April next unless the society otherwise determined, and

Mr. Gribble, while endorsing the success, remarked that, if the proposal were renewed next year, it would be well to consider it *de novo*.

A discussion took place as to the Middlesex Registry Bill, and Mr. Munton said that numerous members thought that there were many points requiring careful consideration. The new registrar (Mr. Holt) had invited him (Mr. Munton) on more than one occasion to a conference on the practice of the registry and the points raised in the various legal proceedings. Mr. Holt showed a courteous desire to investigate the true position, and at his (Mr. Munton's) request a promise had been obtained that the long-asked-for official notice of the true fees receivable should be circulated. Mr. Munton remarked that it could not be too often mentioned that the minimum fee for registering a memorial where the oath was administered outside was 2*s*.—a sum he recommended everybody to strictly adhere to, as it was possible that an average fee might hereafter be fixed based upon the current receipts. It was understood that the Lord Chancellor had intimated to the council that the bill would not be pressed forward till the views of the society had been weighed, and nothing further need now be said. Mr. Munton afterwards brought forward a motion having for its object the classification of trials in the Queen's Bench, so that the causes should be divided into three distinct lists: (1) commercial; (2) libel and personal injuries, including breach of promise cases and the like; (3) miscellaneous. He argued that commercial litigation was of far greater importance than other classes of trial, and that something ought to be effectually done to secure some sort of priority of trial for mercantile cases; that commercial cases being easily ascertained, as was shown by the present partial classification, there was really no practical difficulty, and needless trouble was given by the present massive, unmanageable, and uncountable list; that although libel and other personal questions were of great importance to the parties concerned, and must be efficiently dealt with, their hearing should be postponed when one Court only was available, and that the judges could still sit by rota if there should be any delicacy on the question of selection.

At the suggestion of Mr. Walters (Vice-president),

who stated that the council were already in communication with the Lord Chancellor upon the subject,

Mr. Munton withdrew the motion, observing that, in accordance with the wish that had been expressed by the vice-president, he would read a paper on the subject at the forthcoming meeting of the society at Plymouth.

The President remarked, with regard to the question of the appointment of an additional Chancery judge, that the Council had not been successful in securing this, notwithstanding all their representations to the Lord Chancellor, the suggestions made by the Bar Committee, and by individual members of the bar. It was true they had had the services of a common law judge, but that was not what they wanted. They wanted another Chancery judge. The Chancery judges did their work well, but there were not enough of them, and they could not reduce the arrears without additional help.

A cordial vote of thanks to the president concluded the meeting.

## GLOUCESTERSHIRE AND WILTSHIRE INCORPORATED LAW SOCIETY.

THE annual meeting of this society was held at Cirencester on Thursday, June 25. Mr. Ellett (Cirencester), the president of the society, presided, and there was a large attendance, including Mr. James B. Winterbotham (Cheltenham), vice-president; Mr. E. W. Coren (Gloucester), hon. secretary; and Messrs. Kinneir (Swindon), Whitcombe (Gloucester), Scott (Gloucester), Mullings (Cirencester), Warman (Stroud), D. J. Winke (Newnham), &c.

The President, in moving the adoption of the report of the committee, referred to the opposition to the Public Trustee Bill, and said that although withdrawn for this session it was understood that it would be reintroduced next session. He pointed out the objection on principle to the establishment of a State department for the transaction of private business, and referred to the disadvantages to the *cestui que trust* of having to deal with a State department necessarily acting in accordance with hard-and-fast rules. He recognised, however, that there is one point on which the public feel very strongly, and which must necessarily produce a certain amount of support in Parliament for any proposal for appointing a public trustee—namely, the advantage of the State guarantee for the safety of the trust funds. It must also be recognised that there is a growing difficulty in finding private trustees, especially in the larger and more special trusts. He doubted if it would be expedient or possible successfully to oppose altogether the appointment of a public trustee, but urged that his duties should be limited to the safe custody of the trust funds, and should not extend to the general administration of the trust. The public requirement would, he thought, be to a considerable extent met by authorising trust companies to undertake such business, and that the policy of the profession would be to formulate a good working scheme for the appointment of a public trustee responsible for the safety of trust funds when voluntarily brought under his control, but with no other powers in relation to the trust.—After discussion, in which the views expressed by the president were generally concurred in, the report of the committee was adopted.—Grants to the amount of 90*l.* to the families of deceased solicitors were sanctioned.

The following is extracted from the report:—

'*The Public Trustee Bill.*

'The most important matter which your committee have had to deal with during the past year has been the Public Trustee (No. 2) Bill, being a Government bill introduced into the House of Commons by the Chancellor of the Exchequer early in the present session.

'The bill provides for the establishment of the office of public trustee, which would, in fact, be a Government department for the administration of private trusts. This proposal appeared to your committee to be most objectionable, for the following amongst other reasons:—

'1. As being an effort in the direction of State interference with private business. If it be contended that the bill confers advantages on the parties interested in trust funds, the reply is that it can only do so at the expense of the community, which is wrong. If it does not confer advantages, it is useless.

'2. The management of trusts especially requires the personal attention and local knowledge of those acquainted with the circumstances of the case. Such business frequently requires considerable tact and delicacy of management, which cannot be expected from the officers of a public department who necessarily proceed by rule.

'3. The effect of the bill, if it should result in putting into the hands of a public trustee the enormous amount of money held under trusts, would be to place such money in Consols or similar investments, and this probably is the real object of the bill. In so far as it has this effect, it will defeat the Trust Investment Act, 1889; reduce the income of beneficiaries; and tend to withdraw from the land of the country the trust money invested on mortgage.

'4. Although the bill is permissive, it may be expected that it will be the tendency of the Courts to appoint the official trustee on the occasion of appointment of new trustees, thereby in time placing under his control the bulk of the larger trusts. The same result may be expected from the tendency of every public department to increase the scope of its powers, with a view to becoming pecuniarily self-supporting.

'5. There is no evidence that any legislation is required, and there is no serious difficulty in obtaining private trustees.

'6. It is socially and morally inexpedient to legislate so as to encourage refusal on the part of relatives and friends to undertake trusteeships.

'On March 5 last a meeting of the Associated Provincial Law Societies was held, at which your society was represented by the president, and it was resolved to appoint a deputation to the Lord Chancellor and the Chancellor of the Exchequer. The deputation attended accordingly, accompanied by the president and vice-president of the Incorporated Law Society, but it appeared that the Government intended to proceed with the bill. The Chancellor of the Exchequer, however, intimated his willingness to consider any proposed amendments when the bill is in committee.

'Your committee represented to the local members of Parliament their objections to the bill, and the same course was taken by other societies.

'Subsequently another meeting of the Associated Provincial Law Societies was held, at which the provisions of the bill were fully discussed and amendments considered; Mr. Coren represented the society at this meeting. Owing to the state of public business in the House of Commons, no further progress has at present been made with the bill. Should the second reading be carried, a motion will be made to refer the bill to a select committee instead of the standing committee on law, and amendments will then be proposed.

'*Status of Solicitors.*

'This question was brought under the consideration of the committee by the Incorporated Law Society of Liverpool, in an able report, in which it was pointed out that the present distribution of appointments as between barristers and solicitors is illogical and unfair. Your committee felt, however, considerable doubt as to the expediency of taking any action in view of the circum-

stance that most of the patronage is in the hands of persons whose sympathies are with the bar, and feared that the result might be to confer on barristers appointments now held by solicitors without any corresponding benefit to our branch of the profession. Your committee would rather look to the change resulting ultimately from an improvement of the existing system of legal education by the establishment of a school of law applicable alike to both branches of the profession.

'A communication to this effect was addressed to the Liverpool society.

*'County Courts.*

'Your committee have concurred with the Associated Provincial Law Societies in supporting the following resolution: "That the interests of the public require the repeal of so much of section 72 of the County Courts Act, 1888, as prohibits the solicitor of a suitor from retaining another solicitor to appear in the County Court as an advocate for the suitor."

*'Solicitors' Remuneration Order.*

*'Conducting Sale at Auction Sales.*

'The question whether the right to the conducting sale fee under the Solicitors' Remuneration Order is precluded by a payment to an auctioneer for offering the property and registering the bids at an auction, remains unsettled. The council of the Incorporated Law Society have intimated their willingness to support a suitable test case for obtaining a decision on this important question, and in the event of such a case coming under the notice of any of the members of this society, it is hoped they will communicate particulars of it to your committee.

*'The Tithe Act, 1891.*

'The bill which has resulted in this Act for transferring the liability for tithe rent-charge from the occupier to the landowner was carefully considered by your committee, and suggestions were made upon it to the Council of the Incorporated Law Society. The attention of practitioners should at once be given to the requirements of subsection 6 of section 2, as to notice by the landowner to the tithe-owner, where the occupier is liable to pay the tithe rent-charge under existing contract. Your committee regret that a clause to which exception was taken by the profession generally stands part of the Act—namely, the power given by subsection 1 of section 5 to a tithe-owner to make application to the County Court by an agent not a solicitor. Although the point is in itself a small one, the principle involved is objectionable, and it appears to your committee that the exception to the general rule, that solicitors only are authorised to conduct proceedings in any Court, should not be carried further than it is already carried by the County Court Act, under which an agent in the regular employ of the party may appear. The committee, however, conceive that it is doubtful whether the provision referred to enables the non-professional agent of a tithe-owner to appear and conduct the case on the hearing, if any, or whether his power is not limited to the signing and lodging the prescribed notice of application to the Court.

*'Licensing Law.*

'The importance of the recent decision of the House of Lords in *Sharp* v. *Wakefield* (60 Law J. Rep. M. C. 73), in its bearing upon a branch of practice of interest to many members of the society, induces your committee to think that it may be expedient to make reference to it in this report. The point decided is that the discretion of justices given by the Alehouse Act, 1828, s. 1, in the granting of licenses, applies equally to the renewal as to the original grant. In applying this decision it will be important to practitioners to bear in mind—

'1. That it does not affect the renewal or transfer of licenses under 32 & 33 Vict. c. 27, s. 19—*i.e.* in respect of beerhouses licensed before May 1, 1869.

'2. That it does not affect the grant, renewal, or transfer of off-beer licenses subject to 32 & 33 Vict. c. 27, s. 8.

'3. That it does not alter the procedure prescribed by section 42 of the Licensing Act, 1872, and section 26 of the Licensing Act, 1874.

'4. That although, subject to the foregoing restrictions, the discretion of the magistrates is absolute, they must exercise this discretion judicially "according to law and not to humour;" it must not be "arbitrary, vague, and fanciful, but legal and regular."'

## GRAND JURIES.

'A MAGISTRATE' writes to the *Times* as follows:—

A learned recorder, Q.C., in charging the grand jury of a county town (there were no prisoners for trial!), made the following remarks:—

'He thought it possible that one of these days it might be considered that the attendance of a grand jury at quarter sessions was unnecessary, and there was a sufficient protection that persons would not be improperly put upon their trial, as the cases were heard in the first instance by the magistrates.'

How devoutly it is to be wished that this blessed day may come soon, and that the common sense of this recorder may prevail!

In former days, when the squire heard the case of the poacher upon his own preserves and committed him with no other assistance than his own legal lore, the institution of a grand jury was indeed a safeguard; but in these enlightened times of magistrates' clerks and well-regulated petty sessions it is nothing less than absurd, as regards quarter sessions at least, that the deliberate opinions of justices advised by a lawyer should be submitted *quasi* for approval and should be liable to be overruled by less cultured minds. It is very doubtful, too, even as regards assizes, if the institution of a grand jury can be of any real utility, except to share with a judge the responsibility of saying that such and such a prisoner shall not be put upon his trial in a particular class of case of an unmentionable character for want of evidence. But the judge in such cases is surely able to bring about the same result by a timely hint to counsel.

Is there, however, any such further necessity, or even propriety, in the institution of a grand jury that it is worth while to continue the trouble and expense and loss of time involved? This is no age for pedantic and cumbersome methods of obtaining justice. No one travels nowadays by a stage-coach, except as a curiosity. The blast of the trumpet down St. James's Street is interesting, no doubt; but for the dozen persons sitting upon the coach there are a dozen thousand travelling on the railway.

The relationship of a grand jury to a modern Court of justice is somewhat in the same ratio. Magistrates and commercial men who are bound to attend there know that they are doing no good whatever, except, perhaps, to swell the triumph of a judicial car on a Roman holiday.

Pedantry will not fail, I am aware, to dish up some sort of argument for the continual usefulness of a grand jury; but common sense says loudly 'No!' even though judges here and there may join in the chorus of admiration for this old-fashioned palladium of the liberty of the subject, which represents now only the waste of time, the waste of labour, and the waste of money.

## THE LUNACY BILL.

THE object of a bill introduced by the Lord Chancellor is stated by him as being to amend the Lunacy Act of 1890, principally in matters relating to local government and pauper lunatics. The opportunity is also taken to propose some changes in the Act in some matters relating to private lunatics. One clause is intended to clear up a doubt which has been raised as to the proper classification of lunatics sent to an asylum on the ground that they are not under proper care and control, or that they are cruelly treated or neglected, or that they are wandering at large. Each is to be classified as a pauper until it is ascertained that he is entitled to be classified as a private patient. Another clause makes an order of a justice unnecessary for the detention of a lunatic in a workhouse where a report has already been made as to the lunatic under section 22 of the Poor Law Amendment Act, 1867. These cases are numerous, and to obtain an order of a justice in each case would, it is alleged, be both costly and unnecessary. The clause also relieves the medical superintendent of the metropolitan asylums from the necessity of certifying that the accommodation is sufficient. These asylums are provided for lunatics only, and a lunatic would not be admitted unless the accommodation were sufficient. Another clause enlarges the powers of permitting lunatics to travel under proper care and to be absent on trial; and another gives power to alter the regulations of lunatic hospitals, subject to the approval of a Secretary of State. Amid other clauses there are some which relate to financial and other questions between boroughs and counties in lunatic matters. Then, again, some difficulties have been experienced in procuring orders for the reception of private patients. For instance, a judicial authority is not always easily found, and is sometimes not willing to act. In some cases orders have been made by justices of the peace who are not specially appointed. In one or two cases the justices have appointed the whole of their body to be special justices. To meet these difficulties the jurisdiction of the judicial authority is enlarged; he being empowered to act notwithstanding that he may not have jurisdiction in the place where the lunatic or alleged lunatic is. He is also empowered to transfer a petition to some other judicial authority. Moreover, an order made by a justice who is not specially appointed is to be valid if approved by a judicial authority; and specially appointed justices are to continue in office until their successors are appointed. In other parts of the bill some changes are made in the procedure as to Chancery lunatics.

MR. JUSTICE NORTH.—The cold from which Mr. Justice North was suffering on Friday last has now developed into an acute attack of erysipelas, and the learned judge will not, consequently, be able to resume his seat in Court for some time.

THE DAILY CAUSE LISTS.—The Bar Committee have made arrangements with the benchers of the Inner and Middle Temples and the Lord Chancellor's secretary (Mr. Muir Mackenzie, Q.C.), for the exhibition of the daily lists of causes in a glass frame under the cloisters in the Temple. These lists will be in writing, and they will be posted up at the Temple each evening shortly after the Courts rise, and simultaneously with those at the Law Courts. This arrangement will come into operation in a day or two.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## HNOOURS AND APPOINTMENTS.

MR. HENRY JOHN HOWARD BULL, of the firm of Bull & Bull, 11 New Inn, Strand, W.C., has been appointed a Commissioner to administer Oaths in the Supreme Court of Judicature. Mr. Bull was admitted in 1885.

Mr. Frederick Culver James, of 9 Quality Court, Chancery Lane, W.C., has been appointed a Commissioner for Oaths. Mr. James was admitted in 1877.

Mr. Edgar Banting, of 3 Serle Street, London, W.C., has been appointed a Commissioner for Oaths. Mr. Banting was admitted in 1885.

Mr. William Elliott Snow (of the firm of Snow, Snow & Fox), of 7 Great St. Thomas Apostle, E.C., has been appointed a Commissioner for Oaths. Mr. Snow was admitted in 1883.

Mr. Henry Western Page Phillips (of the firm of Beal, Phillips & Beal), of 49 Finsbury Pavement, E.C., has been appointed a Commissioner for Oaths. Mr. Phillips was admitted in 1884.

Mr. George Reginald Grant, of 40 Norfolk Street, Strand, W.C., has been appointed a Commissioner for Oaths. Mr. Grant was admitted in 1884.

Mr. Walter Morgan Willcocks, of 109 Lavender Hill, S.W., has been appointed a Commissioner for Oaths. Mr. Willcocks was admitted in 1885.

Mr. George Harry Holcroft, M.A., of Dudley, has been appointed a Commissioner for Oaths. Mr. Holcroft was admitted in 1884.

## NOTICES FOR THE WEEK.

### ROTA OF REGISTRARS.

MONDAY, July 20. — Court of Appeal No. 2: Mr. Clowes. Mr. Justice Chitty: Mr. Carrington. Mr. Justice North: Mr. Farmer. Mr. Justice Stirling: Mr. Pemberton. Mr. Justice Kekewich: Mr. Beal. Mr. Justice Romer: Mr. Leach.

Tuesday, July 21.—Court of Appeal No. 2: Mr. Jackson. Mr. Justice Chitty: Mr. Lavie. Mr. Justice North: Mr. Rolt. Mr. Justice Stirling: Mr. Ward. Mr. Justice Kekewich: Mr. Pugh. Mr. Justice Romer: Mr. Godfrey.

Wednesday, July 22.—Court of Appeal No. 2: Mr. Clowes. Mr. Justice Chitty: Mr. Carrington. Mr. Justice North: Mr. Farmer. Mr. Justice Stirling: Mr. Pemberton. Mr. Justice Kekewich: Mr. Beal. Mr. Justice Romer: Mr. Leach.

Thursday, July 23.—Court of Appeal No. 2: Mr. Jackson. Mr. Justice Chitty: Mr. Lavie. Mr. Justice North: Mr. Rolt. Mr. Justice Stirling: Mr. Ward. Mr. Justice Kekewich: Mr. Pugh. Mr. Justice Romer: Mr. Godfrey.

Friday, July 24. — Court of Appeal No. 2: Mr. Clowes. Mr. Justice Chitty: Mr. Carrington. Mr. Justice North: Mr. Farmer. Mr. Justice Stirling: Mr. Pemberton. Mr. Justice Kekewich: Mr. Beal. Mr. Justice Romer: Mr. Leach.

Saturday, July 25.—Court of Appeal No. 2: Mr. Jackson. Mr. Justice Chitty: Mr. Lavie. Mr. Justice North: Mr. Rolt. Mr. Justice Stirling: Mr. Ward. Mr. Justice Kekewich: Mr. Pugh. Mr. Justice Romer: Mr. Godfrey.

SIR T. CHAMBERS, Q.C.—For some time past reports have been current that Sir T. Chambers, Q.C., the Recorder of London, was about to resign, and contradictions have been equally plentiful. It has now, however, been practically settled that the Recorder will retire with a pension nearly equal to his present salary, which is 3,500*l*. a year. This step will probably be taken within a month.

## CALENDAR OF THE COUNTY COURTS.

FROM JULY 20 TO JULY 25.

| No. of Circuit | His Honour | July 20 | July 21 | July 22 | July 23 | July 24 | July 25 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Altrincham | — | — | Birkenhead | — |
| 8 | Judge Heywood | — | — | — | Manchester | Manchester | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | Middlesbrough | Stockton-on-Tees | — | — | — | — |
| 19 | Judge Barber | — | Ilkeston | Burton | Derby | — | — |
| 22 | Judge Harington | Chipping Norton | Stow-on-the-Wold | Alcester | Pershore | Solihull | — |
| 47 | Judge Powell | — | Lambeth | Woolwich | Lambeth | Greenwich | — |
| 54 | Judge Metcalfe | Bristol | Bristol | Bristol | Bristol | Bristol | — |
| 55 | Judge Machonochie | Poole | Lymington | Bournemouth | Wimborne | Wareham | — |
| 58 | Judge Edge | Totnes | Kingsbridge | Crediton | — | — | — |

# House of Lords Register.

THURSDAY, JULY 9.

*Weston* v. *New Guston Company* (company—liquidation—transfer or sale—new company—dissentient shareholders—Companies Act, 1862, s. 161—appeal from the Court of Appeal).—Dismissed.

MONDAY, JULY 13.

*Boyd* v. *Horrocks* (patent—infringement—construction of specification—appeal from Court of Appeal).—Part heard.

TUESDAY, JULY 14.

*Boyd* v. *Horrocks*.—*Cur. adv. vult.*

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, BOWEN, L.J., and KAY, L.J.

THURSDAY, JULY 9.

*Allchurch and another* v. *Assessment Committee and Guardians of Hendon Union* (Q. B. *Crown Side*) (appeal of assessment committee from order of Smith, J., and Grantham, J., dated April 14, affirming order of sessions subject to case stated).—Dismissed.

Before the MASTER OF THE ROLLS and KAY, L.J.

*Regina* v. *Mayor, &c. of Liverpool* (Q. B. *Crown Side*) (appeal of prosecutor, the Rev. J. Kelly, from order of the Lord Chief Justice and Mathew, J., dated May 11, discharging *nisi* for *mandamus* to appoint organist to St. George's Church, Liverpool).—Dismissed.

Before the MASTER OF THE ROLLS, BOWEN, L.J., and KAY, L.J.

FRIDAY, JULY 10.

*Marchioness of Huntly* v. *Bedford Hotel Company* (*Lim.*) (application of plaintiff for judgment or new trial on appeal from verdict and judgment dated April 25, at trial before Wills, J., and special jury in Middlesex).—Refused.

*Hamley* v. *British Workman's Assurance Company* (*Lim.*) (appeal of defendants for judgment or new trial on appeal from verdict and judgment dated May 12, at trial before the Lord Chief Justice and common jury at Bodmin).—Judgment for defendants.

*Dinn* v. *Copleston and others* (application of plaintiff for judgment or new trial on appeal from verdict and judgment dated May 29, at trial before the Lord Chief Justice and a special jury in Middlesex).—Refused.

*Beilin* v. *Austin* (application of plaintiff for judgment or new trial on appeal from verdict and judgment at trial before Smith, J., and a common jury in Middlesex).—Refused.

SATURDAY, JULY 11.

No sitting.

Before the MASTER OF THE ROLLS, LOPES, L.J., and KAY, L.J.

MONDAY, JULY 13.

*In re A. Webber, ex parte S. Slater* (appeal of S. Slater (receiver) from order of Cave, J., dated March 18, that partnership proceeds are subject to repayment of balance of testator's share; heard May 29).—Allowed.

Before the MASTER OF THE ROLLS, BOWEN, L.J., and KAY, L.J.

*Schouten* v. *Hill* (application of defendant G. Hill for judgment or new trial on appeal from verdict and judgment at trial before Smith, J., and a common jury in Middlesex).—Refused.

*Leighton & Co.* v. *Tyser & Co.* (application of defendants for judgment or new trial on application from verdict and judgment at trial before Grantham, J., and a common jury in Middlesex).—Refused.

*Nagle* v. *Parish* (application of plaintiff for judgment or new trial on appeal from verdict and judgment, dated June 16, at trial before Hawkins, J., and a special jury in Middlesex).—Refused.

TUESDAY, JULY 14.

With Assessors—VICE-ADMIRAL GRANT, C.B., and CAPTAIN CASTLE.

*Owners, Masters, and Crews of ss. Inverness, Flying Scud, Heather Bell, and Spurn* v. *Owners of Ship Accomac, Cargo, and Freight. Owners of Ship Accomac, Cargo, and Freight, and Owners of Ship Albert Edward and others* v. *Owners of Ship Accomac, Cargo, and Freight* (appeal of plaintiffs in first action from judgment of President (Sir J. Hannen), dated December 11, 1890).—Allowed.

WEDNESDAY, JULY 15.

*Owners of Eloy Palacios and Cargo* v. *Owners of Homewood and Freight. Owners of Homewood* v. *Owners of Eloy Palacios* (appeal of plaintiff in first action from judgment of the President (Sir J. Hannen), dated December 19, 1890).—Allowed.

## APPEAL COURT II.

Before LINDLEY, L.J., FRY, L.J., and LOPES, L.J.

THURSDAY, JULY 9.

*Brace* v. *Abercarn Coal Company* (*Lim.*) (Q. B. *Crown Side*) (appeal of defendants from judgment of Pollock, B., and Charles, J., dated January 30, on appeal from County Court at Newport, Mon.).—Dismissed.

*Huggins* v. *London and South Wales Coal Company* (Q. B. *Crown Side*) (appeal of defendants from judgment of Pollock, B., and Charles, J., dated January 30, on appeal from County Court at Newport, Mon.).—Dismissed.

*In re Kinnears & Co.* (*Lim.*), *ex parte Brown, Janson & Co.* (appeal of Kinnears & Co. from order of Kekewich, J., dated July 4, for compulsory winding up).—Dismissed.

*Grand Hotel, Prague* (*Lim.*) v. *Concessions Trust* (*Lim.*) (appeal of defendants from judgment of Lawrance, J., dated April 25, at trial without a jury in Middlesex).—Dismissed.

FRIDAY, JULY 10.

*Reeves* v. *Butcher* (appeal of plaintiff from judgment of Day, J., and Lawrance, J., dated April 28, on special case after argument of points of law raised in pleadings, judgment ordered to be entered for defendant, with costs).—Dismissed.

*City and South London Railway Company* v. *London County Council* (Q. B. *Crown Side*) (appeal of London County Council from judgment of Smith, J., and Grantham, J., dated April 22, on appeal from magistrate's order).—Dismissed.

SATURDAY, JULY 11.

No sitting.

MONDAY, JULY 13.

No sitting.

Before LINDLEY, L.J., FRY, L.J., and LOPES, L.J.

TUESDAY, JULY 14.

*In re C. Robson, dec.* *Larkman* v. *Robson* (appeal of defendant from order of Kekewich, J., dated March 11, on further consideration).—Dismissed on terms arranged.

*Sykes* v. *Burr* (appeal of defendant A. Burr from judgment of Kekewich, dated April 27).—Allowed.

WEDNESDAY, JULY 15.

*Bryan Atlantic Patent Fuel Company* (Q. B. *Crown Side*) (appeal of plaintiff from judgment of Day, J., and Lawrance, J., dated April 16, on appeal from judge of County Court; heard July 1).—Allowed.

*Army and Navy Stores* (*Lim.*) v. *Army, Navy, and Civil Service Co-operative Society of India* (*Lim.*) (appeal of defendants from order of Kekewich, J., dated June 5, restraining use of trade name resembling plaintiff's society until trial of action; restored after cross-examination).—Dismissed.

*In re Jane Davis, dec.* *In re T. H. Davis, dec.* *Evans* v. *Moore* (appeal of defendant from judgment of North, J., on originating summons, dated April 20).—Allowed.

*In re Stephens, dec.* *Warburton* v. *Stephens* (appeal of defendant from order of Kekewich, J., dated April 16, varying chief clerk's certificate).—Dismissed.

*Faulder's Brewery Company* (*Lim.*) v. *Bowmaker* (appeal of plaintiffs from order of Romer, J., dated March 16).—Part heard.

DIVORCE LEGISLATION IN CANADA.—A bill has been introduced and read a first time in the Canadian Senate to establish a Divorce Court for the Dominion. Jurisdiction in this matter is to appertain to the highest Court now existing in each province. The bill proposes to grant divorce to either party for adultery, and to the wife for her husband's desertion without sufficient cause for five years. An appeal will lie in every case to the Supreme Court of Canada.

UNIVERSITY JURISDICTION AT OXFORD.—An important letter was read at Oxford City Council, on July 1, from the vice-chancellor, in reply to one from the town clerk, on the question of university jurisdiction. As to the University Civil Court, the vice-chancellor said the only objection made to it was that it was not at all times accessible. The university were disposed to doubt the existence of any real demand for extra-terminal sittings, but were willing to meet the wishes of the city in this respect. As to the petty sessional jurisdiction, the university did not feel that they could give up the power which they possessed to claim cognisance of all serious cases affecting its members. As to the Act of 6 Geo. IV. c. 97, dealing with common women, the university could not help thinking that the objections expressed to the working of this Act arose from some misapprehension of the facts of the case. Proceedings under clause 3 took place in open Court, and reporters always could, and often did, attend. The evidence was taken on oath, and the prisoner could always be professionally represented. The university did not think there was any real danger of innocent women being brought before the Court. They, therefore, were not prepared to acquiesce in the change proposed, but thought that a working arrangement of mutual assistance in the exercise of powers conferred by the Act might be easily made. As to the veto of the vice-chancellor and the mayor upon entertainments, the university urged that the veto had been proved to be a necessary protection. The reply was considered unsatisfactory by the council, and an answer was directed to be returned to the vice-chancellor stating that it appeared to the city council that the university was not disposed to enter into such a conference as the city had desired. In that case the city council would hold itself free to take such other steps as it might consider expedient to remove the grievance of which it complained. The subject-matter of the correspondence was referred back to the Parliamentary committee, with a view to further action.

## BIRTHS.

On July 8, at Middlemoss, Bramley Hill, Croydon, the wife of A. K. Common, Solicitor, of a daughter.

On July 9, at Barrow-in-Furness, the wife of H. Garencières Pearson, Solicitor, of a son.

On July 10, the wife of Frank Woodbridge, of Donnington, Bretford, and 6 Serjeants' Inn, London, Solicitor, of a son.

On July 10, at 11 Eldon Road, Kensington, the wife of Walworth Howland Roberts, Barrister-at-Law, of a daughter.

On July 11, at Harsfold Manor, Billingshurst, Sussex, the wife of John Arthur Penfold Wyatt, Barrister-at-Law, of a daughter.

On July 12, at 42 Ravenscourt Gardens, Hammersmith, the wife of Mr. F. Sydney Waddington, Solicitor, of a son.

## MARRIAGES.

On July 7, at Trinity Presbyterian Church, Hampstead, Percy John Frederick Lush, M.A., M.B. Oxon., of 8 Fitzjohn's avenue, Hampstead, youngest son of the late Right Hon. Lord Justice Lush, to Lydia, second daughter of the late W. D. Anderson, Esq., of The Ferns, Frognal, Hampstead.

On July 8, at St. Peter's, Belsize, Archibald Henry Bodkin, Barrister-at-Law, 4 Temple Gardens, Temple, youngest son of William Peter Bodkin, Esq., J.P., of West Hill Place, Highgate, to Maud Beatrice, third daughter of the Rev. R. Wheler Bush, of 67 Belsize Park, Rector of St. Alphage, London Wall.

On July 14, at All Souls' Church, Harlesden, George Edward Penn Gaskell, Barrister-at-Law, youngest son of the late William Penn Gaskell, of Ealing, to Eleanor Charlotte, daughter of the late David Baird Lindsay.

## DEATHS.

On July 4, at 148 Kennington Park Road, S.E., George Richard Browne, of 3 Church Court, Ironmonger Lane, Cheapside, E.C., Solicitor.

On July 6, by accident at Herne Hill Railway Station, Malcolm Percy Douglas, Barrister-at-Law, of Woodfield, Palace Road, Tulse Hill, S.W.

On July 10, at Gloucester House, Elms Road, Clapham Common, Fanny Mary, widow of the late Henry Prater, M.A., of the Middle Temple, Barrister-at-Law, aged 84.

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# The Law Journal.

*SATURDAY, JULY* 25, 1891.


## 'OBITER DICTA.'

AMONGST the 'fifty-six public and private bills' to which the royal assent was given on Wednesday last, the Stamp Duties Bill is, of course, the most important. It is almost entirely a consolidation bill, and will be of the greatest service to the profession in its conversion of the law of stamps from chaos to simplicity. There remained on that day three more consolidation bills: the Public Health (London) Bill, an amending measure as well as a consolidating one, which is practically safe; the Evidence Bill, which has been read a second time in the House of Commons; and the Trustee Bill, which has not. Both these bills came down from the House of Lords after careful consideration by the standing committee of that House. We believe them to contain, practically speaking, no amendments of the law whatever, and, in fact, the second reading of the Evidence Bill was obtained by the Attorney-General on the assurance that it is a consolidation bill only. Sir Horace Davey, however, has opposed both bills, for what reason we are unable to conceive, and the Trustee Bill has now been abandoned by the Attorney-General. The Evidence Bill is still down for committee in the House of Commons.

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THE St. Paul's reredos case (*Regina* v. *Bishop of London*, 59 Law J. Rep. Q. B. 169) has been decided in favour of the Bishop of London by the House of Lords, as also has the 'second case,' in which it was alleged that superstitious feelings had been actually aroused by the images on the reredos; whereas in the first case it was only alleged that the images 'tended' to give rise to such superstitious feelings. Section 9 of the Public Worship Regulation Act, 1874, prescribes that 'unless the bishop' of the diocese, to whom a representation is made under the Act, 'shall be of opinion, after considering the whole circumstances of the case, that proceedings should not be taken,' he shall take steps to bring the matter to a hearing before him. The mere use of the word 'opinion' in this section is, we think, fatal to the contention of the appellants, that the bishop was bound as a matter of law to take the steps pointed out by the Act. As a grand jury can throw out a bill against a prisoner without appeal, so can a bishop, in his absolute and uncontrolled discretion, prevent proceedings being taken under the Public Worship Regulation Act.

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THE House of Lords has at length delivered judgment in *The Commissioners for Special Purposes of Income-tax* v. *Pemsel*, the arguments in which were concluded about seventeen months ago. How far the slow and stately pace of their lordships' minds was accelerated by a recent question addressed to the Attorney-General in the House of Commons is a point which it may be more useful to suggest than to attempt to answer. It is to be hoped, however, that their lordships have not been betrayed into undue haste or precipitation by the *popularis aura* of the House of Commons, for the result can hardly be said to be quite satisfactory. Four lords —*i.e.* Lord Watson, Lord Herschell, Lord Macnaghten, and Lord Morris—were for affirming the decision of the Court of Appeal, whilst the Lord Chancellor and Lord Bramwell thought it ought to be reversed. After so long a consideration one might have hoped for a unanimous decision. But it is a great thing to have avoided an equal division of opinion, such as happened the other day in an Admiralty appeal. What Lord Macnaghten said will, in process of time, be revealed to the profession and the public, and one could only infer the result of his lucubrations from the anticipatory reference made to his judgment by Lord Herschell. We doubt whether a single person present, save the noble and learned lord himself, heard one quarter of what he said. Even the House of Lords is a public Court, and it is a pity that a judge, all of whose utterances are well worthy of attention, should not speak audibly. And with all respect to the final Court of Appeal, we cannot help feeling that it is not creditable to the administration of justice that suitors should be so long left in suspense. There are other cases in which judgment was reserved months ago, and it is to be hoped

that decisions in all of them will be pronounced in the course of the next fortnight, as the House is not likely to sit after the prorogation, which will probably take place in the first week of August. But such a hope, we fear, is likely to be disappointed.

---

THE question at issue, it will be remembered, was whether certain lands were vested in trustees for charitable purposes so as to be entitled to exemption from income-tax. By an indenture made in 1813 hereditaments in the county of Middlesex were conveyed to trustees as to two fourth parts for the benefit of a society known by the name of the Unitas Fratrum or United Brethren, as to another fourth part for the education of the children of missionaries and ministers at a school at Fulner, near Leeds, and as to the remaining fourth part for the support of certain establishments appertaining to the society for single persons, called 'choir-houses.' By another indenture of 1815 estates were conveyed for the benefit of other institutions in Ireland connected with the society. The Income-tax Acts have all granted an immunity in favour of property dedicated to charitable purposes. Now in deciding whether these were charitable purposes the alternative lay between the usual literary meaning of the words, and that larger scope which is given them in the 43 Eliz. and by the Court of Chancery in the administration of funds devoted to benevolent or public purposes. The Lord Chancellor and Lord Bramwell concurred in thinking that poverty in the intended recipients was a necessary ingredient in 'charitable purposes.' The other lords adopted a broader construction, and accepted the interpretation contained in the Act of Elizabeth and in an old Act of the Scotch Parliament in the reign of Charles II., and sanctioned by the Court of Chancery in the administration of what are called comprehensively, but perhaps rather indiscriminately, 'charities.' If the matter were *res nova* much might be said for the more restricted meaning, though the Christian virtue of charity is, as we know, in the *locus classicus* on the subject in the Epistle to the Corinthians—rather the combination in perfect proportion of all other virtues than merely a single virtue. But whatever ethical view we may adopt, it will be generally felt that for the harmony of English law it is well that the decision should be as it is.

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LORD BRAMWELL'S judgment, as usual excellently delivered, was delicious. If his lordship's judgments are ever collected, there will be many a dainty morsel for the literary as well as for the legal epicure. He held that the conversion of heathens to Christianity or any other religion was not a charitable purpose. No doubt it was a benevolent purpose. The providers of funds for such an object doubtless thought that the converts would be happier and better during this life with a better hope hereafter. So thought those who provided the faggots and racks which were the instruments of conversion in times gone by. What, he asked, of a trust for the conversion of the Jews? Was that a charitable purpose? If so, what of a trust for the reconversion? This reminds one of the Oxford man who declined to subscribe to the Society for the Conversion of the Jews on the ground that the Jews were rich enough to convert themselves. There was a fund for providing oysters at one of the Inns of Court for the benchers. That, however benevolent, could hardly be called charitable. If it had been for the students, or even the barristers, the noble lord might have added, '*Secus*.' So, he said, a trust to provide a band of music for a village green would hardly be charitable. The truth is that of these verbal controversies there is no end. If we remember rightly, there was an outcry many years ago against a proposal by Mr. Gladstone to do away with the exemption altogether. Why should there be such an exemption? It is really a form of concurrent endowment, and of all such forms the least defensible. The community at large is *pro tanto* called upon to support institutions some of which may be positively mischievous, and which are established and supported by individuals for purposes which they deem good, but of which others may hold a different opinion. It is absurd to suppose that either existing charities would materially suffer or charitable impulses be discouraged if charities were called upon to contribute their fair quota to the necessities of the nation at large.

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THE statutes now in force relating to bills of sale are neither very long nor very numerous. We should have thought that the law on this subject as yet hardly stood in need of consolidation, though treatment of another kind might be beneficial. However, it may be hoped that Lord Herschell will achieve such measure of success as is attainable in the task he has promised to undertake. We would commend to his notice one small amendment in the clause defining 'bill of sale'—namely, the omission of 'India warrants' from the list of excepted documents. If we rightly understand the term as meaning the warrants formerly issued by the East India Company for delivery of goods stored in its warehouses, the change suggested would be but laying the ghost of an extinct commercial instrument which has been haunting the statute-book for over half a century since it ceased to live. From the Act of 1878 the term may be traced back to the Act previously in force, the Bills of Sale Act, 1854; and its presence there seems to be due to the draftsman having in this part copied verbatim (save for the omission of 'dock warrants') the definition of 'documents of title' contained in the Factors Act of 1842 (5 & 6 Vict. c. 39, s. 4). This Act again carries us back to the previous Factors Act (6 Geo. IV. c. 94). At the time when the last-mentioned Act was passed, that is, in 1825, the East India Company was still a trading corporation, and its warrants were well known to merchants. But on the renewal of its charter in 1833 it was deprived of the right to trade, and directed to sell its warehouses (see 3 & 4 Wm. IV. c. 85). It may be noted that in the Factors Act of 1889 (52 & 53 Vict. c. 45), which consolidates the law relating to factors, 'India warrants' no longer find mention as 'documents of title.'

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THE announcement (in a prominent paragraph) in last Saturday's *Standard* that Sir William Marriott, 'it is understood, will be a candidate for the Recordership of London,' was the first intimation to the general public that the present Recorder was contemplating retirement, and Sir Thomas Chambers has since caused the statement to be flatly contradicted. The post is an important one, and notwithstanding the early and

quasi-official connection of the Judge Advocate-General's name with the vacancy, it may be taken for granted that when the post *is* vacant Sir William Marriott will not be the only candidate. The appointment is made by the Corporation of the City of London, and is in no sense a Government post. Any attempt, therefore, to dictate to the Corporation or to fetter their choice in any way is certain to be resented in 'the City,' where the sentiment on this subject is extremely strong.

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THERE is a very bad mistake in three of the forms contained in the appendix to the Tithe Rent-charge Recovery Rules, the fifty-eighth of which directs that 'the forms in the appendix, where applicable, and where they are not applicable, forms of the like character, with such variations as circumstances may require, shall be used.' Forms 28, 29, and 30 of 'application by owner of lands for certificate in respect of failure to give occupiers liability notice,' under section 6, subsection 2 of the Act, of 'notice to occupier,' of such application and of the County Court certificate, are drawn as if the occupier's liability notice had to be given to the occupier himself instead of to the owner of the tithe rent-charge. The mistake is one which, when once practitioners are aware of it, is very easily corrected by omitting the words which designate the occupier, and even if, as is likely enough, the forms may be sent out in practice without the necessary alterations, we cannot think that clients will in any way be prejudiced by their solicitors having used prescribed, though erroneous, forms. It is a little unfortunate, however, that in rule 58 the forms should have been so positively prescribed by the use of the expression 'shall be used.' 'May be used' would have been better, as in Rule 31 of the Summary Jurisdiction Rules, 1886, which prescribed that the forms in the schedule 'to those rules, or forms to the like effect, may be used, with such variations as circumstances may require.'

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THE Local Government Board not long ago saw fit to favour the highway surveyors and overseers of the poor throughout the country with a circular drawing their attention 'to certain provisions of the Tithe Act, 1891, with reference to the rating of rent-charges payable in lieu of tithes.' These provisions will be found in section 6 of the Act, by which so much of any Act (see 1 Vict. c. 69, s. 8) as authorised any rate on tithe rent-charge to be assessed on or recovered from the occupier of the lands out of which the tithe rent-charge issues is very properly repealed, and it is provided (as simple justice would seem to require) that 'any rate to which tithe rent-charge is subject may be recovered from the owner of the tithe rent-charge in the like manner and by the like process as from any occupying ratepayer.' It is further provided by section 6, that if the collector of the rates satisfies the County Court that he is unable 'to recover in manner aforesaid the rate from the owner of the tithe rent-charge, the Court may, *after such services* as may be prescribed [by rules under section 3 of the Act], order the owner of the lands to pay such tithe rent-charge to the collector until the amount of the rate and any costs allowed by the Court are fully paid.' All this, and very much more (including the provisions of subsection 1 of section 8 of the Act, whereby tithe exceeding two-thirds of the annual value of the lands out of which it issues may be remitted, so as necessarily to render the rates on such tithe irrecoverable), is very fully dwelt on (we cannot say explained) in the circular, which winds up with an expression of opinion on the part of the board that 'they have no doubt that the power conferred by the Act to recover rates from the owner of the rent-charge will be found to facilitate their collection.' We fear that this circular will greatly puzzle the worthy but in many cases comparatively unlettered functionaries to whom it is addressed. It deals with cases which are extremely unlikely to happen —that of the parson or other tithe-owner refusing, declining, or becoming incapable to pay his rates, and that of the tithe exceeding two-thirds of the annual value of the land—in such a manner that even the most intelligent reader might suppose either that these cases were of ordinary occurrence, or that the whole Tithe Act was being explained to him, and upon the single point which it might have given really useful information—on the effect of the rules under section 3 of the Act—it is absolutely silent.

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MR. TALBOT has hit the right nail on the head in proposing to call the attention of the Government to the state of the law (see p. 273, *ante*) as to the costs of justices of the peace in licensing appeals. The member for the University of Oxford draws attention to the fact that the judges of the High Court never have to pay the costs of an appeal against their judgments, and thinks that justices of the peace ought to be put in the same position. There is, however, considerable difference between the two cases, as judges of the High Court would under no circumstances themselves appear to support their own judgments. In almost all cases, moreover, where inferior Courts are appealed from, both parties have ordinarily a sufficient interest to cause them to appear and support the judgment below. Licensing appeals are quite exceptional, the general interests of the licensing district forming one side and the licensed person forming the other. By whom, if not by the justices, are the general interests of the public to be represented?

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*Whiffen* v. *Bligh* is a case of great importance on the construction of the well-known sections 8 and 19 of the Wine and Beerhouse Act, 1869. The effect of those sections undoubtedly is that licensing justices cannot refuse to renew the license attached to a pre-1869 beerhouse except on one of four specified grounds affecting the character of the applicant or his house. But, if licensing justices have refused a renewal on some other ground than these four, can a Court of Quarter Sessions, on appeal, quash the refusal as to the wrong ground, but affirm it on one of the four grounds, though the ground on which they affirm it was not submitted to the justices below? In other words, is an appeal of this kind a complete rehearing? This was the question raised in *Whiffen* v. *Bligh*. The licensing justices, it seems, had heard a certain amount of evidence as to the character of the applicant's house, but had also been to a certain extent influenced by the consideration that there were too many houses already in the licensing district. The renewal having been refused, the applicant appealed, and the Court of Quarter Sessions, instead of confining themselves to the question whether

the evidence in favour of the applicant ought to have satisfied the justices below, reheard the case from beginning to end, and refused to renew the license on one of the four grounds specified in the Act of 1869—*i.e.* that the house of the applicant had been frequented by persons of bad character. The High Court, on a case stated by sessions, affirmed this judgment, and we think quite rightly. That a licensing appeal is a rehearing was decided some twenty years ago in *Regina* v. *Pilgrim*, 40 Law J. Rep. M. C. 3.

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IN the remarkable Maybrick insurance case the High Court has held, on a special case stated for the opinion of the Court, that an action on a life policy effected on his life by the late Mr. Maybrick for the benefit of his widow (who was convicted of having murdered him), and of their children after her death, could not be sued on by the trustees of his will. The ground of the decision was that it is not in accordance with public policy that the convict Maybrick should recover money payable on an event which had been brought about by her own felonious act, and this is in accordance with the rule in the case of the forger Fauntleroy (*The Amicable Society* v. *Bolland*, 4 Bl. (N.S.) 194) and in that of the murderer Palmer (*The Prince of Wales Insurance Company* v. *Palmer*, 25 Beav. 605). It appears to have been assumed that the conviction in *Regina* v. *Maybrick*, although followed by a commutation of the capital sentence to penal servitude for life, was conclusive evidence of the felonious act of the convict. Is this quite in accordance with authority? We are inclined to doubt it, the parties in *Regina* v. *Maybrick* and in the Maybrick insurance case not being the same. If, for instance, a prisoner convicted of bigamy sue for administration of the second spouse's effects, the validity of the second marriage can be set up, notwithstanding the conviction (*Wilkinson* v. *Gordon*, 2 Ad. 152, and see *The Duchess of Kingston's Case*, 2 Sm. L. C.). It was held, however, in *Palmer's Case* that the coroner's inquisition charging Palmer with murder was *primâ facie* evidence of the murder; and since Mrs. Maybrick was not called to disprove the murder of her husband, as on a *habeas corpus ad testificandum* (see 43 Geo. III. c. 140, and 44 Geo. III. c. 102) she could have been, there seems little doubt that the recent judgment is substantially correct. Perhaps, however, on the death of Mrs. Maybrick the action could be brought again for the benefit of those entitled to a reversionary interest in the policy.

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THE speech of Mr. Rowland in moving the second reading of the Leasehold Enfranchisement Bill, which has been disseminated by the Leasehold Enfranchisement Association, shows clearly that the terminable leasehold system—that of short leaseholds of ninety-nine or a less number of years, as distinguished from that of 999 years—does not exist in a very considerable portion of the United Kingdom, being almost unknown in Scotland, Lancashire, and in many parts of the North of England. The extraordinary system of leases for lives, at one time quite common in the Temple, and in connection with almost all ecclesiastical and college property, still appears to flourish vigorously in Cornwall and Worcestershire. These curious leases appear to have sprung up at a time when it was easier to see whether or not a *cestui que vie* was alive than to count the number of years from the commencement of a lease, and to have been continued partly because a lease for the life of another, being a freehold, was not subject to the debts of the lessee, and partly because such a lease conferred the Parliamentary franchise, whereas the mere chattel interest conferred no such privilege. Be their origin what it may, however, leases for lives confer an absurd and troublesome tenure which ought to be swept out of existence with as little delay as possible.

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THE plaintiff in *Evelyn* v. *Hurlbert*, who advertises her appearance at the Aquarium Theatre 'to tell the story of her life and facts in connection with the above case not disclosed at the trial' is (quite apart from the doubtful taste of such a step) acting with singular lack of judgment in taking this line pending the decision of the Public Prosecutor on the question of perjury. If poverty is the cause there are surely charitable people who might be appealed to in some other way, but to follow the example of 'the claimant' or Mrs. Weldon and take the British public into her confidence on what is, at best, a painful and unsavoury business, is to risk losing the respect and sympathy of thousands of persons who read the newspaper reports of the trial.

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## THE NEW SYSTEM OF LEGAL EDUCATION.

THE Council of Legal Education have, in their new scheme, made alterations in the system of instruction and examination of those who wish to be called to the bar which we do not hesitate to say are of the greatest importance. The scheme, in fact, forms a new departure in the study of English law, the consequences of which it is difficult to foresee. We do not here desire to consider whether the new system will have the effect of making the instruction of the students more thorough, or whether more will in the future avail themselves of the lectures and classes of the readers and assistant-readers than in the past resorted to the lectures of the professors, though this is a matter of considerable moment. What we wish to point out is that the council have, for the purposes of study and examination for call to the bar, adopted a classification of English law which, so far as we know, has never been adopted before, and which certainly is not the one used for practical purposes by practitioners in the Courts of this country. The subjects of legal instruction are, under the new scheme (see the new 'Consolidated Regulations,' par. 28), divided into three heads—viz. (1) Roman law and jurisprudence and international law, public and private; (2) constitutional law and legal history; (3) English law and equity. The latter subject is divided into five subsections, which are (*a*) law of persons, including marriage and divorce, infancy, lunacy, and corporations; (*b*) law of real and personal property and conveyancing, including trusts, mortgages, administration of assets on death, on dissolution of partnerships, on winding up of companies, and in bankruptcy, and practical instructions in the preparation of deeds, wills, and contracts; (*c*) law of obligations, including contracts, torts, allied subjects (implied or *quasi*-contracts), estoppel, &c., and commercial law, with especial reference to mercantile documents in daily use, which should be shown and explained; (*d*) civil procedure, including

evidence; (*e*) criminal law and procedure. It is intended by the council that readers and assistant-readers should be appointed in these subjects and examinations conducted on these lines. (See the 'Consolidated Regulations and the Notice to Candidates for Readerships,' dated July 11.)

It will be seen that under this classification the body of English law and equity is to be treated of in four main heads: (1) the law of persons, (2) the law of property, (3) the law of obligations, and (4) procedure. This corresponds with the division of Roman law in the Institutes of Gaius and Justinian into (1) *jus personarum*, (2) *jus rerum* (subdivided into (*a*) *jura in rem*, and (*b*) *jura in personam*), and (3) *jus actionum*. Now, undoubtedly, for a useful study of any body of law some systematic division of the subject-matter is essential, and the division adopted by the Roman institutional writers was a good one, and useful for an intelligent appreciation of the principles of the *corpus juris*. It has, however, been demonstrated that it was not a strictly logical division nor strictly adhered to by the Roman jurists themselves. (See Austin on 'Jurisprudence,' lectures xl. xli. xliii.) But whatever the merits or demerits of the Roman classification of law may be, it has never, so far as we know, been applied to the practical study of English law, which is not founded on the civil law, and does not naturally fall into the same divisions. English law has been usually studied in what may be called its natural divisions—that is, according to its sources and to the main divisions which obtain in actual practice. These are well known to be—we must apologise for stating them—common law, the law of real and personal property and conveyancing, equity, and ecclesiastical law (including probate and divorce). The leading text-books, not only for students, but also for practical purposes, have been written with reference to this system of classification, which has also been used in examinations for the bar and in examinations for admission as solicitors by the Incorporated Law Society. The Council of Legal Education propose to drop the old classification and introduce a new one. They create a new head of English law—the law of persons—and leave out of consideration equity as a separate field of study, it being intended, we presume, that the student should acquire its principles incidentally in his study of the law of persons, the law of property, and the law of obligations.

Looked at from the point of view of jurisprudence, there is no doubt that the old classification of English law is not strictly logical or scientific. Yet, as we submit, it is far more convenient for the practising lawyer, which is what the student aims at becoming, than any new system that can be devised, because it corresponds with the divisions into which the law of this country has naturally fallen. With the adoption of a new and artificial system founded on Roman law the value of many of the present text-books for students will be more or less destroyed; and we doubt if it will be possible to find competent teachers of such a subject as 'the law of persons,' which comprehends what must seem to the English lawyer the heterogeneous topics of marriage and divorce, infancy, lunacy, and corporations. The new departure of the Council of Legal Education is a bold step; and, even though it may be a theoretical improvement, we venture to doubt if it will commend itself to practical lawyers.

## UNWRITTEN CHAPTERS IN THE LAW OF DESIGNS.

### IV.

(*Continued from page* 478.)

### HARRISON *v.* TAYLOR.*

ONLY 'new' and 'original' designs are, or have been since the earliest legislation on the subject, entitled to registration. But here, as in kindred branches of the law, 'novelty' and 'originality' have been found somewhat hard to define. Down to the middle of the present century the judicial interpretation of the words 'new' and 'original' was inspired by the assumption that there was a complete analogy between copyright in the design and a patent for an invention.† In *Regina* v. *Firmin*, 1851, 15 J. P. 740, the Court of Queen's Bench, supporting the conviction of the defendant for the fraudulent imitation of a design for the ornamentation of a button consisting of two parts, which were new only in combination—viz. a garter with the words on it, 'The Royal Mail Steam Packet Company' and the Royal Arms—seem to have avoided this error almost by accident. But *Regina* v. *Bessell*, 1851, 20 Law J. Rep. M. C. 177; 16 Q. B. 810, reads for all the world like a patent case, and we find the judgment of Mr Justice Erle commencing with the following sentences: 'It appears to me that this *invention* is not within the meaning of the statute. It is a skilful combination of means for producing an end.' In *Harrison* v. *Taylor*—which forms the subject of the present paper—the old judicial identification of patents and designs was finally disposed of. The plaintiffs had registered, under 5 & 6 Vict. c. 100, a design for ornamenting woven fabrics. The design was applied to a fabric woven in cells, called the 'honeycomb' pattern, and consisted of the combination of the large and small honeycomb so as to form a large honeycomb stripe on a small honeycomb ground. The large honeycomb was not new, and the small honeycomb was not new, but they had never been used in combination before the plaintiffs registered their design. Other fabrics had been woven with a similar combination of large and small pattern. The defendants having infringed the plaintiffs' copyright, an action was brought against them by the plaintiffs. The action was tried at the Guildhall before Lord (then Baron) Bramwell and a jury, and a verdict for the plaintiffs was returned. This verdict was set aside by the Court of Exchequer on the ground that the plaintiffs' design was not 'new and original,'‡ but was restored by the Court of Exchequer Chamber.§ The judgment of Mr. Justice Wightman is terse, clear, and to the point, and contains nothing of which the whole Court did not approve, and therefore we shall set it out almost *in extenso*: 'I cannot but think that the Court of Exchequer, in coming to the conclusion to which they did, gave too much effect to a supposed analogy between cases of inventions in which patents have been obtained and designs which come under the protection of the Act regulating the copyright of designs. Now, the Act protects any new and original design; and I appre-

* 1858, 3 H. & N. 301; 1859, 29 Law J. Rep. Exch. 3.

† So the right of property in a trade-mark was once denied owing to the judicial dread of setting up a new species of monopoly. Cf. *Blanchard* v. *Hill*, 1742, 2 Atk. 484.

‡ Under the present Acts the words are 'new *or* original' (section 47, subsection 1).

§ Chief Justice Cockburn, Mr. Justice Wightman, Mr. Justice Erle, Mr. Justice Williams, Mr. Justice Crompton, Mr. Justice Crowder, and Mr. Justice Byles.

hend by "design" is meant any diagram, drawing, or representation of something which the draughtsman has for the first time produced, *and not* (as suggested in part of the judgment of one of the judges below) * *a project or idea in the nature of an invention.* Now, if that be the true meaning of the word "design" (which, I confess, it seems to me it is) there is no doubt that there was in this case a design, a drawing; and there is also no doubt it was new and original, whatever the worth of it may be. It is true all the component parts of it were old; but as to the drawing itself no one had produced such a pattern as that before. It was said by one of the learned judges of the Court below that the constituent parts of it were old, and the novelty was only in the arrangement or combination. Why? A picture which contains within it a novel combination of old parts is a new drawing, and it seems to me, if no one else has ever combined them in the same manner, it would be a new design within the meaning of this Act of Parliament. In my opinion it was a question for the jury whether substantially this was a new and original design. It seems to me that the Court of Exchequer were wrong in determining *as a matter of law* that this was not a new and original design within the meaning of the Act.'

Let us see how this case is affected by other decisions: (1) The assumed analogy between a patent and copyright in a design has never been revived, unless in forensic argument. 'The word *design*,' said Mr. Justice Pearson in *Le May* v. *Welch*,† 'has a very wide meaning under section 60' (of the Act of 1883), 'and inasmuch as the Act allows the registration of designs not only with regard to shape but also with regard to pattern, I cannot help coming to the conclusion that the Legislature intended that matters apparently minute and trivial might nevertheless be registered under this Act. If I wanted authority for that I should say that *Holdsworth* v. *M'Crea* in the House of Lords (L. R. 2 H. L. 380) shows that the Court must not dismiss applications as to designs simply because the subject-matter of dispute seems to the judge to be of the extremest triviality.'

(2) It is now settled, if it ever was doubtful, that a *new* combination, not being a mere collocation (*Norton* v. *Nicholls*, 28 Law J. Rep. Q. B. 225) of *old* parts is registrable as a design (*Lazarus* v. *Charles*, 1873, 42 Law J. Rep. Chanc. 507; L. R. 16 Eq. 117).

(3) An obvious arrangement of old parts, where, for instance, two card baskets, admitted to be separately old in design, are placed together and formed into a double card basket (*Lazarus* v. *Charles*, *ubi sup.*), or three palm-leaves are tied together in the form of an ace of clubs (*semble*, in *Smout* v. *Slaymaker & Co.*, 1890, 7 P. O. R., *per* Mr. Justice Wills, at p. 90), is not registrable, although no one has produced it before.

(4) In order to justify the registration of a design, especially with reference to articles of dress which are in constant and daily use, such as collars (*Le May* v. *Welch*, *ubi sup.*) or ties (*Smith* v. *Hope*, 1889, 6 P. O. R. 200), there must be some clearly marked and defined difference between that which is to be registered and that which has gone before.

(5) The meaning of the words 'new or original' is this, that the design must either be substantially novel or substantially original, having regard to the nature and character of the subject-matter to which it is to be applied (*Le May* v. *Welch*, *ubi sup.*). It will be observed that this definition of a new and original design is somewhat more restricted than that given by Mr. Justice Wightman in *Harrison* v. *Taylor*.

*(To be continued.)*

* Baron Martin.

† 1884, 54 Law J. Rep. Chanc. 279; L. R. 28 Chanc. Div. at p. 26. This judgment was reversed by the Court of Appeal on the facts, but the law, as stated above, was not questioned.

## LEGISLATIVE PROGRESS.

IN the House of Lords the royal assent was given by commission to the following bills:—

Law Agents and Notaries Public (Scotland) Bill.
Mail Ships Bill.
Local Authorities (Scotland) Loans Bill.
Allotments Rating Exemption Bill.
Roads and Streets in Police Burghs (Scotland) Bill.
Bills of Sale Act (1890) Amendment Bill.
Fisheries Bill.
Stamp Duties Bill.
Stamp Duties Management Bill.
Consular Salaries and Fees Bill.
Municipal Registration (Dublin and Belfast) Bill.

Bills read a third time and passed:—

Brine Pumping (Compensation for Subsidence) Bill.
Returning Officers (Scotland) Bill.
Slander of Women Bill.
Commissioners of Oaths Act (1889) Amendment Bill.
Crofters' Common Grazings (Scotland) Bill.
Ranges Bill.

Bills beyond second reading:—

Land Registry (Middlesex) Deeds Bill.
Lunacy Bill (report agreed to).
Penal Servitude Bill (reported without amendment).
County Councils Elections Bill.

Bills through committee:—

Markets and Fairs (Weighing of Cattle) Bill.
Free Education Bill.
Chartered Accountants Bill.
Local Registration of Title (Ireland) Bill.
Highways and Bridges Bill.

Second reading:—

Public Health (Scotland) Acts Amendment Bill.

In the House of Commons.

Third reading:—

Post-Office Acts Amendment Bill.

Bill through committee:—

Redemption of Rent (Ireland) Bill.

Second reading:—

Foreign Marriages Bill.

New Bills:—

Leave was given to introduce the following bills, which were read a first time:—

Bill to Continue Various Expiring Laws.
Bill to Grant Money for the Purpose of Certain Local Loans and for other Purposes relating to Local Loans.

Bills withdrawn:—

Public Health (Interments) Act (1879) Amendment Bill.
Agricultural Holdings Bill.
Trustee Bill.

# Reviews.

## THE HOUSING OF THE WORKING CLASSES ACT, 1890.

*The Housing of the Working Classes Act*, 1890 (53 & 54 *Vict. c.* 70). With Notes and Introduction. The Forms Prescribed under the Act, and all Existing Enactments upon the Subject; Tables of Cases and Index. By W. C. BERNARD, Esq., M.A., LL.B., of the Inner Temple and South-Eastern Circuit, and H. MORGAN BROWN, Esq., LL.B., of the Middle Temple, Barristers-at-Law. London: Butterworths. 1891.

THE Housing of the Working Classes Act, 1890, not only consolidates the law relating to artisans' and labourers' dwellings and the housing of the working classes, which had become very complicated, but it also introduces amendments on several material points. The effect of these amendments is very well summed up in the memorandum which was drawn up by the Local Government Board shortly after the passing of the Act. The principal changes which are introduced may be briefly noted. There are provisions in the present Act which simplify the procedure as to the closing and demolition of dwelling-houses unfit for human habitation. Facilities are given for making and carrying out schemes for the reconstruction and re-arrangement of insanitary buildings on a smaller scale and by a less elaborate machinery than under the former law. Safeguards are provided in certain cases against excessive compensation and for the determination of the expenses of arbitration. Courts of summary jurisdiction are empowered, when making orders for closing houses unfit for human habitation, to authorise payments to tenants of a reasonable allowance for the expenses of removal, which are recoverable from the owners of the houses. Local authorities are also empowered to make similar payments to tenants when their houses are pulled down for improvement schemes. The authors of the present work justly consider that the Act is one of great and growing importance. A good summary of the Act which is given in the introduction will help the reader to master it, and there are also some serviceable notes, though the authors admit the scarcity of judicial decisions on their subject.

## THRING ON THE TITHE ACT.

*The Tithe Act*, 1891. With Explanatory Notes and the Rules and Forms thereunder. By A. T. THRING, Barrister-at-Law. London: Sweet & Maxwell. 1891.

THE Tithe Act, 1891, we are told in the opening sentence of the useful summary of the Act which forms the first chapter of this work, is 'an Act to make better provision for the recovery of tithe rent-charge in England and Wales.' 'The full title of the Act,' the author proceeds to say, 'explains its object; the Act deals only with the recovery of tithe rent-charge.' The question of redemption 'is not touched.' This is not quite accurate. The question of redemption (now under the consideration of a royal commission) is not touched, but the Act deals with more than the recovery of tithe rent-charges. It is, however, only fair to the author to say that this is the only inaccuracy we have noticed in his book, and that it is one into which he was probably led by the title of the Act. Another subject of considerable importance, as is indeed pointed out at p. 5, is dealt with by the Act—viz. the method of recovery of rates on tithe rent-charge. Section 6, which deals with this subject, was introduced while the bill was passing through the House of Commons, which may account for the fact that this point is wholly ignored in the title of the Act. Three main questions, as Mr. Thring points out, are dealt with by the Act—the payment of tithe rent-charge by the owner of the lands, the substitution of recovery by means of a receiver for recovery by distress, and the remission of tithe rent-charge in the case of the reduction in value of the lands on which it is charged. The details of the new procedure are dealt with by the rules which are given with the forms in Appendix A after the Act itself, which is annotated. A note is added in Appendix D on the rating of tithe rent-charge. The work is carefully prepared, and will be found useful.

# Correspondence.

## THE COUNTRY CIRCUITS.

SIR,—It appears to me that the public do not sufficiently appreciate the extraordinary effect of sending only one judge to most of the circuit towns instead of two, as formerly.

I believe that all who practise on circuit will agree with me that the result has been to prevent the entry of causes for trial owing to the impossibility of getting them tried. To take the instance of the Midland Circuit, to which I have the honour to belong.

At Leicester, when we had two judges, there were usually ten or a dozen important cases for trial; now there are seldom more than two. This circuit there were five, of which three were withdrawn, one was tried, and the venue of the other was changed to Nottingham, owing to want of time in which to try it.

At Lincoln there was more than enough crime to occupy one judge the four days allowed for business on this circuit. By sitting, however, every day as late as 7 P.M., and on one day until after midnight, the learned judge managed to procure half a day for the trial of causes. There were only three for trial, and the learned judge managed to dispose of them, but the three causes could not have been fully tried out under two days, and is hardly satisfactory to the parties to have their cases hurriedly disposed of instead of being tried out.

In old times there were usually fifteen to twenty causes at Lincoln, and there would be the same number now if there was a judge to try them.

Last circuit there were two judges at Derby, and the public seemed to have thought that that state of things would continue.

Accordingly, on this circuit there were eleven causes for trial there. This time, however, only one judge has been sent, and it seems probable that he will have difficulty in trying the prisoners within the time allowed, and no arrangement has been made for the trial of the eleven causes.

Several of them have therefore been withdrawn, some have been compromised, and it seems probable that they will have been nearly all got rid of without trial when —if ever—the time of trial arrives.

We have had a similar experience to the above ever

since the 'one judge system' was tried, and I am informed that the experience of the other circuits is the same. The present state of things is a scandal and ought to be put an end to.

If we are too poor to afford a sufficient number of judges, a tolerable remedy would be to group some of the circuit towns for the trial of causes, and to send two judges to the places where causes are to be tried. Thus it would be very easy to group Bedford and Northampton, Leicester and Derby, and Lincoln and Nottingham.

What is wanted is a judge to try causes at a certain date, instead of the present system of keeping the parties to causes waiting an indefinite time while prisoners are being tried, with the probability that there will never be time to try them. A JUNIOR.

July 19.

# Unreported Cases.

## COUNTY COURT.

### UNQUALIFIED MEDICAL PRACTITIONERS.

AT Barnsley County Court, on July 16, an adjourned case of some interest was heard. William Ritchie, surgeon, Hoyland, sued William Pepper, of Hoyland, to recover 20*l.* 4*s.* 6*d.* for medical attendance and medicine supplied to himself and family; and 8*l.* for medicines and attendance on William Wood, of Hoyland, for whom the defendant is executor. The case had been adjourned from last Court that particulars of several attendances might be supplied, and that the attendances by assistants of Dr. Ritchie, said to be unqualified, and for whose attendances defendant objected to pay, might be set out. —Mr. Rideal said the 20*l.* 4*s.* 6*d.* was for professional services from 1883 to 1889. The detailed particulars showed that there were 194 mixtures, two confinements, and 105 visits included in the amount.—The judge inquired the meaning of the items in red ink in the account.—Mr. Rideal said they were attendances made by assistants. One of these assistants, Mr. Moore, was unqualified; the other assistant, Mr. Trundy, was qualified. The reason the plaintiff had not come to Court before was that defendant was in very poor circumstances at that time, receiving, in fact, an allowance of 1*l.* a week from the testator, under whose will he now benefited. Plaintiff, on account of defendant's poverty at that time, had not made anything like his proper professional charges. His charges varied according to the position of parties. Roughly it was 2*s.* 6*d.* per visit, or 1*s.* 6*d.* per visit and 1*s.* 6*d.* per mixture. The plaintiff, in cross-examination, said Moore was not qualified. Mr. Trundy was qualified.—Can you find his name in the medical registers? He was not qualified whilst he was with me, but I have a letter from him that he has passed since.—Mr. Barras, for the defendant, said there were 155 unqualified visits and mixtures which he put down at 7*l.* 15*s.*—Plaintiff thought it would be above the mark to deduct 1*s.* for each unqualified visit and mixture.—It seemed that the unqualified visits were: Mr. Trundy 14, Mr. Moore 54—68; and there were 91 mixtures supplied.—Plaintiff said he had delivered the greater part of the mixtures himself, and was usually in his surgery at the time the medicines were dispensed. — His Honour said he found there were 167 unqualified visits and mixtures, for which he allowed 8*l.* 7*s.*—Mr. Barras would like to have an expression from his Honour—as he had fought this case as a test case—that medical men had no right to have unqualified assistants and to charge for them.—His Honour: I have been trying to impress the public with that for some time past.—Mr. Barras: And they are not entitled to recover.—His Honour: They are not entitled to recover.—Mr. Rideal said that so far as the unqualified attendances were concerned he abandoned the claim for them, but as to the mixtures they were made from Dr. Ritchie's drugs, Dr. Ritchie himself superintending their mixture.—Mr. Barras submitted that the mixtures were supplied after the unqualified visits, and quoted the Medical Act to show that neither payment for attendance nor medicines so supplied could be recovered. —His Honour said medical men seemed to have lost sight of the Act of Parliament. They had no right whatever to send out unqualified practitioners amongst their patients. They could not recover for visits of such men. The verdict in this case would be for 13*l.*, 7*l.* being struck off for the unqualified visits, &c.—The other case was settled privately.—Mr. Rideal was for the plaintiff, and Mr. G. T. Barras, Rotherham, for the defendant.

## SUCCESSFUL CANDIDATES.

THE following candidates (whose names are in alphabetical order) were successful at the Preliminary Examination held on July 1 and 2, 1891:—

Almy, Percival Henry William
Andrew, William Stobo
Archbold, Thomas Forster
Aspden, Daniel Morris
Bardswell, Arthur Hamilton
Baxter, Francis William
Bell, Herbert Grimshaw
Bentley, Seymour Fiennes
Brierley, George Herbert
Burton, Charles
Canning, Arthur Lionel
Carless, Wilfred Townshend
Cobb, Charlewood Francis
Colmer, Ralph Henry James
Copland, William Shrubsole
Cran, George Rose
Crawford, William Leslie
Cresswell, William Warneford
Davies, Oswyn St. Leger
Day, William Rogers
Devonshire, George Thomas
Durham, Andrew Charles Lancelot
Elwen, Frederic William
Evans, Reginald
Fitz-Payne, Richard
Fletcher, William Frederick Ashby
Forster, Charles Ernest
Garrold, Richard
Glover, Alfred Ernest
Goodwin, Francis John
Gosden, Alfred William
Gough, William Meyrick
Grant, James Hamilton
Greaves, Cyril Darnton
Greenwood, Harold
Grimshaw, George
Hanbury, Arthur Walter Lempriere
Harding, Charles Copeley
Haskell, Edwin
Haynes, Samuel Bruce
Hoare, Jesse
Hoggett, Henry
Hughes, Herbert Athelstan
Hyde, Francis Garmston
Johnson, Frederick
Johnson, Samuel Percy
Jones, Frederick
Jones, Henry
Kinney, Alexander Peyton
Kitson, Henry Lane
Lesser, Albert
Lewis, David Edwin
Lewis, Evan David
Mammatt, Edward Arthur
Mennell, George Henry
Mulholland, Harry Ogilvie
Musk, Charles Stonehouse
Mytton, Hugh
Nicholas, Walter Powell
Nix, Henry John
Parker, Edwin Charles *Lewis*
Parker, George Dearden
Pemberton, Arthur Leigh
Richmond, John Adrian Chamier
Robinson, Clement Crawley
Rumbold, Charles Edmund Arden Law
Rutter, Richard
Seppings, John William Hamilton
Sharpe, Wallace William Jessopp
Smallman, George Augustus John
Stockburn, John Lawrence
Stott, George Francis
Sturton, Arthur Jacob
Taynton, Hubert Myon
Waite, Arthur
Warren, Herbert George
Watson, Richard Arnold
Whitehorn, Herbert Alfred Augustus
Wilkin, Henry Eugene
Wilkinson, Claud
Woods, Ernest Edward

## LAW AND PROFESSIONAL NOTES.

By T. F. UTTLEY, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### TRADE UNIONS AND INTIMIDATION.

THE decision of the Queen's Bench Division in *Curran* v. *Treleaven*, deciding that it is not intimidation, and, therefore, not unlawful, to make employers dismiss non-union men under a threat that, if they do not do so, their unionist hands will be called out, has been hailed with acclamation by the various labour papers. One of these papers thus refers to the matter: 'As was only to be expected the Court of Queen's Bench has decided against the Recorder of Plymouth, who upheld the conviction of three trade unionists for the offence of "intimidation." The men were simply officials of a trade union, the members of which were at variance with a shipowner who was employing some non-union workmen, and these officials were deputed to go and inform him that unless he discharged the non-unionists the union men would be called out on strike. The shipowner refused to discharge the non-unionists, thereupon the members of the union were called out, and they ceased work. The men were summoned for "intimidating" the shipowner in his business, and the magistrates who heard the case convicted the three officials, and the recorder supported their action. This decision has now been set aside, and declared to be wrong in principle and against the spirit of the Act of Parliament. So long as no threats or bad language is used, an employer, or those acting on his behalf, can be informed, without fear of consequences, that unless he discharges his non-union workmen the members of the union will be brought out on strike. This having been made clear, the members of the different trade unions connected with the cotton industry should know what course to take when persons refuse to become members of the union, but who, notwithstanding, are always ready to enjoy the advantages which the trade unions secure for the operatives. There is no doubt the ruling of the Queen's Bench in the cases recently submitted to the judges will have a beneficial effect on the future action of trade unions, as the members will now know how far they can go with those who refuse to join the unions, and this will assist them very materially in their conduct in dealing with the non-union element which is to be found more or less in every mill in the country. If the Queen's Bench had upheld the recorder's decision the officials of some associations would have been placed in an awkward predicament, as it is a common practice for them to write to employers and managers, intimating what will be the consequence if they do not remove the grievances under which their spinners labour from time to time. It is proved they are justified in telling what will be the result if so and so is not done with a view to satisfying the workmen. We could never understand where the word "intimidating" came in when a workman merely told an employer or his foreman that he and his workmates would leave work unless the terms they demanded were conceded. They have one side of the bargain and the employers have the other, and each has a right to inform one another of what is intended to be done if they fail to come to an agreement on any trade question which may arise. Threats of violence to persons and property are not requisite in trade disputes, as the latter cannot be amicably settled by such means. Reason and arguments are the weapons to be resorted to, and when these fail to restore peaceful relations between employers and their workpeople, it is better that the battle be fought out by the length of the purse than by the use of threats or bad language. This method of dealing with trade questions is fully recognised by mill operatives as being the most efficacious of any which they have tried in the past; and, having found it to answer their requirements, they intend to adhere to it in future.'

### BIGAMY AND EVIDENCE.

At the Manchester Assizes a remarkable point as to evidence cropped up. According to the present state of the law, a man who is being tried for bigamy must prove, if possible, that he has not heard of his first wife for a period of seven years, or else that he has reason to believe she was dead, before he married a second time. Curiously enough, however, the law will not permit him to give evidence himself, nor yet allow him to call his wife as a witness for himself. This is, of course, an undoubted hardship on a prisoner if innocent, and well merited the strictures of the learned judge who tried a case where these discrepancies came to light. It appeared that a clogger was charged with bigamy, and to the woman with whom the bigamous marriage was celebrated the prisoner represented that he was a widower, and that his wife had been dead nine years. The supposed wife subsequently learned that the real wife was living, and she gave information to the police. Counsel for the prosecution pointed out that if a prisoner had never heard of his wife for a period of seven years, or had reason to believe that she was dead when he went through the marriage ceremony in 1888, then the existing law demanded that on the prosecution should rest the onus of proof that he knew she was alive at the time. The judge asked how the prisoner was to prove what the law said he had to prove when he was not entitled to give evidence nor allowed to call his wife. Counsel for the prisoner naturally pointed out that it was an extreme hardship that, while the burden of proof rested on the prisoner, he could neither be put in the witness-box nor call his wife. The judge agreed that the prisoner was under a hardship, and said it was due to a shocking and barbarous state of the law. He hoped the law would soon be altered, but meanwhile they must act in accordance with it. The prisoner was found guilty, and sentenced to a term of imprisonment. Meanwhile, it is to be hoped the suggested alteration will be carried out.

### MISSING DEFENDANTS AND WARRANTS.

Amongst the cases at these assizes was one where the late proprietor of a Manchester hotel failed to appear to answer to an indictment, adjourned from the last assizes, charging him with the misdemeanour of having neglected and refused to provide certain travellers, members of a football club, with lodgings. The defendant's bail was, consequently, estreated. Counsel asked that costs might be ordered against the defendant, who had received notice of each stage of the proceedings, but the judge said he could not see his way to make such an order, nor could he order a warrant to issue for the apprehension, for they were not intended for cases of this kind. Counsel subsequently said—and it had been clearly shown since the last assizes—that the object of the adjournment (which was applied for by defendant) was not for the purpose of the defence, but was for the purpose of disposing of the defendant's property, for the defendant had sold his house and had gone away, and the prosecution had every reason to suppose that his whereabouts could not be easily ascertained, and that the estreatment of the recognisances would be of no effect so far as recovering the 50*l.* was concerned. The Court had been treated with contempt, and the Court ought to issue a warrant. The judge considered, however, that he could not deal with a question of contempt of Court on that warrant, and could not help counsel.

### PRINCIPLES OF BANKRUPTCY.

Every practitioner and student is doubtless well acquainted with 'The Principles of Bankruptcy,' by Mr. Richard Ringwood, M.A., the fifth edition of which has

just been issued. A noticeable feature of this popular book is the large number of statutes compressed into its pages. These include the Bankruptcy Acts, 1883 and 1890, Bankruptcy Appeals (County Courts) Act, 1884, the Bankruptcy (Discharge and Closure) Act, 1887, the Preferential Payments in Bankruptcy Act, 1888, the Bills of Sale Acts, 1878, 1882, and 1890. These comprise eight statutes altogether, and in addition there is part of the Debtors Act, 1869, and the Bankruptcy Rules, 1886 and 1890. All these go to form an excellent text-book of the complicated bankruptcy laws. The orders as to fees and percentage are also usefully added, and the chapter on bills of sale gives an insight into a complicated matter. The feature of this book, however, is the capital table showing where the sections of the Bankruptcy Acts, 1883 and 1890, may be found, and to students especially, and those busy practitioners who are in the habit of noting up the recent decisions in their text-books the amount of time saved by this table is most acceptable. It is commendable that such a thoroughly practical book as this has been produced in such a handy size, for even the comprehensive appendix has been kept within due bounds, though nothing of moment has been omitted. Most students in the legal profession use other text-books than this, but we believe 'Ringwood's Principles of Bankruptcy' is a prime favourite with accountancy students, perhaps because it is especially recommended by the governing bodies of those institutions. For the purpose a better text-book could not be selected.

COMPANY LAW.

The nature of companies; the legal position of promoters and directors; the mode in which directors are appointed and their office determined; the powers of directors—*e.g.* as to allotment of calls upon shares, transfers, forfeitures, and surrender of shares, borrowing, and mortgage and contracts; the duties of directors as to the accounts of the companies; the payment of dividends; the holding of meetings; the amalgamations and reconstruction of companies and arrangement with creditors; and the liabilities of directors and promoters—such is a summary of what may be found in Dr. Hamilton's 'Manual of Company Law,' and a very comprehensive account is given of every one of the topics enumerated. With the present plethora of companies, and with the threatening aspect of the Directors' Liability Act continually looming before them, one would imagine that every director would obtain a copy of this guide, philosopher and friend on company matters, and that secretaries, too, would find it a handy companion for their labours. Apart from its popular use, the work is well fitted for the lawyer, as all cases and statutes are noted up and many a valuable point is succinctly and tersely given. In the Appendix will be found the Companies (Memorandum of Association) Act, 1890, a list of stamp duties as affecting companies, and the table of fees under the Companies Act, 1862. Where magazines and newspapers are worked by a limited company and financial matters are not in a flourishing condition, the directors would, doubtless, be glad to pay for literary contributions in shares. It is a doubtful question if they can do so. Dr. Hamilton discusses the matter in his chapter on 'Payment for Shares,' and gives the following two rules: (1) An agreement between a company and a holder of its shares to credit as paid thereon the amount of a liability then owing, and payable in cash by the company to him in satisfaction of such liability, and in payment of an equal amount due on such shares, is equivalent to a payment in cash; (2) an agreement between a company and a shareholder to credit as paid up on his shares the amount of a liability owing to him, but not yet payable in cash or payable otherwise than in cash, in discharge of such liability, is not equivalent to a payment in cash. Examples of agreements between companies and shareholders under these rules are also given. It would appear that to set off against future calls on the shares of a member a present liability of the company to pay cash to him has been held equivalent to payment in cash; but it is otherwise to accept payment in fully-paid shares for property sold or services rendered to the company. Could either of these instances be stretched to permit such to be taken in payment for literary contributions? On some other occasion, perhaps, Dr. Hamilton will issue a companion volume on the Winding-up Acts.

COMPANIES AND TRUST DEEDS.

Sometimes a deed is executed by which property of a company is assigned to trustees for debenture-holders to secure the payment of moneys owing on debentures. Such a trust-deed serves a useful purpose, and it was therefore a sensible suggestion of a correspondent in a financial contemporary that, when a company is getting into temporary trouble, it should execute a trust deed in favour of certain persons, or, to put it in the words of a poem by that correspondent:

> Then pipe your eyes and blow your nose;
> Let lawyers come on deck,
> For by my faith without their aid
> You'll soon become a wreck.
> I give you, sirs, the deed,
> For you all its virtues need.
> A bumper, sirs—three cheers—hurrah!
> The deed, the deed, the deed!

It is a pleasure to note that it is the lawyers who will save the wreck of the company. It is perhaps some other profession which prefers them being wrecked.

## COUNCIL OF LEGAL EDUCATION.

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NOTICE TO CANDIDATES FOR READERSHIPS AND ASSISTANT-READERSHIPS.

Lincoln's Inn Hall.

In November next the Council of Legal Education will

appoint six readers at a salary of 500*l.* a year in each—viz.:—

One in constitutional law, English, Colonial, and legal history.

One in Roman law and jurisprudence and international law, public and private.

Three in English law and equity—viz.: Law of persons (including marriage and divorce), law of property (and conveyancing), law of obligations (contracts, torts, and commercial law), criminal law (excluding procedure).

One in procedure, civil and criminal, and evidence.

And also four assistant-readers, at a salary of 350*l.* a year each—viz.:

Three in English law and equity as above defined.

One in Roman law and jurisprudence and international law, public and private.

Each reader in English law and equity will have to deliver two lectures a week—one to advanced and one to commencing students, and will also have to hold an advanced class at least twice in each week.

Each assistant-reader in English law and equity will have to hold an elementary class three times a week.

The reader in Roman law, &c., will have to give two lectures a week—viz.: one to advanced and one to commencing students, and will have to hold two advanced classes in each week.

The assistant-reader in Roman law, &c. will have to hold at least three elementary classes a week.

The reader in constitutional law and legal history, and also the reader in procedure and evidence, will have to give one lecture and to hold three classes a week.

The lectures and classes will have to be for one hour each, and to be given and held in each week throughout the entire year, except during the legal vacations.

It is intended that every student should be definitively attached to some member of the teaching staff as a consulting tutor or adviser.

The lectures will have to be given and the classes held at places to be provided—

(A) By the Inner Temple and Middle Temple during the Michaelmas and Hilary Sittings;

(B) By Lincoln's Inn and Gray's Inn during the Easter and Trinity Sittings.

The lectures and classes will be commenced in Hilary Sittings next.

The readers will be appointed for three years and will be re-eligible, but they will also be removable, if necessary, by the votes of not less than ten members of the council.

The assistant-readers will be appointed for one year, and will be re-eligible and similarly removable.

The council will expect that practical instruction be given in the preparation of deeds, wills, and contracts, and that mercantile documents in daily use be shown and explained.

A board of studies will be appointed annually by the council, consisting of eight members of the council, and three of the teaching staff, and four members of the council will be a quorum. In order to secure systematic instruction, the scheme of the lectures to be given by each reader and assistant-reader will have to be submitted to, and approved by, the board.

Gentlemen desirous of becoming readers or assistant-readers are requested to send their applications, stating the subjects on which they propose to lecture, or which they propose to teach, and such testimonials as they think proper, to Mr. Corn, clerk of the Council of Legal Education, Lincoln's Inn Hall, London, W.C., not later than October 20 next. No applications are to be made to, or will be entertained by, the members of the council.

(Signed) NATHL. LINDLEY,
Chairman.

Council Chamber:
July 10, 1891.

May, 1891.

CONSOLIDATED REGULATIONS

Of the several societies of Lincoln's Inn, the Middle Temple, the Inner Temple, and Gray's Inn (hereinafter described as the four Inns of Court) as to the admission of students, the mode of keeping terms, the education and examination of students, the calling of students to the bar, and the taking out of certificates to practise under the bar.

*Admission of Students.*

1. Every person, not otherwise disqualified, who shall have passed a public examination at any university within the British dominions, or for a commission in the army or navy, or for the Indian civil service, or for the consular service, or for cadetships in the three Eastern colonies of Ceylon, Hong Kong, and the Straits Settlements, shall be entitled to be admitted as a student, without passing a preliminary examination, but subject to rule 7.

2. Every other person, except such as come under rule 15, applying to be admitted as a student shall, before such admission, have satisfactorily passed an examination in the following subjects, viz.:—

(*a*) The English language,
(*b*) The Latin language, and
(*c*) English history.

Provided that the board of examiners mentioned in rule 3 shall have power to report any special circumstances to the masters of the bench of the Inn of Court of which any person may desire to be admitted as a student, and that the masters of the bench of such Inn shall have power, with or without such report, to relax or dispense with this regulation, in whole or in part, in any case in which they may think special circumstances so reported, or otherwise ascertained by the bench, justify a departure from this regulation.

3. Such examination shall be conducted by a joint board, to be appointed by the four Inns of Court.

4. For constituting such board, each of the four Inns of Court shall appoint four examiners, and the Council of Legal Education shall have power to allot such remuneration as the council shall think fit to such examiners.

5. The examiners shall attend according to a rota to be fixed by themselves, and two shall be a quorum.

6. Meetings of the examiners shall be held at least once in every week during each term, as hereinafter defined, and once in the week next preceding each term, and at such other time as shall be appointed in accordance with any order of the board. Provided that no examiner need attend unless two clear days' notice prior to the day appointed for his attendance shall have been given to the secretary of the board, by at least one candidate, of an intention to present himself on that day for examination.

7. No attorney-at-law, solicitor, writer to the signet, or writer of the Scotch Courts, proctor, notary public, clerk in Chancery, Parliamentary agent, or agent in any Court original or appellate, clerk to any justice of the peace or person acting in any of these capacities, and no clerk to any barrister, conveyancer, pleader, equity draftsman, attorney, solicitor, writer to the signet, or writer of the Scotch Courts, proctor, notary public, Parliamentary agent, or agent in any Court original or appellate, clerk in Chancery, clerk of the peace, clerk to any justice of the peace, or to any officer in any Court of law or equity, and no person acting in the capacity of any such clerk, shall be admitted as a student at any Inn of Court until such person shall have entirely and *bonâ fide* ceased to act or practise in any of the capacities above named or described, and if on the rolls of any Court, shall have taken his name off the rolls thereof.

8. The following forms shall be adopted by each of

the four Inns of Court on application for admission as students:—

I, of
aged , the son of
of , in the county of [add father's profession, if any, and the condition in life and occupation, if any, of the applicant]
de hereby declare that I am desirous of being admitted a student of the Honourable Society of
for the purpose of being called to the bar, or of practising under the bar, and that I will not, either directly or indirectly, apply for or take out any certificate to practise, directly or indirectly, as a pleader, or conveyancer, or draftsman in equity, without the special permission of the masters of the bench of the said society.

And I do hereby further declare that I am not an attorney-at-law, solicitor, a writer to the signet, a writer of the Scotch Courts, a proctor, a notary public, a clerk in Chancery, a Parliamentary agent, an agent in any Court original or appellate, a clerk to any justice of peace, nor do I act, directly or indirectly, in any such capacity, or in the capacity of clerk of or to any of the persons above described, or as clerk of or to any barrister, conveyancer, pleader, or equity draftsman, or of or to any officer in any Court of law or equity.

Dated this day of

(Signature)

We, the undersigned, do hereby certify that we believe the above-named to be a gentleman of respectability, and a proper person to be admitted a member of the said society.

} Barristers of

Approved {

Treasurer, or, in his absence, by two benchers.

9. Every person applying to be admitted as a student shall pay the sum of one guinea upon application for the form of admission; and the sums so paid shall form part of the common fund hereinafter mentioned.

*Keeping Terms.*

10. The word 'terms' in these regulations, except where otherwise expressed, shall mean the terms as fixed by the Inns of Court for the purpose of calls to the bar.

11. Students who shall at the same time be members of any of the Universities of Oxford, Cambridge, Dublin, London, Durham, the Queen's University in Ireland, St. Andrew's, Aberdeen, Glasgow, Edinburgh, or the Victoria University, Manchester, shall be enabled to keep terms by dining in the halls of their respective Inns of Courts any three days in each term.

12. Students who shall not at the same time be members of any of the said universities shall be enabled to keep terms by dining in the halls of their respective Inns of Court any six days in each term.

13. No days of attendance in hall shall be available for the purpose of keeping term, unless the student attending shall have been present at the grace before dinner, during the whole of dinner, and until the concluding grace shall have been said, unless the acting-treasurer on any day during dinner shall think fit to permit the student to leave earlier.

14. A student who previously to his admission at an Inn of Court was a solicitor in practice for not less than five years (and, in accordance with rule 7, has ceased to be a solicitor before his admission as a student) may be examined for call to the bar without keeping any terms, and may be called to the bar upon passing the public examination required by these rules, without keeping any terms.

Provided that such solicitor has given at least twelve months' notice in writing to each of the four Inns of Court and to the Incorporated Law Society of his intention to seek call to the bar, and produces a certificate signed by two members of the council of the Incorporated Law Society that he is a fit and proper person to be called to the bar.

15. A student coming under the last preceding rule may be exempted by the masters of the bench of the Inn to which he seeks admission from passing the examination preliminary to admission.

*Calling to the Bar.*

16. Every student shall have attained the age of twenty-one years before being called to the bar.

17. Every student, except such as come under rule 14, shall have kept twelve terms before being called to the bar, unless any term or terms shall have been dispensed with under special circumstances by the benchers of his Inn.

18. No student shall be called to the bar unless such student shall, to the satisfaction of the Council of Legal Education, have passed a public examination for the purpose of ascertaining his fitness to be called to the bar, and have obtained from the council a certificate of having passed such examination.

19. No student shall be called to the bar until his name and description shall have been screened in the hall, benchers' room, and treasurer's or steward's office, of the Inn of which he is a student, fourteen days in term before such call.

20. The name and description of every such student shall be sent to the other Inns, and shall also be screened for the same space of time in their respective halls, benchers' rooms, and treasurers' or stewards' offices.

21. No call to the bar shall take place except during a term; and such call be made on the same day by each of the Inns—namely, on the sixteenth day of each term, unless such day shall happen to be Saturday or Sunday, and in such case on the Monday after.

*Certificates to Practise under the Bar.*

22. No student shall be allowed to take out a certificate to practise under the bar without the special permission of the masters of the bench of the Inn of Court of which he is a student, to be given by order of such masters, and no such permission shall be granted to any student unless he shall be qualified to be called to the bar, and the regulations, as to screening names in the halls, benchers' rooms, and treasurers' or stewards' offices, applicable to students desirous of being called to the bar, shall be applicable to students desirous of practising under the bar. Such permission shall be granted for one year only from the date thereof, but may be renewed annually.

*Council of Legal Education.*

23. The Council of Legal Education shall consist of twenty benchers, five to be nominated by each Inn of Court, of whom four shall be a quorum. The members of the council shall remain in office for two years, and each Inn shall have power to fill up any vacancy that may occur in the number of its nominees during that period. To this council shall be entrusted the power and duty of superintending the education and examination of students, and of arranging and settling the details of the several measures which may be deemed necessary to be adopted for those purposes, or in relation thereto, and such other matters as are herein in that behalf mentioned.

*The Committee of Education or Board of Studies.*

24. The council shall appoint a committee of the members of the council, or, if deemed expedient, a board of studies consisting of members of the council and of the

teaching staff. The constitution of such committee or board and the period for which its members shall hold office shall be from time to time determined by the council.

25. The committee or board shall, subject to the control of the council, superintend and direct the education and examination of students and all matters of detail in respect to such education and examination.

*Lectures and Classes.*

26. The lectures and classes shall be open to all members of the Inns of Court.

27. Students shall be provided with the means of education in the general principles of law and in the law as practically administered in this country, and for the purpose of such education systematic instruction shall be given in the following subjects, viz.:—

28. The subjects for instruction shall be—

(1) Roman law and jurisprudence and international law, public and private (conflict of laws).

(2) Constitutional law (English and colonial) and legal history.

(3) English law and equity,—viz.:—

(*a*) Law of persons, including:—
- Marriage and divorce.
- Infancy.
- Lunacy.
- Corporations.

(*b*) Law of real and personal property and conveyancing, including:—
- Trusts; mortgages.
- Administration of assets on death; on dissolution of partnerships; on winding-up of companies, and in bankruptcy.
- Practical instruction in the preparation of deeds, wills, and contracts.

(*c*) Law of obligations:—
- Contracts.
- Torts.
- Allied subjects (implied or *quasi*-contracts), estoppel, &c.
- Commercial law, with special reference to mercantile documents in daily use, which should be shown and explained.

(*d*) Civil procedure, including evidence.

(*e*) Criminal law and procedure.

*Staff of Teachers and Mode of Teaching.*

29. There shall be a permanent staff of such a number of readers (not more than eight) as the council may think expedient; and such readers shall give instruction, both catechetically and by lectures, in such subjects as shall be directed by the council.

30. In addition to the readers there shall be a permanent staff of assistant-readers for elementary classes, but the number of such assistant-readers and elementary classes shall be left to the council.

31. In addition to the staff of readers and assistant-readers the council shall also have power to engage the services of lecturers on particular subjects, whether enumerated above or not, as they may think fit.

32. Both lectures and classes shall be held throughout the entire year, except during the legal vacations, at such place or places as the council may appoint, but so as not to unduly prefer one Inn to another.

*Tenure of Offices.*

33. Each reader shall be appointed for three years, and shall be re-eligible, but he shall be removable during his term of office by the vote of not less than ten members of the council.

34. The period for which assistant-readers shall be appointed, and the conditions of their tenure of office, shall be left to the discretion of the council.

35. To secure systematic instruction, the scheme of the lectures to be given by each reader and assistant-reader shall be submitted to, and approved by, the committee or board of studies, at such times and in such manner as the committee or board shall direct.

36. Students, in addition to availing themselves of the means of instruction provided by these regulations, are recommended to attend in the chambers of a barrister or pleader for the purpose of studying the practice of the law; but such attendance shall not be compulsory.

*Salaries and Payments.*

37. A system of payment by capitation fees is recommended for adoption by the council if practicable.

38. The sum of 500*l.* per annum, and such capitation fees as the council may decide, shall be paid to each of the readers.

39. The remuneration of the assistant-readers and lecturers on particular subjects shall be left to the discretion of the council.

40. Each student shall pay on admission a sum of five guineas, which shall entitle him to attend all the lectures and classes of all the readers and assistant-readers, so long as he shall be a student. The council shall have the power to require payment of additional fees for attendance at the lectures of lecturers on particular subjects appointed under regulation 31.

*The Examinations for Call to the Bar.*

41. There shall be four examinations for calls to the bar in each year—one before each term, and in sufficient time to enable the requisite certificates to be granted by the council before the first day of each term.

42. An examination in Roman law and in such of the heads of the English law and equity, mentioned in rule 28 (3), as the council shall from time to time determine, shall be obligatory for call to the bar.

43. No student, except such as come under rule 14, shall be examined for call to the bar until he shall have kept nine terms; but the students shall have the option of passing the examination in Roman law, required by rule 42, at any time after having kept four terms.

44. The council may accept as an equivalent for the examination in Roman law:—

(i.) A degree granted by any university within the British dominions, for which the qualifying examination included Roman law;

(ii.) A certificate that any student has passed any such examination, though he may not have taken the degree for which such examination qualifies him; and

(iii.) The testamur of the public examiners for the degree of Civil Law at Oxford that the student has passed the necessary examination for the degree of Bachelor of Civil law;

Provided the council is satisfied that the student, before he obtained his degree, or obtained such certificate or testamur, passed a sufficient examination in Roman law.

45. There shall be a board of three examiners in each subject—viz. a reader, with such assistants selected by the council, not being members of the staff of readers and assistant-readers, as the council may determine.

46. Examination for call to the bar shall be by written papers, and by such *vivâ voce* questions (if any) as the examiners may think desirable.

47. Each examiner shall be appointed for three years, subject to removal by the council; but no examiner, other than a reader, shall be re-eligible until he has been at least one year out of office.

48. The council shall have power to appoint such as-

sistant-examiners as may be necessary, who shall hold office during the pleasure of the council.

49. The fee to be paid to each examiner and assistant-examiner shall be left to the discretion of the council.

*Honours and Studentships.*

50. The council shall grant certificates of honour to such persons as may be reported worthy of the same by the examiners.

51. Two studentships of one hundred guineas per annum each, tenable for three years, shall in each year be given to the students who shall pass the best examination on the whole in all the subjects mentioned in regulation 28. But the council shall not be obliged to recommend any studentship to be awarded if the result of the examination be such as, in their opinion, not to justify such recommendation. Where any candidates appear to be equal or nearly equal in merit, the council may, if they think fit, divide the studentship between them equally or in such proportions as they consider just.

52. Only members of an Inn not called to the bar shall compete for a studentship.

53. No person who has gained one studentship shall hold another.

54. The expense of these studentships shall be defrayed out of the common fund.

55. There shall be two honour examinations in each year, conducted by a board of examiners appointed by the council, at each of which one studentship and certificates of honour, and pass certificates enabling the holders to be called to the bar without further examination, may be awarded.

56. At every call to the bar those students who have obtained studentships shall take rank in seniority over all other students called on the same day, and those students who have obtained certificates of honour shall take rank immediately after the holder of a studentship called on the same day.

57. The Inn of Court to which the holder of any studentship or of a certificate of honour belongs may, if desired, dispense with any terms not exceeding two that may remain to be kept by such student previously to his being called to the bar.

58. The examiners shall submit their examination papers to the committee or board of studies for approval at such time as the committee or board shall direct; and the number of marks to be attributed to each paper shall also be submitted to the committee or board for their approval.

59. Previous to each examination the committee or board shall give such notice as they shall think fit of the books and branches of subjects in which students will be required to pass at such examination in order to be entitled to a certificate.

60. One examiner at least shall be present during the whole time of the examination in writing.

61. The board of examiners shall, after each examination, report the result thereof to the committee or board of studies, who shall submit to the council the names of those students (if any) who are in their opinion entitled to receive pass or honour certificates or to obtain studentships.

62. All students shall be bound by such variations as may from time to time be made in these regulations.

*Common Fund.*

63. The four Inns of Court shall continue their annual contributions of 360*l.* each towards constituting the common fund, to which shall be added the several fees for forms of admission and for attending lectures; and also the several sums of five guineas for each student, to be paid by the Inns of Court respectively, as additional contributions, pursuant to the report of the committee of the four Inns of Court, dated December 6, 1871; and any further money which may from time to time be required to enable the common fund to meet the charges on it in any year shall be contributed by the four Inns of Court at the end of such year, rateably and in proportion to the number of students belonging to the four Inns respectively, who shall in that year have been called to the bar, or have for the first time obtained permission to practise under the bar.

## NOTICES FOR THE WEEK.

### ROTA OF REGISTRARS.

MONDAY, July 27. — Court of Appeal No. 2: Mr. Carrington. Mr. Justice Chitty: Mr. Pugh. Mr. Justice North: Mr. Ward. Mr. Justice Stirling: Mr. Jackson. Mr. Justice Kekewich: Mr. Godfrey. Mr. Justice Romer: Mr. Rolt.

Tuesday, July 28.—Court of Appeal No. 2: Mr. Lavie. Mr. Justice Chitty: Mr. Beal. Mr. Justice North: Mr. Pemberton. Mr. Justice Stirling: Mr. Clowes. Mr. Justice Kekewich: Mr. Leach. Mr. Justice Romer: Mr. Farmer.

Wednesday, July 29.—Court of Appeal No. 2: Mr. Carrington. Mr. Justice Chitty: Mr. Pugh. Mr. Justice North: Mr. Ward. Mr. Justice Stirling: Mr. Jackson. Mr. Justice Kekewich: Mr. Godfrey. Mr. Justice Romer: Mr. Rolt.

Thursday, July 30.—Court of Appeal No. 2: Mr. Lavie. Mr. Justice Chitty: Mr. Beal. Mr. Justice North: Mr. Pemberton. Mr. Justice Stirling: Mr. Clowes. Mr. Justice Kekewich: Mr. Leach. Mr. Justice Romer: Mr. Farmer.

Friday, July 31. — Court of Appeal No. 2: Mr. Carrington. Mr. Justice Chitty: Mr. Pugh. Mr. Justice North: Mr. Ward. Mr. Justice Stirling: Mr. Jackson. Mr. Justice Kekewich: Mr. Godfrey. Mr. Justice Romer: Mr. Rolt.

Saturday, August 1.—Court of Appeal No. 2: Mr. Lavie. Mr. Justice Chitty: Mr. Beal. Mr. Justice North: Mr. Pemberton. Mr. Justice Stirling: Mr. Clowes. Mr. Justice Kekewich: Mr. Leach. Mr. Justice Romer: Mr. Farmer.

THE SELDEN SOCIETY. — At the last meeting of the executive committee, Lord Coleridge, the president, in the chair, supported by Lord Justice Fry, the vice-president, and other members, Mr. P. E. Dove, the hon. secretary, brought up a list of proposed translations of early interesting records, and several suggestions were made as to the next volume to be issued by the society. Ultimately, after a discussion in which the president, vice-president, Mr. Scargill Bird, Mr. H. P. Elphinstone, and Mr. F. K. Munton took part, it was resolved to accept the proposal for the following work: '"The Leet Jurisdiction in the City of Norwich during the Thirteenth and Fourteenth Centuries," edited from rolls in the possession of the corporation, by the Rev. W. H. Hudson. The value of this volume will consist in the early character of its evidence on the working of the Frankpledge system, of which little has hitherto been known, and on the subject of municipal development in a chartered borough, the origin of municipal divisions, and on the social, commercial, and judicial arrangements at the close of the thirteenth century in one of the largest cities in the kingdom.'—On the motion of Mr. Munton, Mr. R. P. Cunliffe, ex-president of the Incorporated Law Society, was elected a member of the executive committee.—On the motion of Professor F. W. Maitland, a vote of thanks was accorded to Mr. O. C. Pell for having allowed the society to print extracts from the rolls of the Manor of Littleport.

## CALENDAR OF THE COUNTY COURTS.

FROM JULY 27 TO AUG. 1.

| No. of Circuit | His Honour | July 27 | July 28 | July 29 | July 30 | July 31 | Aug. 1 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Runcorn | Birkenhead | Warrington | Leigh | — |
| 8 | Judge Heywood | — | Manchester | Manchester | Manchester | Manchester | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 19 | Judge Barber | — | Derby | Burton | — | — | — |
| 47 | Judge Powell | — | Lambeth | Greenwich | Lambeth | Greenwich | — |
| 54 | Judge Metcalfe | Bristol | Bristol | Bristol | Bristol | Bristol | — |

# House of Lords Register.

THURSDAY, JULY 16.

*Holmes Oil Company* (*Lim.*) v. *Pumpherston Oil Company* (*Lim.*) (decree—arbitral—alleged misrepresentations to arbiter—proceedings to set aside report. Appeal from Second Division of the Court of Session in Scotland).—Part heard.

FRIDAY, JULY 17.

*Holmes Oil Company* (*Lim.*) v. *Pumpherston Oil Company* (*Lim.*).—Dismissed.

*Walsh, Hall & Co.* v. *Oriental Bank Corporation* (*in liquidation*) (breach of contract of agency—breach of trust—agent selling to principal—fraud—concealment by agent from principal—Statute of Limitations. Appeal from the Court of Appeal).—Part heard.

MONDAY, JULY 20.

*Commissioners for Special Purposes of the Income-tax* v. *Pemsel* (income-tax—allowances—charitable purposes—5 & 6 Vict. c. 31, s. 61, No. 6, schedule A. Appeal from the Court of Appeal. Reported 58 Law J. Rep. Q. B. 196; L. R. 22 Q. B. Div. 296, 305. Lord Watson, Lord Herschell, Lord Macnaghten, and Lord Morris voted for dismissing the appeal; *contrà* Lord Halsbury, L.C., and Lord Bramwell).—Dismissed.

*Alloroft and others* (*prosecuting on behalf of the Queen*) v. *Bishop of London. Leighton and others* (*prosecuting on behalf of the Queen*) v. *Bishop of London* (Public Worship Regulation Act, 1874)—superstitious ornaments—complaint—dissension of bishop. Appeal from Court of Appeal. Reported 59 Law J. Rep. Q. B. 169.—Dismissed.

*Walsh, Hall & Co.* v. *Oriental Bank Corporation.*—Part heard.

TUESDAY, JULY 21.

*Smith* v. *Baker* (master and servant—injury to servant—*volenti non fit injuria*—negligence. Appeal from County Court. Statement of ground of appeal).—Allowed.

*Walsh, Hall & Co.* v. *Oriental Bank Corporation.*—Part heard.

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, BOWEN, L.J., and KAY, L.J.

With Assessors—VICE-ADMIRAL GRANT, C.B., and CAPTAIN CASTLE.

THURSDAY, JULY 16.

*G. B. Vessels and others* v. *Owners of Boston City* (appeal of defendants from judgment of the President (Sir Jas. Hannen), dated November 24).—Allowed.

FRIDAY, JULY 17.

*Owners of Eaton Hall* v. *C. B. Theobald, Captain of H.M.S. Rupert* (appeal of defendants from judgment of the President (Sir C. Butt), dated August 1).—Dismissed.

SATURDAY, JULY 18.

*Owners of the Star of England* v. *Owners of the Vesper* (appeal of plaintiffs from judgment of the President (Sir C. Butt), dated February 9).—Dismissed.

MONDAY, JULY 20.

*Teeside Iron Engine Works Company* (*Lim.*) v. *C. C. Duncan* (appeal of defendants from judgment of the President (Sir C. Butt), dated January 29).—Dismissed.

*Towerson* v. *Jackson, extrix.* (Q. B. *Crown Side*), appeal of plaintiff from judgment of Day, J., and Lawrance, J., dated April 21, dismissing appeal from judge of County Court).—Dismissed.

Before LOPES, L.J., and KAY, L.J.

TUESDAY, JULY 21.

*Regina* v. *Leresche and another* (*Justices of Lancashire*) (Q. B. *Crown Side*) appeal of J. Price from refusal of *ex parte* application on May 14 by Day, J., and Lawrance, J.; on application to Court of Appeal order *nisi* granted to justices to state case as to maintenance order; heard June 15).—Allowed.

*Pelton Bros.* v. *Harrison* (appeal of plaintiff from order of Denman, J., and Wright, J., dated May 27, affirming discharge of order for receiver of defendant's share of W. B. Little's estate; heard June 16).—Dismissed.

Before the MASTER OF THE ROLLS, BOWEN, L.J., and KAY, L.J.

*In re The Onward Building Society and Building Society Acts*, 1874, 1875, *and* 1877, *and Companies Acts* (appeal of H. E. Broad from order of the Lord Chief Justice and Mathew, J., dated June 22, refusing leave to register transfer of shares).—Dismissed.

WEDNESDAY, JULY 22.

*Harrison, Ainslie & Co.* v. *Muncaster* (appeal of plaintiffs from judgment of Day, J., dated February 20, at trial without a jury at Lancaster).—Dismissed.

*Lambourn Valley Railway Company* v. *Lillups* (appeal of defendants from judgment of Lawrance, J., dated May 1, at trial without a jury in Middlesex) —Dismissed by consent.

*Hogarth* v. *Nanson* (appeal of defendant from judgment of Charles, J., dated May 12, at trial without a jury in Middlesex).—Dismissed.

*Tharsis Sulphur and Copper Company* (*Lim.*) v. *Morel Brothers & Co. and Richards & Co.* (appeal of defendants (Richards & Co.) from judgment of Charles, J., dated May 2, at trial without a jury in Middlesex).—Part heard.

## APPEAL COURT II.

Before LINDLEY, L.J., FRY, L.J., and LOPES, L.J.

THURSDAY, JULY 16.

*Faulder's Brewery Company (Lim.)* v. *Bownass* (appeal of plaintiffs from order of Romer, J., dated March 16).—Dismissed.

*The Mineral Residues Syndicate* v. *The Levant Mine Adventurers* (appeal of plaintiffs from judgment of Romer, J., dated April 22).—Dismissed.

FRIDAY, JULY 17.

*In re Jacobs, dec. White* v. *Jacobs* (appeal of defendant Fanny Hart from judgment of Kekewich, J., dated March 18).—Allowed.

*In re Contract, dated October* 23, 1890, *between Joseph Reynolds and others and J. T. Smith and Vendor and Purchaser Act*, 1874 (appeal of vendors from order of Kekewich, J., dated April 25).—Dismissed.

*In re Philip Withington, dec. Clay* v. *Corkling* (appeal of defendant R. Corkling from judgment of Kekewich, J., dated April 15).—Allowed. *In re Philip Withington, dec. Claye* v. *Corkling* (appeal of Louisa Corner from same judgment).—Dismissed.

SATURDAY, JULY 18.

*In re Sir J. Tyler, dec. Tyler* v. *Tyler* (appeal of plaintiffs from judgment of Stirling, J., dated February 21).—Dismissed.

*In re The Opera (Lim.) and Companies Acts* (appeal of H. J. Leslie and others from order of Kekewich, J., dated April 28).—Allowed. *In re The Opera (Lim.) and Companies Acts* (appeal of official liquidator from same order).—Allowed.

Before the LORD CHANCELLOR, LINDLEY, L.J., and FRY, L.J.

MONDAY, JULY 20.

*In re S. Rees, dec. Rees* v. *Jones* (appeal of plaintiffs from judgment of Romer, J., dated March 5).—Part heard.

TUESDAY, JULY 21.

*In re S. Rees, dec. Rees* v. *Jones*.—Dismissed.

*Guardians of the Poor of Tendring Union, in the County of Essex* v. *Dowton* (appeal of defendant W. Slimon from judgment of Stirling, J., dated May 22, 1890).—Allowed.

Before LINDLEY, L.J., FRY, L.J., and LOPES, L.J.

WEDNESDAY, JULY 22.

*Steel* v. *Evans* (appeal of defendants S. C. Overton and another from judgment of Romer, J., dated April 13). *Steel* v. *Evans* (appeal of defendant W. Evans from same judgment).—Dismissed.

*London Printing and Publishing Alliance (Lim.)* v. *Cox* (appeal of defendant from judgment of Williams, J. (sitting as an additional judge of the Chancery Division), dated May 13).—*Cur. adv. vult.*

THE QUEEN'S BENCH DIVISION.—All the judges of the Queen's Bench Division have now left town for the assizes, except Justices Denman, Charles, and Wills, and the latter will very shortly have to join Mr. Baron Pollock on the Oxford Circuit. With the exception of Mr. Baron Pollock and Mr. Justice Williams, none of the other judges will be back before the Long Vacation, and when the latter judge returns he will sit in the Chancery Division. Under these circumstances very little further progress will be made in the Queen's Bench Division during the remaining three weeks of the sittings.

## HONOURS AND APPOINTMENTS.

MR. THOMAS WILLIAM COXON, B.A. (of the firm of J. & H. F. Gadsby & Coxon), of Derby, has been appointed a Commissioner for Oaths. Mr. Coxon was admitted in 1883.

Mr. Walter William Brodie, of Llanelly, has been appointed a Commissioner for Oaths. Mr. Brodie was admitted in 1885.

Mr. Edmund Gillart (of the firm of Howell, Evans & Gillart), of Machynlleth, has been appointed a Commissioner for Oaths. Mr. Gillart was admitted in 1884.

Mr. Thomas Alfred Capron, of Grays, Essex, has been appointed a Commissioner for Oaths. Mr. Capron was admitted in 1888.

Mr. Albert Howe, of Sheffield, has been appointed a Commissioner for Oaths. Mr. Howe was admitted in 1885.

Mr. John Henry Genn (of the firm of Marrack, Nalder, Hockin & Genn), of Falmouth, has been appointed a Commissioner for Oaths. Mr. Genn was admitted in 1880.

CHARTERED ACCOUNTANTS.—A bill introduced by Lord Herschell, and read a second time in the House of Lords on Friday, provides that after this year it shall be unlawful for anyone who is not a member of an institute or society of accountants incorporated by royal charter to use the name of 'chartered accountant,' or any name, title, addition, or description by means of initials or letters placed after his name, or otherwise stating or implying that he is a fellow, member, or associate of such an institute or society. For contravening this regulation the penalty may be 20*l*. If a member of the English and Welsh Chartered Institute uses his title beyond the limits of England and Wales he is to add to it a reference to England and Wales, and a similar regulation is to apply to members of the Scotch and Irish Institutes respectively. For contravening this regulation the penalty may be 5*l*. Moreover, a fine of 50*l*. may be imposed on any institute or society of accountants which, while not incorporated by royal charter, uses the title of 'chartered' or any other description stating or implying that the society is so incorporated. However, prosecutions under this bill can only be instituted by a society so incorporated, or by a private person with the written consent of one.

## MARRIAGES.

On July 16, at Walesby, Notts, Archibald Edward, second son of William Blackman Young, Solicitor, Hastings, and of Grove, St. Leonards-on-Sea, to Cicely, only daughter of Henry Ashton, of Parkside Terrace, Heaton Park, Manchester.

On July 16, at St. Mary's, Bryanston Square, William Henry Smith, Solicitor, Northampton, son of the late Rev. J. T. H. Smith, formerly Rector of Kislingbury, to Mary, daughter of the late Frederick Bostock, of Northampton.

On July 21, at St. Barnabas, Kensington, F. Austin Browne, M.A., Barrister-at-Law, to Edith Sara Maude, younger daughter of W. Fraser Rae, of Lincoln's Inn, Barrister-at-Law, and of 36 Holland Villas Road, W.

## DEATHS.

On July 17, in London, Captain Horace Alfred Coward, Royal Marine Light Infantry, son of William Coward, Esq., Barrister-at-Law, of the Inner Temple.

On July 21, at 12 Inverness Terrace, Clara, widow of the late Sir John Smale, Chief Justice of Hongkong, and daughter of Halsey Janson, Esq., of Stamford Hill, in her 75th year.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & CO., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

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# The Law Journal.

*SATURDAY, AUGUST* 1, 1891.


## 'OBITER DICTA.'

The Evidence Bill has followed the Trustee Bill to the grave, the Attorney-General thinking it hopeless to persevere with it, although it had reached the committee stage in the House of Commons after a careful examination by a committee of the House of Lords. The two Houses seem to have but little reliance on each other's committees, even in the matter of purely consolidation bills. The result is that any consolidation bill requires two sessions of Parliament at the least before it can be passed.

The system of sending only one judge to most of the circuit towns, which was first set on foot in 1884, has given great dissatisfaction in many quarters. A letter which we published last week (*ante*, p. 493) from 'A Junior' on the Midland Circuit shows very pointedly the manner in which this one-judge system works, and a still stronger argument against the present system is afforded by a supplementary letter from the same correspondent which appears in our present issue. 'In old times,' wrote he last week, 'there were usually fifteen to twenty causes at Lincoln. Last circuit there were two judges at Derby. This time, however, only one judge has been sent, and it seems probable that he will have difficulty in trying the prisoners within the time allowed, and no arrangement has been made for the trial of the eleven causes.' And he now states that at the assizes for Lincoln just terminated 'there was *only half a day available for the trial of causes*.' We agree that the present state of things is a scandal, and also that a tolerable remedy would be to group some of the circuit towns—as Bedford and Northampton, Leicester and Derby, and Lincoln and Nottingham—for the trial of *causes* only. For the trial of *prisoners* no grouping would ever be allowed, nor would it be desirable. As for the frequent sittings 'far into the night,' which 'A Junior' so eloquently discourses of, they are an abomination.

In the thrice-tried case of *Weideman* v. *Walpole* the Court of Appeal has now entered judgment for the defendant upon the issue as to the breach of promise of marriage, leaving the verdict for 300*l.* to stand upon certain other issues. The question of law was, whether the fact of the defendant not having answered two letters charging him with the promise afforded that material corroboration of it within the meaning of 32 & 33 Vict. c. 68, s. 2, without which a plaintiff in this kind of action cannot succeed. There had been two letters written, one by the plaintiff herself and another by the minister of the German church at Sydenham, 'appealing to the defendant's honour to marry' the plaintiff 'or to give her a start in life.' The Court unanimously held that no material corroboration had been afforded by either of these letters, and this decision is unquestionably correct. The case, as we have already pointed out (see *ante*, p. 413), is obviously distinguishable from *Bessela* v. *Stern*, 46 Law J. Rep. C. P. 46, in which the defendant charged the plaintiff, in the presence of a third person, with the promise to marry.

The *Pall Mall Gazette* has recently inserted a multitude of letters complaining of the noise of church bells in terms which show that the writers are *bonâ fide* sufferers. Have they any and what remedy at law? The point is one singularly bare of authority. The well-known case of *De Soltau* v. *Held*, 21 Law J. Rep. Chanc. 153, in which both damages were recovered and an injunction granted, is, we believe, the only one to be found in the books on the subject. But in that case the offending bells belonged to a Roman Catholic chapel, and Vice-Chancellor Kindersley appears to have drawn a great distinction between the bells of such a chapel and the bells of a 'church in law,' to which 'bells are an appendage recognised by law, the special property in which is vested in the churchwardens for the benefit of the parishioners at large.' We cannot think, however, that the bells even of a parish church might legally be rung to excess. The churchwardens, we should imagine, could

only authorise a reasonable user of them. It may be observed that in the chapter of the Introduction to the Prayer-book 'concerning the service of the Church,' it is provided that 'the curate that ministereth in every parish church or chapel shall say morning and evening prayer in the parish church or chapel where he ministereth, and shall cause *a bell* to be tolled thereunto a convenient time before he begin, that the people may come,' &c.

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The reported cases as to actions by unqualified medical practitioners are very few. All the more necessary is it for legal practitioners to take careful notice of the County Court case of *Ritchie* v. *Pepper*, of which we gave (see *ante*, p. 494) a short report last week. In this case the claim was for more than 20*l.*, but as much as 7*l.* was struck off on the ground that a great amount of the medical assistance sued for had been supplied by 'unqualified assistants' of the plaintiff. The enactment which bars actions by unqualified persons is section 32 of the Medical Act, 1858 (21 & 22 Vict. c. 90), by which 'no person shall be entitled to recover any charges in any Court of law for any medical or surgical advice, attendance, or for the performance of any operation, or for any medicine which he shall have both prescribed and supplied, unless he shall prove upon the trial that he is registered' under that Act. See, as to the construction of this section, *Leman* v. *Houseley*, 44 Law J. Rep. C. P. 22, and *Turner* v. *Reynall*, 32 Law J. Rep. C. P. 164, which cases are in conflict on the point whether a plaintiff must have been registered at the time that the services in respect of which he sues were rendered, or whether it is sufficient if he was registered at the trial. Curiously enough, the more recent Medical Act, 1886, while repealing and re-enacting the enabling section 31 of the Act of 1858, has left this disabling section untouched, so that both the Acts have to be consulted to get at the whole law of the subject, which may account for medical men having, as the County Court judge in *Ritchie* v. *Pepper* complained, 'lost sight of' the Act of 1858.

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Lord Bramwell writes to the *Times* to complain of habitual unpunctuality on the part of the Brighton Railway Company, which company he represents to be, on a certain branch line, 'constantly after their time from causes which they know will make them so.' The noble lord, in despair of a remedy, has even 'thought of an indictment of the directors for obtaining money under false pretences,' but sees 'some technical difficulties in the way,' as, looking to *Regina* v. *Johnston*, 2 Moo. C. C. 254, and other cases bearing on the construction of section 88 of the Larceny Act, 1861, which makes obtaining money by false pretences a misdemeanour, no doubt there would be. Those cases are simply to the effect that for the pretence to come within the statute it must be a false pretence of some existing fact, and that a pretence that the defendant will do some act which he never meant to do is not within the statute. But is there no remedy for habitual unpunctuality as distinct from one act of unpunctuality, in respect of which one act, as pointed out by the Court of Appeal in *Le Blanche* v. *The London and North-Western Railway Company*, 45 Law J. Rep. C. P. 521, the suffering passenger can only recover nominal damages in ordinary cases? We cannot but think that there may be some remedy open by appealing to the Railway and Canal Commission. If it could be proved before that commission that any company knowingly so arranged one part of its traffic that another part could not possibly be carried on without certain and great unpunctuality, we cannot help thinking that that tribunal would have jurisdiction to interfere to secure more reasonable facilities for receiving, forwarding, and delivering that part of the traffic which suffered by such arrangements.

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An important 'Memorandum relating to Statute Law Revision' has just been issued as a Parliamentary paper. It divides the 'dead law' intended to be repealed by Statute Law Revision Acts into seven different kinds, according as it is expressed in enactments: (1) repealed specifically, (2) expired, (3) spent, (4) repealed generally, (5) repealed virtually, (6) superseded, and (7) obsolete—'*i.e.* where the state of things contemplated by it has ceased to exist, or is no longer capable of being put in force, regard being had to the alteration of political or social circumstances, as, *e.g.*, the Act declaring that gold and silver shall be used for no other purpose except the coinage.' It states, also, that 'great pains have been taken to leave untouched all enactments as to the present operation of which there was any reasonable doubt,' and calls attention to the very wide character of the saving clause which is inserted in each Statute Law Revision Act. 'The terms of this clause,' it is said, 'were prepared with great care by the able draftsmen of the first bill, Mr. (afterwards Sir) F. S. Reilly and Mr. A. J. Wood, and ultimately settled by Lord Westbury (then Sir R. Bethell, Attorney-General); and these terms are so very wide that, even if a mistake were made of including in a Statute Law Revision Act any living enactment, the operation of the saving clause in the Act would continue the effect of that enactment as a principle to be recognised in the Courts of law.' It is added that 'no mischief has been found during the past thirty years in the Courts of law to have arisen from statute law revision.'

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It is a little alarming to learn from Judge Chalmers's interesting article in the *Law Quarterly* that, in the opinion of so high an authority and of one who may claim a paternal connection with the Bills of Exchange Act, 1882, the decision of the House of Lords in the *Vagliano Case* really settles nothing. 'There is,' he says, 'probably nothing in the judgments which would affect the summing up of the judge to a jury in any future case, or which would necessarily interfere with a verdict one way or the other on like facts.' The learned writer approves the decision, but it cannot be said that it has met with general satisfaction. Judge Chalmers notes the diversity of reasons which actuated the majority of the law lords. The reasoning of the article is not altogether satisfactory, especially in connection with the words 'fictitious or non-existing' payees. The Act, he says, seems to draw a distinction between the two terms; but if only one class, and not two, are intended, surely the meaning is 'fictitious—*i.e.* non-existing,' and the latter epithet could certainly not be applied to C. Petridi & Co., whose name was forged. He admits that the common law rule was that the banker could only pay a person who could give a discharge; and points out

that in the case of cheques exceptions have been made by statute to this rule, and argues that another exception ought to be made, as in fact it was made, in a case like Vagliano's. Perhaps it ought; but, if so, the exception should be made unequivocally by statute. In like cases, he says, one of two innocent persons must suffer, and in the case of a forged indorsement on a genuine bill he thinks it ought to fall on the person who has been guilty of negligence, if there has been negligence, and who has lost the bill. But that does not exhaust all cases. The bill might be stolen in the post or by a pickpocket without any negligence in the true owner, and might be indorsed to others to whom negligence could not be imputed. Surely in such a case the loss ought to fall on the banker, who provides against risk in his business. But, whichever view be taken, it ought to be unmistakably established by statute.

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*Regina* v. *Tyler*, decided on Tuesday last, adds one more and an important case to the long list of those decided on the construction of the words 'criminal cause or matter' in section 47 of the Judicature Act, 1873, which enacts that no appeal shall lie to the Court of Appeal from the judgment of the High Court in any criminal cause or matter. Section 26 of the Companies Act, 1862, enacts that every company coming under that Act 'shall make once a year a list of the members of the company,' &c., and section 27 provides that if any company makes default in complying with these provisions 'such company shall incur a penalty not exceeding 5*l*. for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully permit such default shall incur the like penalty.' In *Regina* v. *Tyler* the defendant company had been summoned under these sections, but the defendant Tyler had refused to grant a summons. The High Court having discharged a rule for a *mandamus*, the applicants appealed, but the Court of Appeal unanimously held that the case could not be distinguished from *Mellor* v. *Denham*, 49 Law J. Rep. M. C. 89, and other cases in which it had been held that proceedings before justices were proceedings in a criminal cause or matter within section 47 of the Judicature Act, 1873. The argument that criminal proceedings could not be taken against a corporation was justly described by Lord Justice Bowen as not only contrary to reason, but also to the authority of such well-known cases as *Regina* v. *The Birmingham and Gloucester Railway Company*, L. R. 3 Q. B. Div. 223, and *Regina* v. *The Great North of England Railway Company*, L. R. 9 Q. B. Div. 315.

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That a Stock Exchange speculative contract, when made in the ordinary way through a broker and jobber, is perfectly good in law, was decided by the Court of Appeal in *Thacker* v. *Hardy*, 48 Law J. Rep. Q. B. 289, in which it was held that a broker employed by his principal to speculate was entitled to an indemnity against losses incurred in the course of the speculation authorised, and also to commission. But it was pointed out by Lord Justice Bramwell that *Grizewood* v. *Blane*, 11 C. B. 526, in which a Stock Exchange speculative contract was held bad, was unaffected by this decision, the reason for the distinction being that in *Grizewood* v. *Blane* the transaction took place between two principals. In *Beriro* v. *Thalheim*, which we recently noted (*ante*, p. 437), the Recorder of London has followed *Grizewood* v. *Blane*, and applied it to a new state of facts. Two young men, it seems, had agreed to combine their forces in speculation, the profit, if any, to be shared, and the loss, if any, to be shared also. A loss having been sustained, 'the defendant said that he admitted making the agreement to speculate, but when he found that the stocks were going down he asked the plaintiff to close the account and open a "bear" account, which the plaintiff declined to do, "because he was certain the stocks would recover."' The transactions eventually terminating in loss, the plaintiff sued for half of it according to contract, but the recorder ruled that he must be nonsuited, as the contract was purely a gambling one, 'like a horse race or wagering on two drops of rain running down a window pane.' On the whole, we think that the recorder is right, but it would be satisfactory to have the judgment of a Court of Appeal on *Grizewood* v. *Blane*, especially as Lord Justice Cotton appears to have disapproved of that case in *Thacker* v. *Hardy*.

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Mr. W. H. Smith has been much pressed by various members of the House of Commons to bring the influence of the Government to bear on the trustees of the National Gallery to arrange for the interchange by provincial art galleries of the collections lent to them by the National Gallery, under the National Gallery Loans Act, 1883 (46 & 47 Vict. c. 4), in order that, without removing any of the pictures now in Trafalgar Square, an opportunity might be given to the provincial public of seeing a greater number of the pictures belonging to the nation. Mr. Smith undertook to communicate with the trustees, but stated that they were independent of the Government, and that he understood generally that there would be objections to the proposal on account of the extra risk incurred through moving pictures about the country, and also on the score of expense, as the National Gallery had no funds at its disposal from which the carriage, packing, and insurance of the pictures could be paid. The Act of 1883 authorises any two or more of the trustees, together with the director of the Gallery, to 'order that any pictures under their control, which in their opinion can be spared from the national collection, shall be lent' to any 'public gallery,' situate in the United Kingdom, under the control of the Government, or of any 'municipal authority,' which expression includes not only the town council of any municipal borough or royal burgh in England, Ireland, or Scotland, but also 'any other local authority which may be approved by any two or more trustees, with the approval of the director.' By s. 3 of the Act, the loans are to be made for such time, and subject to such conditions, as the National Gallery authorities may determine, 'provided that any profits which, after payment of all expenses, may be derived from any exhibition' of the pictures lent, 'shall be devoted altogether to the promotion of science and art.' The expenses of interchange of pictures amongst the borrowing authorities might perhaps be defrayed out of the profits of such exhibitions.

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The great difficulty of knowing the exact date of the death of a person drowned, or supposed to be drowned, in some shipping disaster has before now given rise to no little speculation in the realms both of probabilities

and of law. Sometimes it is important from the point of view of interest which accrues *de die in diem*, sometimes from that of survivorship. A husband and wife, for instance, start for America in a ship which founders, each having left to the other all his (or her) fortune. Which was the survivor? The husband is the stronger, and is more likely to be able to swim well; but, on the other hand, the chivalry which animates men so often at the point of a tragic death may have secured for the wife a place in a boat or on a plank which would save her awhile from a watery grave. The House of Lords in *Wing* v. *Angrave, Tulley and others*, 30 Law J. Rep. Chanc. 65; 8 H. L. Cas. 183, decided that there was no presumption in the English law from age, sex, or other circumstances as to the survivorship of one out of several persons who are destroyed by the same calamity. In that case the husband left his property to W. in case his wife should die in his lifetime, and the wife left hers to W. in case her husband should die in her lifetime. Since there was no legal presumption as to which died in the other's lifetime, poor W. took under neither. Conveyancers should guard against the possibility of both dying by the same disaster when a person wants a gift over to take effect in the event of another person not being alive to enjoy it. Would not these words be sufficient: 'If the said H. shall not survive or be presumed to have survived me?' *In the goods of James Henry Kirkbride* (Notes of Cases, p. 96), where there was an application to the Court to presume the death of a man supposed to have been lost at sea, Mr. Justice Jeune intimated that it was the established practice to give notice of such application to any assurance office in which the deceased was insured. In 'Browne on Probate' (rev. edit. p. 429) it is laid down that 'it is desirable to show on affidavit whether or not the life of the deceased was insured,' and a *dictum* of Lord (then Sir James) Hannen is cited to the effect that this should be done in every case. So that the practice on such applications will be to show on the affidavit the fact of the existence of the policy, and also to give notice to the office in which that policy was taken out.

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THE Glamorganshire magistrates have resolved (see p. 471, *ante*) that 'something must be done' to meet the prevailing infringement of the Sunday Closing (Wales) Act, 1881 (44 & 45 Vict. c. 61), whereby in Wales all premises, whether licensed by the justices or not, requiring such license, in which intoxicating liquors are sold or exposed for sale by retail, must be closed the whole of Sunday. A special detective force to deal with offences under the Act is to be constituted, and it has been resolved that 'the course be adopted of refusing the seven-days' license and offer the six-day license instead.' It is hard to see what advantage in respect of closing would be gained by granting six-day licenses in Wales. As by general law all premises must be closed the whole of Sunday, the holder of a six-day license will, though he may double his legal obligation to close, not be under the obligation to close for any greater number of hours than he is at present bound to close for under the Act. The license-holders, however, will do well to take advantage of the offers of the Glamorganshire magistrates, inasmuch as by section 49 of the Licensing Act of 1874, under which these licenses are granted, the holders may obtain from the Inland Revenue Commissioners any license which he is entitled to obtain in pursuance thereof 'upon payment of six-seventh parts of the duty which would otherwise be payable for a similar license not limited to six days.' It may, perhaps, be doubted whether justices have power to force a six-day license on any person by refusing to renew the ordinary seven-day license, unless the holder will consent to turn it into a six-day one. (See *Regina* v. *Silvester*, 31 Law J. Rep. M. C. 93.)

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*Roberts* v. *Jones*, which we reported last month (60 Law J. Rep. Q. B. 441), is a case of very great importance on the practice regarding venue, and all the more deserving attention because there is so little authority on the subject. It was there decided by Mr. Justice Hawkins that unjustifiable use by the plaintiff of his privilege of choosing the venue (see Rules of the Supreme Court, Order XXXVI., rule 1) constitutes good cause for dealing with the costs of an action, although the defendant has made no effort to change the venue. In *Roberts* v. *Jones* the plaintiff, by omitting to state any place of trial in the statement of claim, selected Middlesex, inasmuch as, by Order XXXVI., rule 1, when no place is named, the place of trial 'shall be Middlesex.' None of the plaintiff's witnesses—seven in number—resided in or near Middlesex. Six came from Flintshire or Cheshire and one from Oswestry. The trial extended over two whole days and parts of two others, so that the expense of bringing the witnesses to London and maintaining them there greatly increased the costs. The plaintiff succeeded only to an extent not amounting to quite one-third of his claim. The order of the learned judge was that he should be allowed as against the defendant one-third of his costs and no more; that such costs should be taxed as if the action had been tried at Chester; and that the defendant, having succeeded to an extent exceeding two-thirds of the claim made against him, should be allowed as against the plaintiff two-thirds of his costs, to be taxed on the footing of a Middlesex trial. A somewhat similar order was made in *Willey* v. *The Great Northern Railway Company*, in which an application for change of venue had been made to a Divisional Court and refused, so that the order was a very 'strong' one. We cannot help thinking that in both cases orders have been made which will not of necessity be followed, but the questions involved are of great difficulty and complexity.

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THE custom of inserting an after-acquired property clause in a lady's marriage settlement is one which may well be deemed 'more honoured in the breach than the observance.' Often difficulties may be incurred by this grasping clause. For instance, moral justice may require that a certain sum of money coming to the lady should be released by her. But, however honourable the lady may be, she cannot give up her 'pound of flesh,' for, before it has become hers, she has covenanted to assign it to trustees, who hold in trust, perhaps, for children and issue yet unborn. Still, in spite of this serious objection to the clause, it is well that some effect should be given to its provisions when it is found in a settlement, even though it be a settlement made by an infant. *In re Johnson; Moore* v. *Johnson* (Notes of Cases, *ante*, p. 86), on the marriage of a female infant in 1883, a settlement was made under the Infants' Settlement Act which contained a covenant by her and her husband to bring into settlement any after-

acquired property of the value of 100*l.*, with certain immaterial exceptions. Five years after the marriage the wife's mother died, leaving 4,000*l.* to the wife by a will made years before the marriage. The wife resisted the trustees' claim to bring this money into settlement on the ground that it was not her property when she executed the settlement, within the meaning of the Act 18 & 19 Vict. c. 43, which provides that 'it shall be lawful for every infant upon or in contemplation of his or her marriage, with the sanction of the Court of Chancery, to make a valid and binding settlement, or contract for a settlement, of all or any part of his or her property, or property over which he or she has any power of appointment, whether real or personal, and whether in possession, reversion, remainder, or expectancy,' and gives to the settlement the effect which it would have had if the infant had been of age. Mr. Justice North held that this was property 'in expectancy' within the meaning of the Act, and that it was, therefore, caught by the covenant. Infants have rightly many privileges, and can sometimes, on the plea of youth, escape contracts into which they have entered, but where a marriage has been definitely entered into in the faith that the wife's property should be settled, any attempt to repudiate that settlement must be closely watched, and the words of the Act which Mr. Justice North had to consider are wide enough to include the property in question.

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Mr. Cobb asked the Attorney-General last week whether, in order to remove some misapprehension which seemed to exist as to a recent case at Wolverhampton, he could state what was the existing law as to licensed victuallers supplying alcoholic liquors after closing hours in cases of illness, and whether it was legal to supply them in such cases upon a magistrate's order or medical certificate. The Attorney-General declined to state the existing law on this curious subject 'otherwise than by referring the honourable member to the provisions of the statutes of 1872 and 1874,' but said he would be happy to give any assistance in his power upon being informed of the circumstances of any particular case. We do not think that an investigation of the 'circumstances of any particular case' will do any good as far as the sale of liquor out of legal hours by *licensed victuallers* is concerned. Section 72 of the Licensing Act, 1872, however, with which the Act of 1874, fixing the hours of closing, is to be read as one, amongst a long string of exemptions, contains the curious saving that 'nothing in the Act shall affect or apply to the sale of medicated or methylated spirits, or spirits made up in medicine and sold by *medical practitioners or chemists and druggists*, which favoured individuals may, no doubt, supply medicines in which spirits form an ingredient at any time of the day or night; and what is more curious, there is still to be found on the Statute-book (see 'Revised Statutes,' 2nd edit. vol. ii. p. 159) section 12 of a certain 'Act for repealing the duties on spirituous liquors,' &c., 16 Geo. II. c. 8, whereby *that Act* or '*anything therein contained* shall not extend to any physicians, apothecaries, or chymists as to any spirits or spirituous liquors which they may use in the preparation or making of medicines for sick, lame, or distempered persons only.' The whole of 16 Geo. II. c. 8, except section 12 in question, was repealed by the Statute Law Revision Act, 1867. Section 12 therefore has no practical force, for it merely prevents the operation in particular cases of an enactment which has itself ceased to operate in any case. Was it allowed by the statute law revisers to remain on the statute-book as being supposed to afford a sort of gloss upon the saving clause *in pari materiâ* of the Licensing Act, 1872?

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## 'LAW JOURNAL REPORTS' FOR AUGUST.

In the present month there are nineteen cases reported in the Chancery Division (pp. 473–536), of which three are appeals; fifteen cases in the Queen's Bench Division (pp. 457-504), of which six are appeals; seven magistrates' cases (pp. 89–104); six Probate, Divorce, and Admiralty cases (pp. 57–72), of which one was in the Court of Appeal; and four Privy Council cases (pp. 17–32). The number also includes the Statutes of the Realm, cc. 19 to 25.

In the Chancery Division, in the case of *In re Watson & Son*, Mr. Justice Chitty made a special form of supervision order in the winding up of a company. The same judge, in the case of *The Government Stock Investment Company*, decided that the alterations of a company's memorandum of association allowable under the Companies (Memorandum of Association) Act, 1890, are expressly confined to the definite matters mentioned in section 1, subsection 5. *Fisher* v. *Jackson* was a case of wrongful dismissal of a schoolmaster to whom relief was granted without his having obtained the consent of the Charity Commissioners under the Charitable Trusts Act, 1853, s. 17. *In re Northage* raised complicated questions with respect to the distribution of accumulated profits of a company by way of bonus dividends, and decided as to whether certain funds were capital or income. According to *In re Warren* (*Lim.*) a Scotch proceeding in sequestration by a landlord against a tenant company for future rent is a sequestration within the Companies Act, 1862, s. 163, and is prohibited from enforcement after the commencement of the winding-up, but under section 87 the Court has power to give the landlord leave to proceed with the sequestration. *The John Morley Building Company* v. *Barras* involved the construction of a number of articles in Table A of the Companies Act, 1882. By *In re Johnson* it is settled that an interest under a will, ambulatory at the date of the marriage settlement of an infant, but coming into operation during the marriage, was 'property in expectancy' within section 1 of the Infants' Settlement Act. In *Coxon* v. *Gent* it was held that an order under the Companies Act, 1862, dissolving a company, was a bar to an action by a creditor against the directors charging misfeasance, but not fraud and not impeaching the dissolution. *In re Brace* decides that a general devise of real estate does not operate under the Wills Act, s. 27, as an exercise of a power to revoke existing uses. *Ex parte King's College, Cambridge*, was concerned with the construction of the Universities and College Estates Amendment Act, 1880, and the University and Colleges Estates Act, 1858, as they affect the erection of new buildings. By *In re The Abstainers and General Insurance Company* it is decided that the Court will not, as a matter of course, allow a company to reduce its capital by writing off as 'capital unrepresented by available assets' the amount of preliminary expenses incurred in the formation of the company. In *Witherby* v. *Rackham* Malins's Act was held large enough to com-

prise legal *choses in action—e.g.* a policy of life insurance effected by a woman before her marriage. In *In re Briggs and Spicer* the Court declined to force on a purchaser a title derived from the trustees of a voluntary settlement. Interesting and complicated questions of doubtful domicil, service out of the jurisdiction and conflicting jurisdictions were raised in the case of *In re De Penny. Morris, Wilson & Co.* v. *The Coventry Machinists Company* assimilates the practice in amendment of particulars of objection in a patent action to that with regard to a registered design. In *In re Taylor, Stileman and Underwood* security taken for solicitors' costs was held to be *primâ facie* evidence of waiver of lien. *In re Thorpe* was an administration action in which it was held that an agreement by which an executor made a profit of his office could not be set aside by a summons in the action. *Richards* v. *Butcher* was a case of an improper registration of a trade-mark. According to *In re The National Debentures and Assets Corporation* the Court can go behind the certificate of incorporation of a company to ascertain whether it consists of seven members.

In the Queen's Bench Division *Regina (on the prosecution of Mitchell)* v. *The Secretary of State for War* decides that the Court has no jurisdiction to hear an application for increased pay by a retired army officer. *Jones* v. *Foley* was a case of landlord and tenant, and of the operation of a justices' order requiring possession to be given up within twenty-one days under 1 & 2 Vict. c. 74. *Sowerby & Co.* v. *The Great Northern Railway Company* decided a point of construction of the Great Northern Railway and East Lincolnshire Railway Acts Amendment Act, 1850, s. 13. In *Bowen* v. *Watson* it was held that a person who has been imprisoned for withholding a friendly society's money cannot be sued for the amount in a civil action. *Bowen (appellant)* v. *Harding (respondent)* was a case of income-tax deduction in respect of a joint salary of husband and wife. *Dillon (appellant)* v. *The Corporation of Haverfordwest (respondents)* raised a question of deduction of income-tax by a corporation which supplied gas to private customers. By *Dobson* v. *Festi & Co.* it was decided that Order IX., rule 6, does not apply to foreign partnerships not subject to English law. In *Cawse* v. *The Committee of the Nottingham Lunatic Asylum* the defendants were not deprived of exemption from income-tax on the ground that they kept paying as well as charity patients. *Francis* v. *Dutton* was an application to County Court practice of the maxim: 'Qui facit per alium, facit per se.' *Lamb* v. *The Great Northern Railway Company* involved the joint operation of the Truck Acts, 1830 and 1887. Questions under a bill of sale and an agreement for lien and repurchase were adjudicated upon in *Beckett* v. *The Town Assets Company.* By *Regina* v. *The Governor and Company of the Bank of England* it was decided that only persons having a *bonâ fide* interest are allowed to inspect the unclaimed dividend book of the bank. In *Hunt* v. *The Great Northern Railway Company* a publication by a railway company of acts of negligence by its servants was held to be privileged. *In re Louis, ex parte The Incorporated Law Society* decided what amounts to the practice as a solicitor of an unqualified person. In *In re Brandreth* a long period of good conduct restored to the rolls a solicitor who had been convicted of a criminal offence.

In the Magistrates' Cases, in *Westmore* v. *Paine* strict compliance was required with the Summary Jurisdiction Act, 1879, for the purpose of stating a case for the opinion of the Queen's Bench Division. In *Slaughter* v. *The Mayor, &c. of Sunderland* hoardings were held not to be a new structure within the Public Health Act, 1875, s. 175. In *Regina* v. *Griffiths* (Crown case reserved) a conviction was quashed for want of strict compliance as to dates with the Bankruptcy Act, 1890, s. 26, and the Debtors Act, 1869, s. 11. In *Budd (appellant)* v. *Lucas (respondent)* it was held that the Merchandise Marks Act, 1887, s. 5, subs. 1 (*d*), is not limited to cases in which a trade description is used in actual physical connection with goods. *The City and South London Railway Company (appellants)* v. *The London County Council (respondents)* was a case of the application of the Metropolis Management Act, 1862, s. 75, to the plans of a railway company. *Fletcher* v. *Field* decides that coke is not coal within the Metropolitan Streets Act, 1867, s. 15, and that a conviction for unloading coke between 10 A.M. and 6 P.M. cannot be sustained. In *Barlow* v. *Terrill* it was held that under the Nuisances Removal Act, 1863, s. 2, when there is no sale or exposure for sale of unwholesome meat there can be no conviction.

In the Probate, Divorce and Admiralty Division, in *The August* a question of breach of contract and conversion was held to be determinable by the law of the flag of the ship on which the goods are shipped. *Witt* v. *Witt* involved the effect of the conduct of parents with respect to the custody of children. In *Lander* v. *Lander* the Court refused to insert the 'dum sola et casta' clause in an order for maintenance. In *Wood* v. *Wood*, also, the Court of Appeal decided that the Court has a discretion as to the insertion of this clause. *The Elton* was a salvage action, and decided a question of 'proper parties' within Order XI., rule 1 (*g*). In *The Rialto* the Court set aside an agreement for salvage service on the ground that the parties were not contracting upon equal terms.

In the Privy Council, in *Plomley* v. *Shepherd* the effect was considered of the New South Wales Act (26 Vict. No. 20) on the lands of an intestate married woman whose husband survived her. *Gibbs* v. *Messer* decided the effect of the registration of a forged deed with respect to the liability of the registrar. *Murugaser* v. *De Soysa* was a Ceylon case, and defined the effect of a fiscal sale of real estate subject to a mortgage of unascertained amount. *Musgrove* v. *Chun Teong Toy* was the Chinese immigrant case under the Chinese Immigrants Act, 1888 (Victoria), and establishes the principle that an alien has no legal right enforceable by action to enter British territory.

## UNWRITTEN CHAPTERS IN THE LAW OF DESIGNS.

### V.

(*Continued from page* 492.)

### HEYWOOD *v.* POTTER.*

SECTION 51 of the Designs Acts, 1883-88, repeating in substance a provision which is as old at least as 5 & 6 Vict. c. 100, s. 4, provides that: 'Before delivery on sale of any articles to which a registered design has been applied, the proprietor of the design shall cause each such article to be marked with the prescribed mark or with the prescribed word or words or figures, de-

* 1853, 1 E. & B. 439.

noting that the design is registered, and if he fails to do so the copyright in the design shall cease unless the proprietor shows that he took all proper steps to ensure the marking of the article.'

In the present paper we propose to trace the gradual development of the law as to the *marking* of registered designs, commencing our survey with the leading case of *Heywood* v. *Potter*. Here A., the proprietor of a design applied to paper hangings, registered under 5 & 6 Vict. c. 100, published and sold certain pattern-pieces* containing the whole design not bearing the letters 'Rd.' and the proper prescribed number. B. copied the design from such pattern-pieces and published articles with the design applied to them. A. sued B. for infringement. B. alleged by way of defence, *inter alia*, that the patterns ought to have been, and had not been, marked;† and thus the issue was neatly raised whether the Act applied to the sale of a copy of a registered design as a pattern. The Court of Queen's Bench (Mr. Justice Coleridge dissenting) held that it did, and, therefore, that A. was not protected against B. or any other person that copied his design from the unmarked pattern-pieces. The *ratio decidendi* of this case is tolerably clear, and is well stated in the judgment of Chief Justice Campbell: 'The Legislature, in giving protection to the proprietors of design, requires that every article of manufacture containing the design secured shall, *if put forth by the manufacturer in the ordinary course of trade*, contain certain marks as a caution to the public that the design of such article has been secured to the proprietors by registration. . . . I do not see that the use to which the article is to be applied affects the question. It is equally an article of manufacture and equally an article of trade, whether it be manufactured and sold as a pattern or for actual use; and, if it contains no marks of registration is just as likely to mislead a purchaser.' The effect of *Heywood* v. *Potter* may be stated shortly in somewhat different terms. The Legislature has given to the author or the owner for value, of a new and original design, the right to prevent other people from copying it for certain limited periods. There are two conditions precedent to the exercise of this right—(1) the design must in fact be registered; (2) the fact of registration must, before sale, be expressed in the prescribed form on the article to which the design is applied, so as to inform the public what it is that they may not copy. Obviously, the purpose of the sale is quite immaterial.

The *ratio decidendi* of *Heywood* v. *Potter* was followed in *Sarazin* v. *Hamel* (1863), 32 Law J. Rep. Chanc. 380, and recently in *Blank* v. *Footman* (1888), 5 P. O. R. 653.

1. In *Sarazin* v. *Hamel*, the plaintiffs, who were merchants and dealers in lace at Calais, and their agents in England, sued for an injunction to restrain the defendant, who was engaged in the same trade at Nottingham, from infringing their registered design for ornamenting lace. On behalf of the defendant it was alleged and proved that the plaintiffs had sold large quantities of lace abroad manufactured according to the registered design, but not containing the prescribed *indicia* of registration, and Lord Romilly, M.R., held that this omission was fatal to the plaintiffs' claim. 'The object of the Act,' said his lordship,* 'obviously is that the public should be warned against pirating any designs which are registered, that they should not by that means get into a lawsuit by reason of their imitating any designs which are previously registered. . . . Whatever the original manufacturer who has got a registered design sells, a separate piece it may be, he must give notice upon that piece that it is registered. . . . It would be a most singular anomaly if the Act does not apply to whatever they sell wherever it is sold. The plaintiffs are manufacturers in Calais; if they sell a large quantity of these goods in Calais to A. B., an Englishman, for import to this country, it is contended that they need not have any mark upon them to show that they are registered, but if they sell the same goods to the same man in Dover then they must show that they are registered. . . . The spirit and meaning of the Act and the plain words used apply everywhere, wherever the proprietor of the registered design sells the goods.'

2. *Blank* v. *Footman* was an action for the infringement of a design for corset trimming. The defendant objected that section 51 of the Designs Acts, 1883–88, had not been complied with. It appeared that the trimming had been made up into packets, each of which contained a large number of yards and was surrounded with a paper band, having printed thereon 'Rd.' and the registered number of the pattern, as prescribed. Mr. Justice Kekewich repelled the objection: 'As regards the marking,' said his lordship, 'the real point is, under section 51, whether Mr. Blank loses the benefit of his registration . . . because the different articles which have been sold in the market (*i.e.* the corsets) have not been marked with the prescribed mark. . . . It has not been argued that the trimming itself ought to be marked . . . and it is admitted that it would be impossible to say where and how often it should be marked. It is obvious you could not mark every quarter of an inch, and that, even if you could do it, you could not in lace work like this preserve the thing as a useful thing if you were to stamp it with marks. . . . The Act says that a mark is to be placed before delivery on sale of any article to which a registered design is to be applied. . . If the proprietor of the design does not sell those articles of dress to which the trimmings are affixed, the section lays no liability on him to mark those articles of dress. What is to be marked by him is the article to which a registered design has been applied—*i.e.* the trimming. If he sells it in pieces of 144 yards, he must mark the pieces of 144 yards; if, on the other hand, he sells small pieces, whether for pattern or for use, he must mark each small pattern . . . in a way in which those things can conveniently be marked by tying on a label or by printing something on the packet in which it is. But he is not bound to mark anything but that which he sells, and that is the exact consequence of' *Heywood* v. *Potter*.†

(*To be continued.*)

* Copies of a registered design published in a book for sale need not have any registered mark attached to them: *Riego de la Branchardière* v. *Emery*, 4 Exch. 440. And see *Maple & Co.* v. *The Junior Army and Navy Stores*, 21 Chanc. Div. 369.

† If this point is to be taken, it must be raised on the pleadings (*Sarazin* v. *Hamel*, 1863, 32 Law J. Rep. Chanc. 378).

* We have changed the order of some of the following sentences in order to bring out more clearly the dependence of the decision on *Heywood* v. *Potter*.

† As to the claim of the cotton manufacturers for exemption from section 51, see the 'Patent Office Inquiry' of 1887, Evid. Ans. 1694. It was very properly rejected by the committee. Report, p. xvi.

## LEGISLATIVE PROGRESS.

In the House of Lords the royal assent was given by commission to the following bills:—

Crofters' Common Grazings (Scotland) Bill.
Brine Pumping (Compensation for Subsidence) Bill.
Manchester Ship Canal Bill.

The Commons amendments to the Purchase of Land (Ireland) Bill were agreed to.

Bills read a third time and passed:—

Trusts Amendment (Scotland) Bill.
Tramways (Ireland) Act, 1880, Amendment Bill.
Markets and Fairs (Weighing of Cattle) Bill.
County Councils (Elections) Bill.
Elementary Education Bill.
Factories and Workshops Bill.
Lunacy Bill.
Land Registry (Middlesex) Deeds Bill.
Chartered Accountants Bill.
Public Health (London) Bill.
Penal Servitude Bill.
Local Registration of Title (Ireland) Bill.
Public Health (Scotland) Acts Amendment Bill.

Bills beyond second reading:—

Sale of Foods Bill (report agreed to).
Highways and Bridges Bill (report agreed to).
Turbary (Ireland) Bill (through committee).
Metalliferous Mines (Isle of Man) Bill (through committee).
Post-Office Acts Amendment Bill (through committee).

First reading:—

Redemption of Rent (Ireland) Bill (from the Commons).

In the House of Commons.

The Lords amendments to the Public Health (Scotland) Bill were agreed to.

Third readings:—

Turbary (Ireland) Bill.
Redemption of Rent (Ireland) Bill.
Western Highlands and Islands (Scotland) Works Bill.
London County Council (Money) Bill.

Bills through committee:—

Conveyancing and Law of Property (1881) Act Amendment Bill.
Labourers (Ireland) Acts Amendment Bill.
Public Works Loans Bill.
Expiring Laws Continuation Bill.
Judicature Acts Amendment Bill.

Second reading:—

Coinage Bill.
Schools for Science and Art Bill.

New bill:—

To Amend the Law with respect to the Sale of Agricultural Fertilisers and Feeding Stuffs.

Bills withdrawn:—

Evidence Bill.
Rating of Machinery (No. 2) Bill.
Wild Birds Protection Act (1880) Amendment Bill.
Elementary Education (Continuation Schools) Bill.
Fire Brigades (Exemption from Jury Service) Bill.
Chartered Accountants Bill.

# Reviews.

## REED ON BILLS OF SALE.

*The Bills of Sale Acts*, 1878, 1882, *and* 1890. With an Epitome of the Law as affected by the Acts. By Herbert Reed, of the Inner Temple, Barrister-at-Law. Eighth Edition. London: Waterlow Bros. & Layton (Lim.). 1891.

The object of the Bills of Sale Acts, we are told in a note to the preambles to the Acts of 1878 and 1882, was to protect creditors, to give them a true idea of their debtors' position, and to prevent transactions by which the grantor is allowed to retain possession of property which the grantee may at any moment withdraw from the claims of creditors and dispose of as he thinks fit. The amendment Act, the author proceeds to say, while continuing this protection, is also designed to define the rights of bill of sale holders and borrowers of money, and to protect the latter against inequitable claims. Here it would have been well to have given a reference to the case of *The Manchester, Sheffield and Lincolnshire Railway Company* v. *The North Central Waggon Company*, 58 Law J. Rep. Chanc. 2191; 13 App. Cas. 554, where Lord Herschell pointed out that the object of the earlier Acts was entirely different from that of the Act of 1882. The aim of this work is to present a short statement of the law of bills of sale as affected by the Bills of Sale Acts, 1878, 1882, and 1890. The Acts are printed together, the reason assigned being that they are to be construed together. The policy of this mode of procedure is, in our opinion, somewhat doubtful, but we are glad to find that each Act is printed separately in the appendix (Part I.), so that each can be read continuously. A useful feature of the work is that the author has, in the interest of those at a distance from reports, given a full extract of the material facts of recent cases. There can be no doubt that at the present time the law as to bills of sale is very much confused and complicated. A codifying Act may be hoped for, but meanwhile Mr. Reed's book, where the reader can find such questions as What is a bill of sale? (p. 40 *et seq.*) and What its form must be (p. 140 *et seq.*), carefully discussed, will be found a very useful and trustworthy guide.

## TWO PAMPHLETS ON INTERNATIONAL LAW.

*International Fishery Disputes.* By T. H. Haynes, Esq. London: Cassell & Company (Lim.). 1891.
*International Law.* Its History, Principles, Rules, and Treaties. By W. Griffith, Barrister-at-Law. The Hansard Publishing Union. 1891.

Readers of Parliamentary intelligence have had recently presented to them a complicated question of international and constitutional law. The interest naturally attaching itself to the debates thereon has been increased by the appearance at the bar of the House of Commons of the venerable representatives of the colony of Newfoundland. It is a principle of English legislation beneficial to the public, and not without its advantages to the English barrister, that though questions of public policy can only be discussed by members of their re-

spective Houses of Parliament, yet where protection is sought for the rights and interests of public bodies, or even of private individuals, such persons may, after presenting their petitions at the bar of the House, represent and argue their claims by counsel. The bar of the House is a somewhat awful place. In the Commons, even a minister of the Crown, when he has any papers of special importance to present, goes to the bar, and on being called by the Speaker brings them up, and they are then ordered to lie upon the table. This usage is probably a relic of the times when the Cabinet had no existence, and each minister was a privy councillor, independent of colleagues. It is below the bar of the Commons that unsworn members—for example, the late Mr. Bradlaugh—have had to sit. At the bar of either House witnesses are examined on oath and prisoners brought up. And readers of the State Trials may remember that it is at the bar of the House of Lords that peers are tried. Mr. Haynes's and Mr. Griffith's two pamphlets have opportunely appeared at the particular crisis. The former gives one of the clearest *résumés* of the treaties involved that we have seen, the latter sets out the principles of interpretation applicable to them. The former argues that privileges which are conceded generally to merchant ships in foreign ports should be extended to foreign fishing ships. This certainly would lessen the number of treaties in force and relieve jurists from the difficulties of interpreting those relating to the fisheries. But it will be a long time before any Government can be expected to surrender in this way its territorial rights over the waters adjacent to its own coasts ('Hale, De Jure Maris.') Humanity may properly require that merchantmen in distress shall have a right to seek and enter a foreign port; policy may dictate the wisdom of inviting commerce by admitting general trading ships on payment of reasonable port charges; but the same policy would prevent those ports being made the basis of fishing operations by foreigners in the adjacent seas, unless the foreign Government consented to some equivalent. Mr. Griffith's work, judging from its table of contents, is designed as an historical introduction to international law for the use of lawyers and diplomatists. His study of the codes of France and of the United States seems to have led him to form the opinion that international law itself may be reduced to the form of a manual or code adapted for practice. The code, however, though it might enlighten the nations, would merely crystallise the *casus belli*. And it is, we think, to arbitration courts and an ameliorated public opinion that we must look for pacific and inexpensive solutions of controversies which must arise. The colony of Newfoundland, like those of New South Wales and Van Diemen's Land, was acquired by discovery or simple occupation, consequently it is not subject, and has not been subject, to the legislation of the Crown, but its members have received as their birthright the common law of England as it existed at the period when the colony was acquired. Important Acts relating to Newfoundland were passed by the English Legislature in the fifth year of George IV., and 2 & 3 Wm. IV. c. 78 gave to the colony a legislative assembly and authority to repeal or alter the Acts of George IV. Of course these Acts in no way lessen the obligation of the English Government to observe and perform the treaty obligations which had been contracted with the sovereignties of France and the United States, neither do they impair the power of the Imperial legislation to confirm, enlarge, restrain, or abrogate the powers granted to Newfoundland, though it was, on the other hand, both just and expedient to listen to the claims of our brethren on the further side of the Atlantic (Coke, 4 Inst. 36). Fortunately the difficulties have recently been settled by a prudent and salutary compromise, whereby the Legislature of Newfoundland has continued the existing *modus vivendi* between French and English subjects until the end of 1893. Otherwise even the treaties might have been liable to criticism and the opinion hazarded that the Crown cannot without legislative sanction grant an exclusive right to trade, and that the Crown acted *ultra vires* in some of the fishery concessions referred to (*East India Company* v. *Sandys*, 10 State Trials, 371; 3 Campbell's 'Lives of the Chancellors,' 581). Sir R. Bethell (Attorney-General) and Sir H. S. Keating (Solicitor-General), in their joint opinion upon the Hudson's Bay Company's charter, said: 'With respect to any rights of government, taxation, exclusive administration of justice or exclusive trade otherwise than as a consequence of the right of ownership of the land, such rights could not be legally insisted upon by the Hudson's Bay Company as having been legally granted to them by the Crown' (Blue-book Report, A.D. 1857).

## STUDD ON THE LAW OF TITHES.

*The Law of Tithes and Tithe Rent-charge.* Being a Treatise on the Law of Tithe Rent-charge, with a Sketch of the History and Law of Tithes prior to the Commutation Acts, and including the Tithe Act of 1891, with the Rules thereunder. By Edward Fairfax Studd, Barrister-at-Law. Second Edition (Revised and Enlarged). London: Stevens & Sons. 1891.

The early history of tithes is, to a great extent, obscure. It is known, however, as we are told in the first chapter of the work before us, that they existed in England in Anglo-Saxon times, and Lord Selborne's researches have led him to the result that Edgar was the first king to make any law attaching a legal penalty to the non-payment of tithes. To the same monarch, according to the same authority, is also due the law which gave permission to anyone who had on his land a church with a burial-place to give a third of the tithes to that church, an enactment which, in Lord Selborne's opinion, is the origin of our modern parishes. The reader who desires to pursue this subject may be referred to Mr. Studd's first chapter, where he will find an interesting sketch of the history and law of tithes prior to the Commutations Act. In the year 1836 the Act for the commutation of tithes into a money payment or rent-charge was passed, and though the process of commutation has been for some time practically completed, it is yet necessary to consider it to some extent. Commutation and apportionment accordingly form the subject of the next chapter of this careful work. Discharge from tithe rent-charge and redemption are then considered. Thus far we have been occupied chiefly with ancient law, but when we come to 'recovery of tithe rent-charge' we are encountered by the new procedure introduced by the Tithe Act of 1891. The present book will be found a handy and useful guide. The law prior to recent legislation is considered so far as it is necessary, and the effect of the recent changes is placed in a clear and intelligible way before the reader.

## ROSCOE'S 'NISI PRIUS.'

*Roscoe's Digest of the Law of Evidence on the Trial of Actions at Nisi Prius.* Sixteenth Edition. By MAURICE POWELL. In Two Volumes. Stevens & Sons (Lim.); Sweet & Maxwell (Lim.). 1891.

THE fifteenth edition of this trusty work, which first appeared in 1827, was brought out by Mr. Powell in 1884, since which date, amongst other important statutes, the Arbitration Act, 1889, and Bankruptcy Act, 1890, have been passed, cases upon cases have been heaped up in explanation of the Bills of Sale Acts and Married Women's Property Act, and Part II. of the work, which deals with that very miscellaneous head of law, 'Evidences in Particular Actions,' has required emendations and additions in points too numerous to mention; while the shorter Part I., which deals with 'Evidence in General,' has been broken in upon by the Oaths Act, 1888, and by decisions of such consequence as that in *Bosvile* v. *The Attorney-General*, 56 Law J. Rep. P. D. & A. 97, *Haines* v. *Guthrie*, 53 Law J. Rep. Q. B. 521, and *Hodson, in re; Beckett* v. *Ramsdale*, 55 Law J. Rep. Chanc. 241. Accuracy and succinctness have always been the leading features of Roscoe, and we are glad to find that the reputation for these all-important qualities is fully kept up in the present edition. We cannot refer to better evidence of what we mean than to the modes in which the Married Women's Property Act and the cases upon it have been dealt with in less than five pages, and the Bills of Sale Acts and the cases upon them in little more than twenty. We very much regret, however, to notice that in no case is there a reference to more than one set of reports, and we think that we have special ground for complaint on this head from finding that two references are still frequently given to cases bearing date before 1866. And, curiously enough, Mr. Powell has omitted to state what has always seemed to us to be the leading point in *In re Hodgson; Beckett* v. *Ramsdale*, 55 Law J. Rep. Chanc. 241—*i.e.* that there is no rule of law which precludes a claimant from recovering against the estate of a deceased person on his own testimony without corroboration, nor even does the index contain the title 'Corroboration.' The index, we should observe, is a remarkably full and well-arranged one, and, very conveniently for the reader, in the table of statutes 'the pages at which the sections of the statutes are set out, or their effect stated, are indicated by figures in black type.' The price of the two volumes, which contain more than 1,800 pages between them (being an increase of about 700 pages upon the eleventh edition, which appeared in 1865), is 2*l.* 10*s.*

# Correspondence.

## THE COUNTRY CIRCUITS.

SIR,—I hope that you will allow me to add to the letter which you did me the honour to publish last week by saying that by postponing the commission-day at Nottingham the learned judge of assize was able to try two of the ten causes which were entered for trial at Derby. The grand result of the assizes is as follows:—

At Leicester and Derby there were altogether fifteen causes for trial, of which three were tried and the remaining twelve either withdrawn, compromised, or the place of trial changed owing to want of time to try them.

At Lincoln, the second largest county in England, there was only half a day available for the trial of causes.

This state of things has been going on in all the country circuits since the one-judge system was tried; and yet there are found persons who profess to be astonished that there are so few causes for trial on circuit.

What becomes of the litigation which must naturally arise no one knows; but it seems certain that some of the cases which ought to be tried in the High Court are tried by private arbitration; but it is manifest that injustice must frequently be submitted to by persons who despair of bringing their opponents to justice. Some unhappy country litigants have tried the plan of entering their causes for trial in Middlesex, with the result that they have been ordered to pay all the extra costs occasioned by that proceeding.

Their position is, therefore, now this: if they enter their causes at home, they cannot get them tried; if they enter them abroad, they are heavily fined. I feel that I ought to add that things would have been even worse on the Midland Circuit this time if it had not been for the extraordinary industry, patience, and courtesy of the learned judge of assize, who has seldom risen from Court before 7 P.M., but has frequently sat far into the night. I believe, however, that his lordship has found out by experience that even he cannot do the work of two judges.

A JUNIOR.

## *THE INCOME-TAX COMMISSIONERS* v. *PEMSEL.*

SIR,—Surely the judgment of the majority of the peers is wrong, not only for the reasons so pointedly given by Lord Bramwell, but because (1) the words 'hospital school or almshouse' which precede the words 'charitable purposes' favour the more restricted construction of those words; and (2), while all liabilities to a tax ought to be construed liberally in favour of the subject, all exemptions from a liability once established ought to be construed strictly in favour of the revenue. This rule will be found laid down by the Court of Exchequer in *The Great Western Railway Company* v. *The Attorney-General*, 5 H. & N. at p. 868.

J. M. L.

# Unreported Cases.

## COUNTY COURTS.

INFANT—NECESSARIES—TOBACCO.

THE case of *Hargreaves* v. *Manders* came before his Honour Judge Bayley on July 29, at the Westminster County Court. The plaintiff sued the defendant for a quantity of cigarettes and cigars supplied to him. The defence of infancy was set up, and the defendant's father appeared and produced the certificate of his son's birth, showing that he was well inside of twenty when the goods were supplied.—Mr. Edlin, plaintiff's counsel, asked if it was not a fact that the defendant had a private income of his own.—The father of the defendant refused to answer the question, and his Honour held that he need not do so.—Mr. Edlin: I submit that it is a material question.—His

Honour: If he was an infant you cannot do anything.—Mr. Edlin: I submit they were necessaries.—His Honour: What, tobacco necessary for an infant?—Mr. Edlin: Yes, there is nothing extravagant in the order; it is for cigarettes and 100 cigars. The only case in the books against me is thirty years old, and I submit that in these go-ahead days what were not necessaries thirty years ago may be now for a young man in society.—His Honour: If you have any evidence to show that tobacco has ever been held to be necessary for an infant, I shall be glad to hear it.—Mr. Edlin: I submit it is, if it is required medicinally, your honour.—His Honour: It is not suggested that these cigarettes and cigars were supplied medicinally.—Mr. Manders, sen.: They were supplied when he was a lad of seventeen.—Mr. Edlin: Nineteen, sir; you may as well speak the truth.—His Honour said it was clear that the defendant was an infant when the goods were supplied. He could not hold that tobacco was necessary for an infant, and there must, therefore, be a verdict for the defendant, with costs.

RAILWAY COMPANY—NEGLIGENCE.

At Marylebone County Court, on Tuesday, July 28, before his Honour Judge Stonor and a jury, was heard the case of *Burgess* v. *The Metropolitan Railway Company*. The plaintiff, a workwoman, sued the defendant company for damages in respect of personal injuries through the negligence of one of the defendants' servants in pushing against a person of the name of Albert Martin, on the platform of the company's station at Baker Street, and causing him to collide with the plaintiff on March 30 last. The company's servant in question was the guard of the train by which the plaintiff had travelled to Baker Street. After the latter had got out and the train started, the guard, in endeavouring to regain his compartment, ran some way along the platform, and, stretching out his left arm, struck Martin, who was more than three feet from the carriages, violently on the breast and twisted him right round, when he fell against the plaintiff, and their heads came in contact. The plaintiff fell to the ground stunned and much hurt, and was confined to her bed for nearly a fortnight. She was unable to follow her employment for a considerable time, and still suffers from the effects of the injuries she received. There was some conflict of evidence as to whether the train in question consisted of the carriages of the defendant company or of some other company using their railway, platform, and servants, but there was no doubt the plaintiff rightly used the train in question. The jury found that the train consisted of the carriages of the defendant company, that the guard was the servant of the company, and they returned a verdict for the plaintiff for 29*l*.—Mr. Vennell was counsel for the plaintiff and Mr. Edwards for the defendants.

## HONOURS EXAMINATION FOR SOLICITORS.

JUNE, 1891.

AT the examination for honours of candidates for admission on the roll of solicitors of the Supreme Court, the examination committee recommended the following candidates as being entitled to honorary distinction:—

FIRST CLASS (in Order of Merit).

HERBERT STANLEY SUGDEN, who served his clerkship with Mr. James Curtis, of London.

ARTHUR EDWIN CLARKE, who served his clerkship with Mr. John William Smith, of Andover; and with Messrs. Garrard, James & Wolfe, of London.

EDWARD AUBREY WHITE, who served his clerkship with Mr. Henry Brown White, of Warrington.

SECOND CLASS (in Alphabetical Order).

COLVIN BRANDRETH, B.A., who served his clerkship with Mr. George Edward Frere, of London.

EDWARD FRANK CHAMPION, who served his clerkship with Messrs. Smiles & Co., of London.

BARUCH COHEN, who served his clerkship with the late Mr. Frederick Arthur Foster and Mr. Ernest Stratton Gerrish, of London.

HAROLD MARTIN, M.A., who served his clerkship with Mr. W. A. Webb (of the firm of Messrs. T. & T. Martin & Hime), of Liverpool.

GERALD MARTINEAU, LL.B., who served his clerkship with Mr. Richard Woolcombe (of the firm of Messrs. Walker Martineau & Co.), of London.

ARTHUR MUSGROVE, who served his clerkship with Mr. Herbert Moser, of Kendal; and with Messrs. Slark & Metcalfe, of London.

EDWYN TURNER ROBERTS, who served his clerkship with Messrs. Helder & Roberts, of London.

ARTHUR SMITH, who served his clerkship with Mr. Frederic Johnson, of Faversham.

HARRY GLANVILLE SOUTHWELL, who served his clerkship with Mr. T. C. Bourne (of the firm of Messrs. T. & R. Swan & Bourne, of Lincoln); and with Mr. C. R. F. Haddelsey, of Caistor.

HENRY SQUIRE STEELE, who served his clerkship with Mr. John Allsopp and Mr. Robert Hugo Montagu Baker (of the firm of Messrs. Francis Baker & Watts), both of Newton Abbot; and with Messrs. Church, Rendell, Tod & Co., of London.

HARRY MORGAN VEITCH, who served his clerkship with Messrs. Stone, Simpson & Sons, of Tunbridge Wells; and with Messrs. Collyer, Bristowe, Russell & Hill, of London.

STANLEY BALWIN WORTH, who served his clerkship with Mr. Raphael Ambrose Biale, of London.

THIRD CLASS (in Alphabetical Order).

EDWIN HUGH FALKWINE BRADBY, B.A., who served his clerkship with Messrs. Bircham & Co., of London.

ERNEST JAMES CARLISLE, B.A., who served his clerkship with Mr. George Hadfield, of Manchester; and with Messrs. Johnson, Weatherall & Sturt, of London.

ARTHUR WILLIAM CUFF, who served his clerkship with Mr. Wilfred Ivanhoe Thomas, of London.

NORMAN DAVIDSON, who served his clerkship with Mr. William Thomas Hamlin (of the firm of Messrs. Hamlin, Grammer & Hamlin), of London.

JONAH DAVIES, who served his clerkship with Mr. Wm. Morgan Griffiths, of Carmarthen.

JOHN ARTHUR EDDISON, B.A., who served his clerkship with Mr. William Simpson Hannam (of the firm of Messrs. North & Son), of Leeds; and with Messrs. Vincent & Vincent, of London.

THEODORE FISHER, who served his clerkship with Mr. John Simpson (of the firm of Messrs. Hayton & Simpson), of Cockermouth.

BERNARD EDWARD HALSEY, who served his clerkship with Mr. Samuel Bircham, of London.

WILLIAM NELSON HARRIS, who served his clerkship with the late Mr. Alfred Hallworth Crowthers, of London.

HENRY EGAN HILL, B.A., LL.B., who served his clerkship with Mr. Joseph Prosser Hill (of the firm of Messrs. Williamson, Hill & Co.), of London.

EDWARD PERCIVAL WHITLEY HUGHES, who served his clerkship with Mr. Richard Hughes Pritchard, of Bangor.

EDWARD BOARDS KNIGHT, who served his clerkship with Mr. William Benning Pritchard, of London.

ALEXANDRA JOHN WAKEMAN LONG, who served his clerkship with Mr. Samuel Horace Candler (of the firm of Messrs. Kingsford, Dorman & Co.), of London.

George Michael Magee, who served his clerkship with Mr. Charles Aloysius Maria Lightbound; and with Mr. George Dickinson (of the firm of Messrs. Hill, Dickinson & Co.), of Liverpool.

James Robinson Meakin, who served his clerkship with Mr. Frederick Wadsworth (of the firm of Messrs. Watson, Wadsworth & Ward), of Nottingham; and with Messrs. Warren, Gardiner & Murton, of London.

Albert Thomas Mills, who served his clerkship with Mr. John Evans Rains, of Manchester.

Godfrey Mosley, B.A., who served his clerkship with Messrs. Bannister, Williams & Ram, of London.

Frederic William Reed Sale, who served his clerkship with Mr. Edwin Leedam Hough and Mr. Edwin Hough, of Carlisle; and with Messrs. Harrison & Powell, of London.

Stephen Malcolm Scammell, who served his clerkship with Mr. Albert Besant, of Portsea.

William Hubert Smith, B.A., who served his clerkship with Mr. Alfred James Shepheard, of London.

Albert William Joseph Walker, who served his clerkship with Mr. Joseph Hayton (of the firm of Messrs. Hayton & Simpson), of Cockermouth; and with Messrs. Speechly, Mumford & Co., of London.

Frederic James Whiteley, who served his clerkship with Mr. Frederick Douglas Hutton (of the firm of Messrs. Killick, Hutton & Vint), of Bradford; and with Messrs. W. J. Flower & Nussey, of London.

Charles Walter Woolnough, who served his clerkship with Mr. Walter William Woolnough, of London.

The council of the Incorporated Law Society have accordingly given class certificates and awarded the following prizes of books:—

To Mr. Sugden, the prize of the Honourable Society of Clement's Inn—value 10 guineas; and the Daniel Reardon prize—value about 25 guineas; and the John Mackrell prize—value about 12*l.* 10*s.*

To Mr. Clarke, the prize of the Honourable Society of Clifford's Inn—value 10 guineas.*

To Mr. White, the prize of the Honourable Society of New Inn—value 5 guineas.

The council have given class certificates to the candidates in the second and third classes.

One hundred and fourteen candidates gave notice for the examination.

By Order of the Council,

E. W. Williamson,

Secretary.

Law Society's Hall,
Chancery Lane, London: July 24.

## SEARCHES FOR HEIRS-AT-LAW AND OTHERS.

Mr. Sydney H. Preston, of 1 Great College Street, Westminster, writes:—

Very many people are largely interested, without their knowledge, in the 'agony' column notices addressed to heirs-at-law, next-of-kin, and others. Such notices often contain a rich variety of romantic incident, although usually occupying but a few lines of space. As a very large number of these items of good news have recently been advertised, I venture to send you an index of the more noticeable cases:—

The following persons, who have dropped out of sight, are sought: Fred. W. Allen (Hastings), Sarah Alsford, Sarah and Fanny Bell, Eliza Boyton, Richard Brayshaw or children (1,875*l.*), Lucy Buxton (husband drowned at sea), John, Elizabeth, Lilly, William, George, and Jess Cameron, John Chambers (Essex), Louisa M. Collingwood (or Forman), Charlotte M. Collis (Plymouth), William Corpes (groom), Joseph Darnborough (seaman), Thomas Davis (went to America, 1854), Donald and John Douglass, G. P. Dugdell (Melbourne), Joseph England (formerly of Norwich), Mary Flanegan (Liverpool), William Fradgley (entitled to an income for life), Robert Freeman (police-constable), Mary Jane Green, Mary Gunn (Dingwall), Charles W. S. Hillier (Liverpool), Alexander Hoar, Rev. John Jessop, Robert Jones (formerly of Liverpool), William Jones (Ealing, York, and Chelsea), A. S. Jonkles, Leenw family, Barbara and Elizabeth M'Donald, Samuel Mann (postman and carpet designer), Watkin, Matthew, and John Davies (North Wales), Ann Mayo (widow), Charles Henry Nicholas (631*l.*), Reed Ockenden (deserted at Peru, 1863), W. R. Orger, John and Betsy Pilgrim, Phœbe Pitman (born 1826), Plume family, John W. Roberts (emigrated, 1856), Margaret R. Groat, Connop A. Rogers, Charles Thirkettle (left home 1843), Caroline Sales, Frank Short (son of William), Richard Skeels, Emma Tortell, Walter W. Tyler (America), John Woodward (or representatives), Emily and John A. Wharran, William A. Whistler, F. T. H. Wilcocks (Buenos Ayres), Charles and John Wilson (Lincoln), and John Wragg (emigrated 1869).

In addition to the foregoing, the next-of-kin, heirs, or representatives of the following were sought: E. Barnes (died abroad), Hannah Binns (died 1854), F. S. Blogg (printer), Emily M. Bowman (Edinburgh), Henry Buckton (436*l.*), Elizabeth Cameron (died 1831), Kitty Carey (Kent), Joseph Crosby (Daventry), Joseph Cunningham (pawnbroker), William Dickin (Stafford), Elizabeth S. Dobson, Joseph Gilder (Huddersfield), S. F. Harte (of Vienna, Brazil, Australia, and London), Henry W. Hayes (Middlesex), Ann Heaton (Southport), John Hunt (Denbigh), Jane Jones (Co. Carnarvon), Sarah Mayo, Mustapha Mustapha, F. W. O'Connor, Jane Powell (Southampton), John Renny (3,397*l.*), Frances Robinson, Mary A. Russell (London), John Tanner (1,000*l.*), Christopher Thompson, Catherine Vaughan, Agnes Warn (Kent), Daniel Wilcox (Liverpool), Caroline Wright (Penrith), and David Young (Tahiti).

Many persons expect to find 'a fortune in an advertisement,' and I hope that the cases above noted may prove not only that fortunes do thus accrue, but that such windfalls are the outcome of most romantic incidents.

* The amount available for this prize at this examination is as above stated.

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Damp Beds.—The mischief wrought by damp beds unfortunately does not usually react upon its heedless originators. The sole sufferer is the luckless occupant, who, forgetful of the buyer's *caveat* and all that it implies, buries himself within the chill of the half-dried bedclothes. In a recent instance, in which the law was appealed to, the tables were turned. The plaintiff, who, with his family, had for several days occupied a room in a seaside restaurant, was then told that the apartment was let and he must accept another. Here the trouble began. Illness, with its expenses, followed, and the final cost, incurred in consequence of his too unceremonious host, amounted to 150*l.* An action so unusual and a verdict so consonant with sanitary principles deserve to be kept in remembrance. It is to be hoped that their obvious teaching will not be forgotten by any who live by housing their fellow-men. As regards the latter, however, the maxim which inculcates prevention is still the best. Not even a money fine will always atone for the injury done by avoidable illness. *Caveat emptor*, therefore, notwithstanding. Let the traveller, however weary and inclined to sleep, first be careful that his bed is dry. In any case of doubt the use of an efficient warming-pan, or, if needful, even a change of bedding, should be insisted on, and the further precaution of sleeping between blankets rather than sheets is in such cases only rational. —*Lancet.*

## CALENDAR OF THE COUNTY COURTS.

FROM AUGUST 3 TO AUGUST 8.

| No. of Circuit | His Honour | Aug. 3 | Aug. 4 | Aug. 5 | Aug. 6 | Aug. 7 | Aug. 8 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Pitoulkes | — | — | — | — | Northwich | — |
| 14 | Judge Greenhow | — | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | — | — | — | Middlesborough | Stockton-on-Tees | — |
| 19 | Judge Barber | — | Derby | Derby | Chesterfield | Chesterfield | — |
| 26 | Judge Jordan | — | Newcastle | Lichfield | Stafford | Market Drayton | — |
| 47 | Judge Powell | — | Lambeth | Woolwich | Greenwich | — | — |
| 54 | Judge Metcalfe | — | Wells | Axbridge | Weston-supr-Mare | — | — |
| 57 | Judge Paterson | — | Taunton | Langport | Bridgwater | Wellington | Wellington |

# House of Lords Register.

THURSDAY, JULY 23.

*Little* v. *Port Talbot Company* (*The Apollo*) (ship—injury in dock—liability. Appeal from the Court of Appeal).—Allowed.

*Salt* v. *The Marquis of Northampton* (life insurance—policy—mortgage or absolute assignment—'once a mortgage always a mortgage.' Appeal from the Court of Appeal. Reported 59 Law J. Rep. Chanc. 460).—Part heard.

FRIDAY, JULY 24.

*Salt* v. *The Marquis of Northampton.*—*Cur. adv. vult.*

MONDAY, JULY 27.

*Walsh, Hall & Co.* v. *New Oriental Bank Corporation* (breach of contract of agency—breach of trust—agent selling to principal—fraud—concealment by agent from principal—Statute of Limitations).—Dismissed.

*The Niobe* (construction of marine insurance policy. Appeal from Court of Session in Scotland).—Dismissed.

*Clarke* (*pauper*) v. *Corfin Coal Company* (compensation to mother in respect of death of illegitimate son. Appeal from Court of Session in Scotland).—Dismissed.

TUESDAY, JULY 28.

*Welch* v. *Tennant* (husband and wife—wife's estate in England—sale moneys of estate—deed of revocation—Scottish law of donation—husband's right to estate. Appeal from Court of Session in Scotland).—Allowed.

*Johnson* (*pauper*) v. *Lindsay & Co.* (master and servant—injury to servant—common employment—sub-contractor. Appeal from Court of Appeal).—Allowed.

*Coregum Gold Mining Company of India* v. *Roper* (company—issue of shares at a discount—*ultra vires*. Appeal from Court of Appeal).—Part heard.

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, BOWEN, L.J., and KAY, L.J.

THURSDAY, JULY 23.

*Tharsis Sulphur and Copper Company* (*Lim.*) v. *Morel Brothers & Co. and Richards & Co.* (appeal of defendants Richards & Co. from judgment of Charles, J., dated May 2, at trial without a jury in Middlesex).—Dismissed.

FRIDAY, JULY 24.

*Société Générale de Paris* v. *Cheque Bank* (*Lim.*) (appeal of plaintiffs from judgment of Lawrance, J., dated May 15, at trial without a jury in Middlesex).—Allowed.

Before the MASTER OF THE ROLLS, BOWEN, L.J., and FRY, L.J.

SATURDAY, JULY 25.

*Evans* v. *Newfoundland Railway Company and others* (appeal of plaintiff from judgment of Smith, J., dated November 22, at trial without a jury in Middlesex).—Dismissed.

Before the LORD CHANCELLOR, the MASTER OF THE ROLLS, and FRY, L.J.

*Skinners' Company* v. *Knight and others* (appeal of plaintiffs from refusal of Charles, J., to give judgment at trial on finding of jury, dated December 19; heard May 13).—Dismissed.

MONDAY, JULY 27.

No sitting.

Before the MASTER OF THE ROLLS, BOWEN, L.J., and KAY, L.J.

TUESDAY, JULY 28.

*Regina* v. *Tyler* (*Alderman, &c.*) *and International Commercial Company* (Q. B. *Crown Side*) (appeal of T. Noton from order of Day, J., and Lawrance, J., dated May 12, discharging *nisi* for *mandamus* to magistrate to hear summons under Companies Act, 1862, s. 27).—Dismissed.

*Cave* v. *Leslie* (appeal of plaintiff from order of the Lord Chief Justice and Mathew, J., dated April 9, dismissing action as frivolous and vexatious).—Part heard.

WEDNESDAY, JULY 29.

*Wiedemann* v. *Walpole* (application of defendant for judgment or new trial on appeal from verdict and judgment at trial before Pollock, B., and a special jury in Middlesex).—Allowed.

*Hamlyn & Co.* v. *Wood & Co.* (application of defendants for judgment or new trial on appeal from verdict and judgment, dated June 26, at trial before Mathew, J., with a special jury in Middlesex).—Part heard.

## APPEAL COURT II.

Before LINDLEY, L.J., FRY, L.J., and LOPES, L.J.

THURSDAY, JULY 23.

*Nettlefolds* (*Lim*) v. *Reynolds* (1889—N.—15) (appeal of defendants from order of Kekewich, J., dated July 8, for further particulars of objections to patent). *Nettlefolds* (*Lim.*) v. *Reynolds* (1890—N.—809) (appeal of defendants from order of Kekewich, J., dated July 8, for further particulars of objections to patent).—Allowed.

*Bolton* v. *Bolton* (appeal of defendant E. M. Bolton and also F. Russell from orders of North, J., dated July 6 and 8, refusing liberty to intermarry).—Allowed.

*Baron Windsor* v. *Walker* (appeal of plaintiffs from order of North, J., dated June 26, refusing restraint of sale of machinery and directing inquiry as to damages).—Dismissed on terms.

*Cocksedge* v. *Metropolitan Consumers' Association* (appeal from order of Kekewich, J.).—Dismissed.

Before Lindley, L.J., Lopes, L.J., and Kay, L.J.

Friday, July 24.

*Thornton* v. *Mackrow* (appeal of plaintiff from judgment of Chitty, J., dated April 29).—Dismissed.

Before Lindley, L.J., Fry, L.J., and Lopes, L.J.

Tuesday, July 28.

*Regina on the Prosecution of C. E. Johnston* v. *Registrar of Joint Stock Companies* (Q. B. *Crown Side*) (appeal of Registrar from order of Cave, J., and Charles, J., dated June 17, for writ of *mandamus* to register company).—Allowed.

*Ogle* v. *Wicks* (*Chitty, J.*) (appeal of plaintiffs from judgment of the Official Referee, dated May 7, upon report under order of reference, dated November 26, 1890).—Judgment varied.

Wednesday, July 29.

*Protheroe* v. *Tottenham and Forest Gate Railway Company* (appeal of plaintiffs from order of Kekewick, J., dated July 10, refusing to restrain proceedings under notices to treat for compulsory purchase).—Allowed.

*Hanbury* (*petitioner*) v. *Hanbury* (*respondent*) (appeal of petitioner (C. M. Hanbury) from order of Jeune, J., dated July 7, for father's custody of children until October 24, with access by mother).—Part heard.

*Levy* v. *Wartman & Co.* (appeal of defendant company from order of Romer, J., for North, J., dated July 24, restraining defendants from selling cigars and issuing circulars).—Part heard.

## NOTICES FOR THE WEEK.

### Rota of Registrars.

Monday, August 3.—Court of Appeal No. 2: Mr. Pugh. Mr. Justice Chitty: Mr. Leach. Mr. Justice North: Mr. Clowes. Mr. Justice Stirling: Mr. Lavie. Mr. Justice Kekewich: Mr. Farmer. Mr. Justice Romer: Mr. Pemberton.

Tuesday, August 4.—Court of Appeal No. 2: Mr. Beal. Mr. Justice Chitty: Mr. Godfrey. Mr. Justice North: Mr. Jackson. Mr. Justice Stirling: Mr. Carrington. Mr. Justice Kekewich: Mr. Rolt. Mr. Justice Romer: Mr. Ward.

Wednesday, August 5.—Court of Appeal No. 2: Mr. Pugh. Mr. Justice Chitty: Mr. Leach. Mr. Justice North: Mr. Clowes. Mr. Justice Stirling: Mr. Lavie. Mr. Justice Kekewich: Mr. Farmer. Mr. Justice Romer: Mr. Pemberton.

Thursday, August 6.—Court of Appeal No. 2: Mr. Beal. Mr. Justice Chitty: Mr. Godfrey. Mr. Justice North: Mr. Jackson. Mr. Justice Stirling: Mr. Carrington. Mr. Justice Kekewich: Mr. Rolt. Mr. Justice Romer: Mr. Ward.

Friday, August 7.—Court of Appeal No. 2: Mr. Pugh. Mr. Justice Chitty: Mr. Leach. Mr. Justice North: Mr. Clowes. Mr. Justice Stirling: Mr. Lavie. Mr. Justice Kekewich: Mr. Farmer. Mr. Justice Romer: Mr. Pemberton.

Saturday, August 8.—Court of Appeal No. 2: Mr. Beal. Mr. Justice Chitty: Mr. Godfrey. Mr. Justice North: Mr. Jackson. Mr. Justice Stirling: Mr. Carrington. Mr. Justice Kekewich: Mr. Rolt. Mr. Justice Romer: Mr. Ward.

## HONOURS AND APPOINTMENTS.

Mr. Charles Broad, of 37 Walbrook, London, Solicitor and Attorney of the Supreme Court of the Colony of the Cape of Good Hope, has received the Commission of the Court for taking Evidence of Witnesses in all places outside the colony.

Mr. Isadore Goldman, of Sunderland, has been appointed a Commissioner for Oaths. Mr. Goldman was admitted in 1885.

Lady Diana Huddleston.—A tasteful and handsome cup has been presented by Lady Diana Huddleston to the mess of the Oxford Circuit in memory of her late husband, Mr. Baron Huddleston, many years leader of this circuit.

The Middle Temple Library.—The Middle Temple Library will be closed during the ensuing Long Vacation in order that several alterations to the roof and other parts of the building may be carried out. The benchers of the Inner Temple have very courteously granted the use of their library to members of the Middle Temple during the alterations, which are expected to be finished about the end of October.

Early Closing at Lincoln's Inn.—Early closing is to be the rule at Lincoln's Inn during the Long Vacation. A circular has been sent round by the benchers to all tenants of chambers in the inn, announcing that after August 1 the gates will be closed to the public at half-past six, and that the old gate in Chancery Lane will not be opened at all after midnight. Laundresses—the name by which the useful female attendants are known in the Inns of Court—will not be allowed to enter the sacred legal precincts after nine, or to stop within them later than ten.

## BIRTHS.

On July 22, at 56 Warrington Crescent, Maida Vale, W., the wife of Albert Hamilton Godfrey, Solicitor, of a son.

On July 22, at The Chilterns, Wanstead, Essex, the wife of George Reader, Solicitor, of a daughter.

On July 24, at 22 Linden Gardens, W., the wife of Joseph Manrice Solomon, Barrister-at-Law, of a son.

## MARRIAGES.

On July 16, at the Pro-Cathedral, Kensington, Nicholas Synnott, of the Middle Temple, Barrister-at-Law, to Barbara, fifth daughter of J. Macevoy Netterville, Esq., of Villa Rita, Biarritz.

On July 25, at Bombay, John A. Oldham (Under Secretary Public Works Department, India), son of the Rev. Oldham Oldham, D.D., to Amy Rose, youngest daughter of the late Sir William Atherton, M.P., Q.C., Her Majesty's Attorney-General.

On July 25, at St. Anne's, Soho, Lieut. Phillip E. Gray, Royal Horse Artillery, eldest son of Benjamin G. Gray, Esq., Q.C., to Laura Violette, widow of the late Ernest Weldon, of 2 Gloucester Mansions, Harrington Gardens, S.W.

## DEATHS.

On July 21, at 12 Inverness Terrace, Clara, widow of the late Sir John Smale, Chief Justice of Hongkong, and daughter of Halsey Janson, Esq., of Stamford Hill, in her 75th year.

On July 21, Cecil Warren, eldest son of Edward Pollock, Barrister-at-Law, of 20 York Terrace, Regent's Park, aged 19 years.

On July 24, at his residence, Gibraltar Place, Chatham, Matthew Spray Stephens, Solicitor, in his 93rd year.

On July 24, at 5 Leinster Gardens, W., Martha, widow of Griffith Richards, Esq., Q.C.

On July 25, at Park House, Oxford, the Rev. J. E. Walsh, M.A., second son of W. H. Walsh, Solicitor, Oxford, Assistant-Curate of St. John's, Deptford, aged 28 years.

On July 28, William Ransom, son of Robert Ransom, Solicitor, Sudbury, Suffolk, aged 29 years.

Home Cure for Deafness.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. *D. H. W.* Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. Dr Vere & Co., Publishers, 22 Warwick Lane, London, E.C.—Advt.

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# The Law Journal.

*SATURDAY, AUGUST* 8, 1891.


## 'OBITER DICTA.'

A REPORT has been going the rounds of several of the evening papers to the effect that Mr. Justice Hawkins intends to retire at the end of the Long Vacation. We venture, however, to doubt the accuracy of the rumour. The learned judge has, according to all accounts, been showing unabated capacity for work, and especially for late sittings on the South-Eastern Circuit, and, his health being good, there would seem to be no reason why he should relinquish judicial work. The report probably originated in the fact that on November 2 Sir Henry Hawkins will complete fifteen years' service on the bench, but this circumstance, as has been shown in the cases of Mr. Justice Denman and Baron Pollock, is a very insufficient reason for assuming that a judge will resign.

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THE appointment of Mr. Justice Williams as Bankruptcy judge is admitted on all hands to be an excellent one. The learned judge, when at the bar, had a large practice in bankruptcy, and is the author of one of the best treatises on the subject. There is every reason to think that great weight will attach to his decisions, and that the number of appeals will diminish rather than increase.

---

IT seems that some little friction has arisen between the library authorities of the Inner and Middle Temples. The library of the Middle Temple is to be closed from the 13th inst. till some time in October pending certain repairs to the roof, and a request was sent to the benchers of the Inner Temple to allow the members of the Middle Temple to use the library of the sister society during that period. Certain objections appear to have been raised, and, although the desired consent was ultimately given, the Middle Temple authorities have now obtained for their members the use of the Lincoln's Inn Library, and, we believe, do not intend to avail themselves of the permission of the Inner Temple benchers. The fact seems to have been somewhat overlooked that during the Long Vacation, owing to cleaning and other matters, only a small portion of the Inner Temple Library is available for the members of that society.

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THE clergyman who recently completed the marriage of a drunken man has been found fault with for so doing, but he pleads justification on the ground that 'when the outrage occurred the ceremony, so far as regards the actual marriage itself, had already been legally completed by the declaration which pronounces M. & N. to be "man and wife together."' We cannot think that the reverend gentleman is technically correct as to the point of the marriage service at which the knot is legally tied. From the judgments in *Beamish* v. *Beamish*, 9 H. L. C. 274, it would seem that the part of the service at which the marriage becomes knit is 'after affiance and troth plighted' between the parties, so that if the ministerial pronouncement should not happen to be given, the marriage would be complete and binding on the parties all the same. In Blunt's 'Church Law,' however (2nd edit., revised by Sir W. Phillimore, at p. 154), the view is taken that the marriage itself is legally completed by declaration of the priest.

---

IN consequence of the decision of the House of Lords in *Pemsel's Case*, it has been stated that numerous applications will be made to the Inland Revenue authorities to repay income-tax paid on account of various charities which that decision has now shown to be exempt from taxation. One estimate has been made to the effect that many hundreds of thousands of pounds will be demanded from the Chancellor of the Exchequer under this head. Would repayment be a matter of obligation or of favour? We can find no authority in the Property Tax Acts to the Inland Revenue Com-

missioners to make such repayment, so that neither would the claiming charities have any right to it, nor would the Inland Revenue Commissioners have any right to make it as a matter of favour. Only a special Act of Parliament could authorise such repayments, and we greatly doubt whether Parliament would consent to such an Act.

---

Readers of the Law Journal Reports for the month of August will observe a case in which a solicitor on his third application was restored to the roll of solicitors from which he was struck off in 1879 at the instance of the Incorporated Law Society, after being convicted of obtaining 6*l.* 14*s.* 4*d.* by false pretences, and being sentenced to six months' imprisonment with hard labour. It is only fair to observe that the conviction was obtained under peculiar circumstances, and that the facts of the case do not appear to have been brought to the attention of the Court on the two former applications for restoration, which were opposed by the Law Society. The present application was strongly supported by evidence of subsequent good conduct, and was not opposed by the Law Society. The case is of importance as a distinct authority that the Court has power to restore a solicitor to the roll even after a conviction.

---

In an article lately published in the *Spectator* (August 1) it has been argued that a peer is by law capable of being elected to and sitting in the House of Commons, or that, at least, if elected while a commoner he may continue to sit after succeeding to a peerage. What vacates the seat, it is said, is the issue of a writ of summons calling the new peer to the Upper House, and by neglecting to apply for this he might delay indefinitely his exclusion from the Lower House. Without entering into the merits of this argument, we would point out that the writer has been misled by a carelessly expressed note of Sir Erskine May's into an error in the statement of facts on which he relies. The note referred to is as follows: 'Lord Eddisbury sat until May 15, 1848, although his creation had appeared in the *Gazette* on May 9 (103 Com. J. 513)' ('Law and Practice of Parliament,' 9th edit. p. 698). Now it is not usual to gazette the 'creation' of a peer. The *Gazette* of May 9 contained an announcement in the customary form, dated the day previous, that 'the Queen has been pleased to direct letters patent to be passed under the Great Seal' granting the peerage in question. Some days generally elapse between the signing of the warrant for sealing and the actual sealing of the patent by which a peer is created. In this case the patent was not sealed till May 12, and the writ of summons calling Lord Eddisbury to the House of Lords was issued on the same day (see 70 Lords Journals, p. 265). There appears to be no ground for suggesting that his lordship ever sat in the House of Commons after his creation. The 12th being a Friday there was no sitting of the House between that day and Monday, the 15th, when one of the first things done was to order the Speaker to issue a warrant for the election of a member to fill the vacant seat.

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The House of Lords has affirmed the judgment of the Court of Appeal in *Dr. Barnardo's Case*, 59 Law J. Rep. Q. B. 345, and ordered Dr. Barnardo to hand over an illegitimate child, in pursuance of an authority from the mother of the child (who had signed an agreement to leave the child under the care of Dr. Barnardo at his home for twelve years), to a person named by her. The judgments, and especially that of Lord Herschell, are mainly of legal interest as laying down the law in respect of the right of a mother to the disposal of her illegitimate child. Such a child is, no doubt, *filius nullius* at common law, and Mr. Justice Maule in *In re Ann Lloyd*, 3 M. & G., at p. 548, went so far as to ask, 'How does the mother of an illegitimate child differ from a stranger?' Lord Herschell, though of opinion that Mr. Justice Maule was merely enunciating the true doctrine of the common law, points out that it has been altered by the Poor Law Amendment Act, 1834, which, by casting upon the mother of an illegitimate child the duty to maintain it until the age of sixteen, has beyond doubt, though indirectly, given the mother a primary right of custody, which may be broken in upon for the proved benefit of the child alone.

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Ann Lloyd's case was a peculiarly painful one. She, being the mother of an illegitimate female child, had obtained a *habeas corpus* directed to the putative father. The girl, who was between eleven and twelve years old, being produced by him, was allowed by the Court to use her own discretion as to where she would go, she having expressed a strong disinclination to go with her mother. 'She then left the Court with the female who had accompanied her. Upon quitting the Court the mother attempted to take forcible possession of the child. This being made known to the Chief Justice (Chief Justice Tindal), one of the officers of the Court was sent with her for her protection.'

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The session of 1891, if memorable for nothing else, will long be remembered for the passing of the nine special Acts under which the London and North-Western, Midland, Great Northern, Great Western, Great Eastern, South-Eastern, London, Chatham and Dover, and London, Brighton and South Coast Railway Companies become bound by a completely new set of clauses fixing the maximum rates chargeable for animals and goods. Alphabetical classifications, as complete as they can be made, will replace the present disorderly and defective classifications, and the maximum rates will in all cases be graduated according to distance from point to point of carriage, decreasing, of course, as the distance increases. Passenger maximum fares will, we suppose, be revised by a future set of bills at some future date, but the Railway and Canal Traffic Act, under which the bills of which we speak were set on foot, is concerned with rates for animals and goods only.

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Mr. Cust's Allotments Rating Exemption Act, 1891 (54 & 55 Vict. c. 33), recites that 'doubts have arisen whether allotments are or are not included among the lands' exempted from full rating under the head of 'arable meadow or pasture ground, or woodlands, market-gardens, or nursery grounds,' which lands are, by section 211, subsection 1 (*b*), and section 235 of the Public Health Act, 1875, directed to be rated, for the purposes of that Act, 'in the proportion of one-fourth

part only of the net annual value or rateable value of such land,' and, for the purpose of removing the doubts, directs that the above sections are to be read as if the word 'allotments' was inserted in each of them after the word 'woodlands.' The 'doubts' referred to in the Act were not, we believe, judicial doubts, but arose from disputes between rating authorities and owners of allotments on questions of fact, it being often difficult to ascertain, from the manner in which an allotment was cultivated, whether it came within the exemptions of the Public Health Act or not. The new Act describes an allotment as meaning 'any parcel of land of not more than two acres in extent and let as an allotment, *and* cultivated as a garden or a farm, or partly as a garden and partly as a farm.'

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The time is now fast approaching for Brewster sessions and the preparations for them. These sessions are by section 1 of the Licensing Act, 1828 (9 Geo. IV. c. 61), held annually throughout England (except in Middlesex and Surrey, where they are held in March) 'on some day between the twentieth day of August and the fourteenth day of September inclusive;' and by section 42 of the Licensing Act, 1872, notices of intention to oppose the renewal of a license must be served on the holders 'not less than seven days before the commencement' of Brewster sessions. There is little doubt that, looking to the decisiveness of the well-known *Sharp* v. *Wakefield*, many licensed victuallers will have to fight pretty hard to obtain renewals at the ensuing sessions. On some licensing benches there is a strong feeling against tied houses, on others there are many justices who have been waiting for the judgment of the House of Lords before venturing to give practical effect to their opinions as to the undesirability of this or that particular house continuing to be licensed, whilst on a few it may be possible that a majority may be found possessed of the strange view that no intoxicating liquors ought to be sold, or even consumed, by any person whatever. As far as the law goes, all such persons may act in an uncontrolled discretion in granting or refusing renewals, nor, except in cases coming within the Wine and Beerhouse Act, 1869, will they be bound to give their reasons. The threatened victuallers, however, may draw no little consolation from the reflection (1) that the procedure which section 42 of the Licensing Act, 1872, and section 26 of the Licensing Act, 1874, provides as to applications for renewal is highly favourable to them; and (2) that in every case of a refusal to renew there is an appeal from the licensing justices to quarter sessions. We have frequently discussed the law of the subject (see *ante*, p. 210, and Law Journal for 1890, pp. 345, 385).

---

Lord Herschell has inquired of the Government in the House of Lords whether the Home Secretary could not cause persons fined for non-compliance with the Vaccination Acts to be treated as first-class misdemeanants; but Lord De Ramsey answered that the power of ordering convicted criminal prisoners to be treated as first-class misdemeanants did not belong to the Secretary of State, but to a judge, and 'perhaps, also, though this was not free from doubt, to a Court of summary jurisdiction.' By the Prisons Act, 1865 (28 & 29 Vict. c. 106), 'prisoners convicted of *misdemeanour*, and not sentenced to hard labour, shall be divided into at least two divisions, one of which shall be called the first division, and whenever any person convicted of misdemeanour is sentenced to imprisonment, without hard labour, it shall be lawful *for the Court or judge* before whom such person has been tried to order, if such Court or judge think fit, that such person shall be treated as a misdemeanant of the first division, and a misdemeanant of the first division shall not be deemed to be a criminal prisoner within this Act.' There being no misdemeanour created by the Vaccination Acts (except by section 30 of the Act of 1867 relating to false certificates), it seems that this section, which from the use of the words 'Court or judge' is properly applicable to indictable offences only, can have no application to the ordinary offences against those Acts, which are punishable on summary conviction only. It may be observed that the maximum penalty on a parent for neglecting to have a child vaccinated is twenty shillings under section 29 of the Vaccination Act of 1867, so that the imprisonment for non-payment of the fine cannot by section 5 of the Summary Jurisdiction Act, 1879, exceed seven days, and must in any case be an imprisonment without hard labour. A Government bill, to the effect that no parent should be liable to be convicted for neglecting to have his child vaccinated or for disobedience to an order for vaccination, if he had already paid the full penalty of twenty shillings, or had been twice adjudged to pay any penalty for any such offences, was introduced in the session of 1880, when it was read a second time in the House of Commons but not further proceeded with.

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It is a pity, from the lawyer's point of view, that the question raised on the recent application for a *mandamus* against the registrar of joint-stock companies was complicated by the somewhat peculiar features of the case. No clear decision has therefore been given by the Court of Appeal as to what is a company 'otherwise duly constituted by law,' within the meaning of section 180 of the Companies Act, 1862. All that can be said is that doubt has been cast upon the construction placed on those words by the Divisional Court. Lord Justice Fry (with whom on this point Lord Justice Lopes concurs) inclines to the opinion that the description is applicable only to 'companies *ejusdem generis* with those previously mentioned, companies the constitution of which does not arise from the mere consensus of parties but from something which the law imposes beyond their consent—something like letters patent or an Act of Parliament.' But, in the first place, what does the law impose beyond the consent of the parties for the formation of a mining company in the Stannaries? And, secondly, what companies, except those constituted by the mere consent of the parties, are not included in the classes previously mentioned? Lord Justice Fry says an instance may be found in a company constituted by certificate of the Board of Trade under 27 & 28 Vict. c. 121, but such a company would surely fall within the class of companies formed in pursuance of an Act of Parliament. It is difficult, we think, when section 4 of the Companies Act, 1862, is compared with section 180, to resist the conclusion that a company 'otherwise duly constituted by law' in the latter clause means a 'company, association or partnership' created by consent of the parties, and not exceeding in number the limits prescribed by the former clause.

Our Central American colony of British Honduras has in the course of the last few years developed quite a taste for litigation. Two cases which it has added to the official law reports severally involve issues of substantial importance—the applicability of the English Mortmain Act to a British colony, and the right of a Chief Justice to turn himself into an unsworn witness against a prisoner over whose trial he is presiding. The prolonged arbitration—now at last concluded—between Mr. C. T. Hunter, of Belize, and the Government of British Honduras, although it possesses no peculiarly legal value, is replete with instructive and dramatic incidents which can hardly fail to awaken interest. The material facts are as follow. Several years ago the Government of British Honduras employed Mr. C. T. Hunter, a contractor, to construct certain public works in the town and harbour of Belize, under the directions of the colonial engineer. The contract consisted of two parts—the construction of canals and the dredging of the foreshore, which for the sake of clearness must be considered separately. When the specifications for the canals were laid before him, Mr. Hunter came to the conclusion that they were altogether inadequate, and he expressed this conviction to the Government. The colonial engineer, however, not unnaturally supported his own plans, and after some negotiations Mr. Hunter was ordered to proceed. He did so, and a portion of the structure collapsed. The other part of Mr. Hunter's contract was to dredge the foreshore under the directions of the colonial engineer. The plant was prepared, but no directions were given, and while matters were still in this position the canal wall, as we have mentioned already, fell in. The Colonial Government at once, with 'extra-legal' haste, seized Mr. Hunter's plant and refused him an extension of time for the dredging of the foreshore, although the completion of this part of the contract had been delayed by the neglect of their own engineer in furnishing the plan. In consequence of these proceedings, Mr. Hunter was involved in serious pecuniary embarrassments, and for the time being his credit was destroyed. Gradually, however, the consciousness that they had acted with undue precipitation dawned upon the colonial authorities. An offer to restore the plant was made, and the chief question at issue between the parties whether or not the collapse of the canal wall had been caused by the negligence of the contractor was referred to arbitration within the colony by consent. The arbitrator decided in favour of the contractor, and eventually the colonial engineer was requested to send in his resignation to the Secretary of State. Only the question of damages remained for settlement, and that was made the subject of consideration at a second arbitration, which was held a short time ago at the Colonial Office in Downing Street. The arbitrators, Sir Benjamin Pine, K.C.M.G., who was sometime Lieutenant-Governor of Natal, and a Mr. Gentle, of Belize, found that Mr. Hunter was entitled to 3,500*l.* damages, together with the costs of both arbitrations. Thereupon the Secretary of State directed the Governor of British Honduras to introduce a vote into the Legislative Council for the amount awarded to Mr. Hunter by the arbitrators in London. The unofficial members resigned in a body, and the vote was carried in their absence. Then the Colonial Office took up the ground that the award was payable only 'when the revenues of the colony permitted,' and there was every prospect that the soundness of this contention would have to be tested by a petition of right. But wiser counsels at length prevailed in Downing Street, and the award has now been satisfied.

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The exceedingly cautious reply of the Solicitor-General, when recently questioned in the House of Commons as to the steps taken for a prosecution with reference to *Evelyn* v. *Hurlbert*, will not satisfy the public conscience. If anything is to be done it should be done quickly; and it will be nothing less than a scandal if the session closes and the Courts rise for the vacation before the long-delayed prosecution for perjury is commenced.

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Mr. Montagu Williams possesses at least two essential qualifications for a successful police magistrate—viz. courage and common-sense. Although differing apparently from the views of a brother-stipendiary, Mr. Williams will carry public opinion with him in his vigorous protest against the practice (which, it is stated, is not uncommon) of giving cabmen articles to pawn and thereby provide money for cab fares due to them. In the magistrate's opinion the individual who provides the article and the cabman who pawns it are equally blameworthy. The latter has, as Mr. Williams pointed out, a summary remedy open to him if his fare is not paid.

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The arguments urged with much emphasis for changing the venue of the 'Salvation Army' trial failed to convince Mr. Justice Denman and Mr. Justice Collins. The facts of the case are so simple that it is probable the real defence will turn on a legal point; and, as Mr. Justice Denman pointed out, the judge who tried the case could easily raise a question for the opinion of the Court of Criminal Appeal. Any other result would have been unfortunate, for it is quite time that 'General' Booth and all religious enthusiasts realised the fact that they must not expect exceptional treatment. If they have not broken the law they have nothing to fear; but they certainly failed to show sufficient reason for removing or delaying the trial and a judicial decision on a question of considerable importance.

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The irrepressible Mr. Cobb seems to have discovered a 'mare's nest,' and to have been misled by the 'very eminent and old Queen's Counsel on the Western Circuit' (whoever that may be) with reference to the alleged breach of the traditions and etiquette of the bar. It is satisfactory to find from the Attorney-General's reply that the barristers whose names were mentioned in the House of Commons were not in the habit of practising in the County Courts over which their fathers presided. It would indeed be unfortunate if public confidence in these local tribunals were shaken by any suggestion of partiality. Owing to the heavy Court fees and other causes, County Courts are not nearly so popular as they should be, and they cannot afford to lose what share of public favour they still retain.

## THE COURT OF APPEAL ON *EVERS* v. *CHALLIS*.

The judgment of the Court of Appeal in *In re Bence; Smith* v. *Bence* (reported at length in the *Times* of June 18) will cause some surprise to conveyancers and real property lawyers.

The action was brought to try the validity of a gift over following upon a devise which was void for remoteness. A share of realty was given by the testator upon trusts for his daughter Maria for life, and after her death for such of her children as should attain twenty-one or, being daughters, be married, and for such children of any child of hers dying under that age as should attain twenty-one or, being daughters, be married. It is obvious that the class to take after Maria's death might not be ascertained within the limits of perpetuity, and that the devise to them was therefore void. The gift over which was in question provided that if Maria should die without leaving any issue who should live to attain a vested interest in their respective shares the trustees should convey Maria's share to such of the testator's children as should be living at the time of such failure of issue and the issue then living of such of them as might then be dead. Maria survived the testator and died without ever having had any issue. It was urged for the appellant that, in the event which had happened, the gift over was valid and effectual, although, had Maria left issue, it would have been void for remoteness. *Evers* v. *Challis*, 29 Law J. Rep. Q. B. 121; 7 H. L. Cas. 531, was relied upon as establishing that the gift over was divisible into two separate gifts—the one an equitable contingent remainder which would vest, if at all, on the death of Maria leaving no issue then living; the other an executory devise, which, inasmuch as it might not vest within the limits of perpetuity, was void *ab initio*. On behalf of the heir-at-law it was contended that the gift was single in expression and could not be divided; that *Evers* v. *Challis* did not apply except in cases where the gift could be analysed into a legal contingent remainder in one event and an executory devise in another; that an equitable contingent remainder was subject to the same rule of perpetuity as an executory devise, and, further, that a gift over in the form of a direction to convey must be construed as an executory devise, and could not operate as a contingent remainder. *Abbiss* v. *Burney*, 50 Law J. Rep. Chanc. 348; L. R. 17 Chanc. Div. 211, was cited in support of the last two propositions.

The Court (Lords Justices Lindley, Bowen, and Fry) took time to consider, and judgment, dismissing the appeal, was delivered by Lord Justice Fry. Lord Justice Bowen added that he accepted the conclusion because he thought it impossible to do otherwise without disregarding authorities by which the Court was bound. After stating the terms of the will, and pointing out that the meaning of the words, 'without leaving issue,' in the gift over was not affected by section 29 of the Wills Act, and therefore extended to an indefinite failure of issue, the judgment proceeds thus: 'In the present case we have three circumstances (1) that the particular estate which precedes the remainder in question is limited to a class which may never be ascertained within the limits of perpetuity; (2) that the event on which the gift over is to take effect—default of the vesting of the particular estate—may in like manner never be ascertained within those limits; and (3) that the class of persons to take under the gift over may never be ascertained within the same limits. These circumstances are, in our opinion, enough to make the gifts over (whether regarded as equitable remainders or executory devises) *primâ facie* bad.' Now surely the only particular estate is that limited to Maria. Her children and issue would take, if anything, estates in fee simple, and no remainder could be limited upon these. In no event, then, could the gift over be construed as a contingent remainder except that in which it would vest on Maria's death—that is, in the single event of her dying without leaving issue living at her death. The judgment goes on to say that 'the argument of the appellant is that the terms of the gift over can be split up into as many separate gifts over as there are possible events, and that whenever the actual event falls within the limits of perpetuity the gift over is good; whenever it falls beyond the limit it is bad.' We do not think this was the argument of the appellant. It is obviously untenable. But it is another question whether the gift could not be split up into two gifts, a contingent remainder in one event, an executory devise in the other. Before answering this question in the negative *Evers* v. *Challis* has to be reckoned with. Unfortunately, in stating the facts of that case, Lord Justice Fry has fallen into an error which seriously affects the reasoning on which his judgment is based.

The testator in *Evers* v. *Challis* left an estate to his daughter Elizabeth for life, with remainder in fee simple to her children defeasible on their dying, if sons, under twenty-three, if daughters, under twenty-one, with cross limitations in case of the deaths of any under those ages. In case all the children of Elizabeth should die under those ages, or if she had none, the testator gave the estate to his son John and his daughters Sarah and Ann for life in equal shares, with remainders as to the share of each to his or her children defeasible on such children dying, if sons, under twenty-three, if daughters, under twenty-one. It seems clear from Lord Justice Fry's judgment that he thought *Evers* v. *Challis* turned upon this gift over. He dwelt on the circumstance that it expressly provided for two events: (1) that which happened, Elizabeth's death without ever having had a child; (2) the death of all her children under the ages named. And he says the case applies the principle that a limitation shall, if, when, and so far as possible, be construed as a remainder rather than as an executory devise to dispositions so expressed as to sever the remainders from the executory devises. As a matter of fact, no real question arose on this gift. In the Exchequer Chamber, no less than in the Queen's Bench and the House of Lords, it was admitted that the distinct and separate clause providing for Elizabeth's having no child took effect as a good remainder at her death. But the lessors of the plaintiff could not have made out their title if they had relied on that clause alone. They were Mr. and Mrs. Evers, the latter one of the two children of the testator's son John. Now John was stated in the special verdict to be still living, and the clause gave nothing to Mrs. Evers except in remainder after a life estate to him. The devise, however, contained yet a further gift over, and it was on this that the question depended. It provided that in case of the death of the testator's son or either of his two daughters (John, Sarah, or Ann) 'without leaving a child, if a son that shall live to attain the age of twenty-three years, or if a daughter

that shall live to attain the age of twenty-one years,' the share which such children or child would have been entitled to should go to the children of the testator's said son and two daughters having issue living, to attain, if sons, twenty-three, if daughters, twenty-one years, in fee simple in equal shares *per stirpes*. Here there were not two contingencies expressed but only one. Hence the difficulty which the House of Lords was called upon to solve. On the death of Elizabeth without having had issue one-third of the estate passed under the first gift over to Ann for life. On the subsequent death of Ann, who also never had any issue, this one-third became divisible under the second gift over (if valid) *per stirpes* between the children of John and Sarah, the lessors of the plaintiff taking one-fourth of that third, or one-twelfth of the whole estate.

The lessors of the plaintiff also claimed one-twelfth of another estate which was devised to Ann for life, with like remainders to her children, and like gifts over to John, Sarah, and Elizabeth and their children. One-third of this estate would but for Elizabeth's prior decease have passed to her for life on Ann's death, and the lessors of the plaintiff claimed one-fourth of that third. The question as to this twelfth was not separately discussed, since it was agreed that the title to it would stand or fall with the title to the twelfth of the estate originally devised to Elizabeth.

It was held in the Exchequer Chamber that as the testator had not himself separated the legal from the illegal limitations, but had included all in one clause, the Court must treat the gift as single for the purpose of determining as to its validity. 'How,' asked Baron Alderson, 'is the Court to sever these events which the testator has expressly joined together without making a new will?' Therefore, since some of the contingencies were too remote the gift over was declared void. Had the case stopped there it would have been a direct authority in favour of the decision in *In re Bence*. But an appeal was taken to the House of Lords, and a different view prevailed there. It was the unanimous opinion both of the judges who advised the House and of the learned lords who heard the appeal that it made no difference whether the alternative gifts were separately expressed or not. 'No case or authority,' said Mr. Justice Wightman, the spokesman of the judges, 'has been cited to show that where a devise over includes two contingencies, which are in their nature divisible, and one of which can operate as a remainder, they may not be divided, though included in one expression.' Lord Cranworth said: 'I can see no distinction, when we are only construing the language of the will, between the case where the contingency of dying without having had a child is, as I have suggested, expressed, and where it is implied, as in the present case.' And Lord Wensleydale thought the legal effect of the clause was 'precisely the same as if the testator had provided in express words for the event of Ann having no children, as he had done in the former clause for Elizabeth having none.' Similar passages may be cited from the speeches of Lord Chelmsford and Lord Brougham. The gist of the matter is that a contingent remainder and an executory devise are 'distinct and separate in their nature,' 'in their nature divisible,' and therefore, notwithstanding that they are not separately expressed, will be treated as two alternative gifts, each subject to its own rules and unaffected by the rules applicable to the other.

The case, says Lord Justice Fry, is 'no authority for the proposition that every gift over may be analysed into as many events as are included within its language and be held good or bad as the events happen.' This is perfectly true; the case is only an authority that a gift may be analysed into a contingent remainder and an executory devise. The lord justice adds that his view is supported by the language of the learned lords and of the judges who advised the House, and especially by their adoption and affirmation of *Proctor* v. *The Bishop of Bath and Wells* (2 H. Bl. 358). 'The gift over in that case was single in point of expression, but in point of fact embraced one event which happened, and on which a perfectly good remainder could have been limited; but, inasmuch as it was not expressly so limited, inasmuch as the event of death without having any issue was not separated from a subsequent event which might transgress the rule against perpetuities, it was held that in that case the limitation over could not operate as a remainder.' Now in point of fact there was no event in which the gift over in *Proctor* v. *The Bishop of Bath and Wells* could have operated as a remainder, for the simple reason that there was no particular estate to support a remainder. Mr. Justice Wightman, Lord Chelmsford, and Lord Brougham point out that the gift was in any event an executory devise, and upon that ground, not upon the ground stated by Lord Justice Fry, they distinguished the case from *Evers* v. *Challis*.

It thus appears that the reasoning of the Court of Appeal, though it professes to follow, is in reality inconsistent with that upon which *Evers* v. *Challis* was decided in the House of Lords. The arguments of the respondent's counsel suggested a different *ratio decidendi*, which, it may be, would have been sufficient to support the decision, but they are not dealt with in the judgment.

## UNWRITTEN CHAPTERS IN THE LAW OF DESIGNS.

### VI.

(*Continued from page* 509.)

### The Inspection of Registered Designs.

The Designs Act of 1883, s. 52, subs. 1, re-enacting in substance a provision that is as old as 5 & 6 Vict. c. 100 (see s. 17), declared that, 'during the existence of copyright in a design, the design shall not be open to inspection except by the proprietor, or by a person authorised by the comptroller, or by the Court, and furnishing such information as may enable the comptroller to identify the design, nor except in the presence of the comptroller or of an officer acting under him, nor except on payment of the prescribed fee, and the person making the inspection shall not be entitled to take any copy of the design or of any part thereof.'

The policy of this provision was strongly challenged by many of the witnesses before the Patent Office Inquiry committee of 1887 (1888, C. 5,350), but the committee unanimously upheld it, merely* recommending the enactment of the clause, which now forms section 6 of the Act of 1888 and runs as follows: 'Provided that where registration of a design is refused

* Section 88 of the Act of 1883, which enacted that every register kept under the Act should at all convenient times be open to the inspection of the public, was obviously inconsistent with section 52, subsection 1. The committee recommended the insertion in the former section of the words 'subject to the provisions of the Act.'

on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered.'

It may be interesting to analyse the reasons alleged by the committee in favour of the privacy of registered design. The passage in their report which deals with the matter is paragraph 52 (p. xvi.): 'We are equally unable to give our assent to the proposal that the register of designs should always be open to public inspection. The most strenuous opposition to the proposal was expressed by the majority of the witnesses. They urged that it would afford great facilities to persons desirous of taking unfair advantage of the work of others. Great expense is often incurred in the preparation of new designs and much skill in their production, and we were assured by those who were able to judge that if free access were allowed to designs, newly registered, unscrupulous persons would be sure to take advantage of it for the purpose either of pirating a design or, without doing so, of approaching as near to it as possible, and so getting all the advantage bestowed upon it without being amenable to the law.'

The Patent Office Inquiry Committee of 1887 was composed of Lord Herschell, the Earl of Crawford, Lord Macnaghten, Mr. Mundella, Baron de Worms, and Mr. Hutton. The unanimous opinion of such a body of able and experienced men must always carry immense weight and is entitled to respect. But it is obnoxious to several criticisms.

1. The minutes of evidence taken before the committee are published, are public property, and are readily accessible. We venture to think that they do not bear out the assertion made in the report that 'a majority of the witnesses' were opposed to the inspection of registered designs. The question is one of fact, and our readers can answer it for themselves.

2. Whatever force the view of the committee possesses is equally available as an argument for the privacy of the register of patents and the register of trade-marks. 'Great expense' is incurred and 'great skill' displayed in the perfecting of inventions. The patentee has to give not merely 'a statement of the nature' of his invention, but a full disclosure of the method by which it is to be exercised. The register of patents is a far greater instrument of fraud in the hands of 'unscrupulous persons' than the register of designs could ever be.

3. Moreover, it is surely not the case that 'persons desirous of taking unfair advantage of the work of others' can approach as near as possible to pirating a design 'without being amenable to the law.' Section 58 (*b*) prohibits the fraudulent *or* obvious imitation of a design, and the old common law 'as and for' action would prove of considerable value as a supplement to the statutory remedy.

Perhaps the strongest point in favour of the resolution of the committee is one to which they do not even allude. In one of the old Parliamentary reports on copyright in designs it is pointed out that the profit of the designer, if it is to be made at all, must be made quickly. In a few months the novelty of the design begins to wane, and, long before the expiry of the period of statutory protection, it is, at least as a source of income, already dead. An 'unscrupulous person' having 'free access' to the register of designs might in a few weeks do the proprietor of a design an injury which no 'account of profits' could repair.

(*To be concluded.*)

## LEGISLATIVE PROGRESS.

In the House of Lords. Consideration of Commons' Amendments:—

Judicature Acts Amendment Bill.
Lunacy Bill.
Schools for Science and Art Bill.
Markets and Fairs (Weighing of Cattle) Bill.
Elementary Education Bill.
Purchase of Land (Ireland) Bill.
Factories and Workshops Bill.
Public Health (London) Bill.
Statute Law Revision Bill.
Mortmain and Charitable Uses Amendment Bill.

Bills read a third time and passed:—

Consolidated Fund (Appropriation) Bill.
London County Council (General Powers) Bill.
Sale of Goods Bill.
Highways and Bridges Bill.
Metalliferous Mines (Isle of Man) Bill.
Post-Office Acts Amendment Bill.
Turbary (Ireland) Bill.
Expiring Laws Continuation Bill.
Western Highlands and Islands (Scotland) Works Bill.
Public Works Loans Bill.
Redemption of Rent (Ireland) Bill.
London County Council (Money) Bill.
Land Registry (Middlesex) Deeds Bill.
Foreign Marriages Bill.
Labourers (Ireland) Acts Amendment Bill.
Coinage Bill.

Second reading:—

Conveyancing and Law of Property Act (1881) Amendment Bill.

The following bills received the Royal Assent:—

Consolidated Fund (Appropriation) Bill.
Purchase of Land and Congested Districts (Ireland) Bill.
Factories and Workshops Bill.
Elementary Education Bill.
London County Council (Money) Bill.
Land Registry (Middlesex Deeds) Bill.
Lunacy Bill.
County Councils (Elections) Bill.
Penal Servitude Bill.
Markets and Fairs (Weighing of Cattle) Bill.
Schools for Science and Art Bill.
Public Health (London) Bill.
Coinage Bill.
Foreign Marriages Bill.
Statute Law Revision Bill.
Local Registration of Title (Ireland) Bill.
Post Office Acts Amendment Bill.
Slander of Women Bill.
Turbary (Ireland) Bill.
Trusts Amendment (Scotland) Bill.
Forged Transfers (No. 2) Bill.
Returning Officers (Scotland) Bill.
Commissioners for Oaths Act (1889) Amendment Bill.
Metalliferous Mines (Isle of Man) Bill.
Public Health (Scotland) Acts Amendment Bill.
Ranges Bill.
Judicature Acts Amendment Bill.
Western Highlands and Islands (Scotland) Works Bill.

Expiring Laws Continuance Bill.
Public Works Loans Bill.
Redemption of Rent (Ireland) Bill.
Highways and Bridges Bill.
Labourers (Ireland) Acts Amendment Bill.
Rates and Charges Bill.
Provisional Order Bills of the Great Eastern Railway Company, Great Northern Railway Company, London and South-Western Railway Company, London, Brighton, and South Coast Railway Company, London, Chatham, and Dover Railway Company, Midland Railway Company, South-Eastern Railway Company, London and North-Western Railway Company, and Great Western Railway Company.
Hanover Chapel Bill.
And thirty-two other private bills.

In the House of Commons.

Lords' amendments considered and agreed to:—
Elementary Education Bill.
Forged Transfers Bill.

Third readings:—
Consolidated Fund (Appropriation) Bill.
Mortmain and Charitable Uses Act Amendment Bill.

Bills withdrawn:—
Intoxicating Liquors (Ireland) Bill.
Assistant County Surveyors (Ireland) Bill.
Presentation to Benefices Bill.
Betting and Loans (Infants) Bill.
Accumulation Bill.
Labourers' Allotments (Ireland) Bill.
National School Teachers (Ireland) Bill.
Towns Improvement (Ireland) Bill.

# Reviews.

## CASES JUDICIALLY NOTICED.

*Index of Cases Judicially Noticed* (1865-90). Being a List of all Cases cited in Judgments reported in the 'Law Reports,' 'Law Journal,' 'Law Times,' and 'Weekly Reporter,' from Michaelmas Term, 1865, to the End of 1890, with the Places where they are so cited. By George John Talbot and Hugh Fort, Barristers-at-Law. London: Stevens & Sons (Lim.); Sweet & Maxwell (Lim.). 1891.

This is an exceedingly valuable book, especially to practitioners who are not the fortunate possessors of a set of carefully 'noted up' reports. The authors claim in their preface that 'anyone who may use the book will be able to trace the history of the treatment of any decision in later judgments, and will be guided by any decision to the later decisions on the same subject, in just the same way as if he had a complete library of reports, in which at the head of each case references were given to all citations of it in judgments reported since 1865.' If the work may be relied upon as correct, its value cannot be over-estimated. It is, of course, impracticable without much labour to thoroughly test it, but so far as a cursory examination extends we have found it perfectly accurate. It will be noticed from the title of the book that the references have been limited to cases cited in judgments, to the exclusion of citations in argument. To have included the latter would have enormously increased the bulk of the book, and, we think, without a proportionate advantage, because, unless an authority is dealt with by the judgment in a case, its weight as an authority is not increased or diminished by anything said in argument. It has been found impracticable to give a reference to more than one report of cases in which citations occur, but, by adopting the plan of adding in each instance the date, the authors have enabled persons using the book to trace the references to that series of reports which they may happen to possess. The compilation of such a book is a work of enormous and most irksome labour, and we trust that it will meet with the appreciation it deserves from those for whose benefit it is intended. The publishing price is 25*s*.

## MORAL INSANITY.

*Prichard and Symonds in Especial Relation to Mental Science.* With Chapters on Moral Insanity. By D. Hack Tuke, M.D., LL.D. Pp. 113. London: J. & A. Churchill. 1891.

This *brochure* consists of three papers read respectively before the Medico-Psychological Association at Bristol in May, 1891; the British Medical Association at Belfast in July, 1884; and the Medico-Psychological Association at Cork in August, 1885. Its importance is out of all proportion to its size. Of Dr. Tuke's appreciative sketches of Prichard and Symonds we shall only say that we commend them to the notice of the editors of the 'Dictionary of National Biography' and the contributors more immediately concerned. But this essay has a far higher than a merely bibliographical value. We bring it before our readers as a phenomenal book for two reasons: (1) We have here a new and inexpugnable statement of the doctrine of 'moral insanity' by one of the foremost of living experts. Moral insanity, says Dr. Tuke, is 'a form of mental disorder in which there is a loss of control over the lower propensities, or in which the moral sentiments *rather than* the intellectual powers are confused, weakened, or perverted. . . . From time to time cases occur in regard to which . . . *the prominent characteristic and by far the most striking and important* factor of the mental condition is, not loss of memory, not delusion or hallucination, not any deficiency of talent or genius, not any lack of mental acuteness, and certainly no incoherence of ideas or language—none of these—but a deficiency or impairment of moral feeling or self-control, such being either the development of a character natural to the individual or a departure from it, which contrasts most strikingly with its former traits.' If the advocates of moral insanity had always defined their position with such skilful moderation as this they would not have lain so long under what Dr. Tuke calls 'the curse of the law.' (2) Dr. Tuke has placed on record in his little book a case of alleged 'congenital moral defect' without any appreciable mental lesion. We shall attempt no *précis* of the facts. We shall simply express the belief that the existence of *primäre verrücktheit* has been proved at last, and that Dr. Tuke's case will henceforth be the *locus classicus* of moral insanity.

Home Cure for Deafness.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the utmost service to me.' Post free, 4*d*. Dr Verre & Co., Publishers, 22 Warwick Lane, London, E.C.—Advt.

# Correspondence.

## MORTGAGE REDEMPTION AND ANTI-FORECLOSURE INSURANCE COMPANIES.

SIR,—These insurance companies enable the mortgagor or borrower after the lapse of a few years to pay off the mortgage, which very probably the mortgagor never otherwise would do, the mortgagor paying half yearly a portion of the mortgage debt, which the insurance company eventually wholly redeems.

In these ways, enforced by law, estates could be liberated from both debt and interest.

AUGUSTUS J. HARVEY.

12 Landridge Road, Fulham:
Aug. 4.

# Unreported Cases.

## NISI PRIUS.

### COMMISSION AGENT.

ON August 4, before Mr. Justice Charles without a jury, the case of *Moore* v. *Peachey* was tried. This was an action, as stated in the writ, to recover 193*l.* 1*s.* 3*d.*, whereof 115*l.* 1*s.* 3*d.* was upon a cheque drawn by the defendant and 78*l.* being money received by the defendant on commissions executed by him as agent for the plaintiff. The plaintiff alleged that previously to and in November, 1890, the plaintiff employed the defendant, for reward to the defendant in that behalf, to make bets on horse races for the plaintiff, and to receive for the plaintiff any moneys won upon such bets, and to pay for the plaintiffs any moneys lost upon such bets. Between November 3 and 8, 1890, inclusive, the defendant received to the use of the plaintiff 417*l.* 10*s.* in respect of bets made and won for the plaintiff by the defendant on the terms above stated; the defendant's reward or commission on the above sum payable by the plaintiff amounting to 10*l.* 8*s.* 9*d.* During the same period the defendant made and lost bets for the plaintiff to the amount of 192*l.* The plaintiff claimed 193*l.* 1*s.* 3*d.*, being the balance of the sum of 417*l.* 10*s.*, after deducting therefrom 10*l.* 8*s.* 9*d.* and 192*l.*, and also a further sum of 22*l.* due to the defendant from the plaintiff as money had and received by the defendant. The plaintiff lost on the horses Ben, Tortoise, Whistle Jacket, Touchwood, Theophilus, and Bookdale, and won on Vasistas and Queen of the Dale, The plaintiff further claimed the above sum on accounts stated on November 10, 1890. The defence was that these were wagering contracts void under the statute 8 & 9 Vict. c. 109, s. 18, made between the parties as principals; and that it was part of the contract that if either party should make default in payment of any money lost, then all liability on the part of the other party should cease; and the defendant said that the plaintiff had failed to meet a cheque for 22*l.* in respect of such early in November, 1890. This writ was issued on December 5, 1890. In support of the plaintiff's case he himself was called and deposed to the employment of the defendant by letter after the meeting at Ascot in June, 1890. He said that in all the transactions represented by the accounts the mode of business was that the defendant should make bets with third persons in his behalf as his agent, charging him, the plaintiff, his commission. In various letters the defendant spoke of not being able 'to get on' certain horses, and of persons with whom he had made bets refusing to pay him. For the defence Mr. Peachey was called, and said he was a bookmaker, but preferred being described as a commission agent, as being the more respectable term. (Laughter.) He said he had never 'placed' any bets for the plaintiff, and that he had never received these moneys for the plaintiff. He attributed the expressions in the letter to his practice when he found himself too heavily committed on any particular horses of getting other bookmakers to take part of the bets off his hands. This process was known as 'hedging,' and he had to pay in some cases 5 per cent. or even 10 per cent. for the accommodation. The commission charged in the accounts was charged to country customers to cover expenses. (The accounts showed charges for 'expenses' in addition to the 'commission.') He was corroborated by his clerk, who said there were books, but they were not produced. The defendant also called two other gentlemen, Messrs. Harris and Day, of the same calling, who said that 'bookmakers' and 'commission agents' were practically and in many cases identical.—Mr. Candy, in summing up, relied on *Cohen* v. *Kittell*, 58 Law J. Rep. Q. B. 241; L. R. 22 Q. B. Div. 680, where it was held that no action lay for failure by a commission agent in accordance with his employment. Mr. Justice Manisty there said: 'A decision in favour of a plaintiff in this case would still further defeat the object of the statute, which, as the preamble shows, was to add to the strictness of the law with respect to gambling. Since the Act passed, however, and in consequence, as I cannot but think, of some of the decisions upon it, the practice which it was intended to discountenance has greatly increased, and that with results of a most disastrous character as regards both horse-racing and transactions in stocks.'—Mr. Talbot replied for the plaintiff, pointing out the documentary evidence was all one way as against the evidence of the defendant, unsupported by any books. The defendant in August wished to avail himself of the very position as to third parties which he now sought to deny.—Mr. Justice Charles, in giving judgment, said the question was whether the relation between the parties was that of principal and agent, or whether both parties were betting together as principals with each other. The defendant said that it was part of the contract that if either party should make default in payment of any money lost, then all liability on the part of the other party should forthwith cease; but he (the learned judge) did not think that that defence was made out, and thought that the contract contained no such term. If the true relation between the parties was that both were betting together as principals, then no action at law would lie to recover the money lost or won, and the Act 8 & 9 Vict. c. 109, s. 18, would apply. If the relation was as principal and agent, then, according to *Read* v. *Anderson*, 52 Law J. Rep. Q. B. 214; L. R. 10 Q. B. Div. 100; 53 Law J. Rep. Q. B. 532; L. R. 13 Q. B. Div. 779, which many people thought was unfortunately decided, money owing under such contracts could be sued for and recovered. The plaintiff's case was clear, that he resided at Seaton, in Devonshire, and met the defendant at Ascot in June, 1890, and that the defendant sent him his terms and a card, in which the defendant was described as a 'commission agent,' and which stated that his terms were 5 per cent. commission. In spite of the evidence of Messrs. Harris & Day, called by the defendant, he could not think that 'bookmaker' and 'commission agent' were convertible terms, and meant the same thing. The account rendered weekly to the plaintiff showed the balance of what he (Moore) owed, and that the commission charged was 2½ per cent., and the plaintiff treats it as a commission for bets made on his behalf. But in August there was a stronger circumstance, when there was 100*l.* due. The defendant writes to the plaintiff that he cut off 40*l.* from that sum on the representation that persons who had made bets

with him had not paid up, and the plaintiff said he took the 60*l.* and let the defendant off the remainder. And then, on September 23, the defendant said he had a lot of money on Gone Coon. On November 11 the plaintiff paid the defendant 22*l.* by cheque, which was dishonoured by accident, as there were not sufficient funds to meet it. After that a sum of money had been paid to the defendant. The defendant admitted that he had got it and wanted to keep it, as his country clients would not pay, and the defendant refused to pay it. The defendant says he never made bets with other people. But I cannot accept that statement, his assertion that he made the bets with himself. No books are brought here for me to inspect, or to bear out what they admit were carefully booked transactions. In these circumstances I am of opinion that the defendant has not displaced the case presented by the plaintiff, and that he is estopped by his conduct from saying that he betted as a principal. The plaintiff, therefore, I think, is entitled to a verdict and judgment for 193*l.* 1*s.* 3*d.* as claimed, with costs.—Mr. G. J. Talbot (with whom was Mr. A. T. Lawrence) was counsel for the plaintiff; Mr. Candy, Q.C., and Mr. Pike appeared for the defendant.

## THE VICTORIA LAW COURTS, BIRMINGHAM.

On July 30, in the new Victoria Law Courts, which the Prince of Wales opened last week, the Birmingham summer assizes commenced, and the occasion was marked by an address of welcome to the judges by the mayor and a reply by the Lord Chief Justice. At 11 o'clock Lord Coleridge and Mr. Justice Wills arrived at the Courts. There was a large gathering of the city justices to receive their lordships in the great hall, with the mayor (Alderman Clayton), wearing his chain of office, the recorder (Mr. Dugdale, Q.C., M.P.), the high sheriff (Mr. Beard), the town clerk (Mr. E. O. Smith), and the clerk of the peace (Mr. C. E. Mathews). There were also present a large number of members of the bar. The Lord Chief Justice wore the gold chain of his office, and Mr. Justice Wills wore the usual dark robes of a judge sitting in a civil Court. After the reception, a procession was formed, headed by the magistrates, and consisting of the town clerk, the mayor, the recorder, the under-sheriff (Mr. Heath), the high sheriff's chaplain (Canon Evans), the high sheriff, and the judges.

On the judges entering the Crown Court, the commission was opened, and the Mayor, addressing the judges, asked leave to say a few words on the first occasion of the opening of the commission of assize in those Courts. The corporation of Birmingham had for many years endeavoured to obtain for Birmingham the position of an assize town. After attempts extending over thirty years, in 1884 they were successful on the condition that Courts suitable for the administration of justice should be erected. As soon as they obtained that privilege they appointed a committee, which had for the last seven years worked very hard to produce the results their lordships saw that morning. If the Courts were not perfect, it was not for want of time or trouble or expense at the sole charge of the borough of Birmingham, without any contribution from the Imperial or county funds. No doubt it would be found that there were minor things required, but he asked their lordships' indulgence in any little difficulties they might find in connection with the administration of justice in the Courts. The city had been highly honoured in connection with the opening of the Courts. The foundation-stone was laid by Her Majesty in her Jubilee year. Their lordships would be aware that only last week the city had the honour of having the Courts formally opened by the Prince and Princess of Wales, and they had a great honour added in having the Lord Chief Justice of England present on that occasion, accompanied by Mr. Justice Wills, a Birmingham man they were proud to see once more amongst them. (Cheers.)

The Lord Chief Justice, in reply, said: Right Worshipful Sir, Gentlemen of the Corporation, and Magistrates of Birmingham,—I did not come here prepared to receive this address, and, therefore, anything that I say is the issue of the moment. But, on the part of my learned brother and myself, I cannot help both gratefully receiving and cordially returning the welcome you have been pleased to give us. I will only say that I trust that the justice which is administered in these Courts will be worthy of the shrine which you have chosen to erect for its administration; and this, at least, I may say, that it would be want of power, and not want of will, that would prevent us from fulfilling the expectation you have a right to form from the long and noble and unbroken traditions of that English bench to which it is the honour of both of us now to belong. (Cheers.)

In subsequently addressing the grand jury, his lordship remarked that he was very glad to meet so many county gentlemen present, for, although the Courts, as the mayor had said, had been the creation of the city of Birmingham, yet business from the county had to be transacted there. The calendar which would be presented was neither large with regard to the number of its items nor grave in the character of the crime of which it was composed. Considering that they were dealing with an enormous town and a neighbourhood in many parts most densely populated, a calendar containing the names of twenty-seven persons and few serious cases was not an unusual one. After briefly referring to one of the worst cases on the calendar—a charge of wilful murder—he said few people had opportunities of realising as he did the terrible effects produced by intemperance. Of course, there were cases which stood quite aside from the influence of the publichouse—crimes such as perjury, forgery, false pretences, and others which required the assistance of education; but drunkenness was mainly the cause of the commoner sorts of crime; and if England could be made sober three-fourths of her gaols could be closed. He trusted all in positions of authority would do what they could to set their faces against this great evil. Another crime that appeared to be on the increase was perjury. The crime of perjury was one of such enormity and wickedness that the code of punishment was not sufficiently severe, especially considering the cruel results which might follow. Perjury corrupted justice at the fountain-head, and turned the Court into a field of triumph for successful fraud. It was impossible to say anything too strong in denunciation of perjury; but it must be remembered that unsuccessful prosecutions for perjury caused mischief, because the failure of the prosecution suggested to people likely to give way to perjury that, after all, there was not very much danger. Therefore, it was to be hoped in such cases the grand jury would not return true bills unless they were tolerably certain of a conviction.

In the evening the judges were entertained by the Mayor at a banquet, at which the local magistrates and members of the bar were also present.

## CAPITAL PUNISHMENT AMONG THE JEWS.

In a work on the 'Criminal Code of the Jews,' Mr. Benny gives an interesting account of the various modes of punishment of those convicted under the Hebrew law of capital offences. In accordance with the Mosaic code four kinds of death were inflicted, each appropriate to a distinct series of crimes. These were stoning, strangling, burning, and decapitation. Nothing can be more absurd, says the author, than the notions generally current re-

specting the manner in which these punishments were carried out among the Jews. The stoning of the Bible and of the Talmud was not, as commonly supposed, a pell-mell casting of stones at a criminal; the burning had nothing whatever in common with the process of consuming by fire a living person as practised by the Churchmen of the Middle Ages; nor did the strangling bear any resemblance to the English method of putting criminals to death.

The stoning to death of the Talmud was performed as follows: The criminal was conducted to an elevated place, divested of his attire, if a man, and then hurled to the ground below. The height of the eminence from which he was thrown was always more than fifteen feet; the higher, within certain limits, the better. The violence of the concussion caused death by dislocating the spinal cord. The elevation was not, however, to be so high as to greatly disfigure the body. This was a tender point with the Jews; man was created in God's image, and it was not permitted to desecrate the temple shaped by heaven's own hand. The first of the witnesses who had testified against the condemned man acted as executioner, in accordance with Deut. xvii. 7. If the convict fell face downward, he was turned on his back. If he was not quite dead, a stone, so heavy as to require two persons to carry it, was taken to the top of the eminence whence he had been thrown; the second of the witnesses then hurled the stone so as to fall upon the culprit below. This process, however, was seldom necessary; the semi-stupefied condition of the condemned, and the height from which he was cast insuring, in the generality of cases, instant death.

It may be well to mention, in this connection, that previous to the carrying into effect a sentence of death, a death draught, as it was called, was administered to the unfortunate victim. This beverage was composed of myrrh and frankincense (*lebana*) in a cup of vinegar or light wine. It produced a kind of stupefaction, a semi-conscious condition of mind and body, rendering the convict indifferent to his fate and scarcely sensible to pain. As soon as the culprit had partaken of the stupefying draught the execution took place.

A criminal sentenced to death by burning was executed in the following manner: A shallow pit some two feet deep was dug in the ground. In this the culprit was placed, standing upright. Around his legs earth was shovelled and battered firmly down until he was fixed up to his knees in the soil. Movement on the part of the condemned person was, of course, impossible; but care was taken that the limbs should not be painfully constrained. A strong cord was now brought, and a very soft cloth wrapped around it. This was passed once round the offender's neck. Two men came forward; each grasped an end of the rope and pulled hard. Suffocation was immediate. As the condemned man felt the strain of the cord, and insensibility supervened, the lower jaw dropped. Into the mouth thus opened a lighted wick was quickly thrown. This constituted the burning.

Decapitation was performed by the Jews after the fashion of the surrounding nations. It was considered the most humiliating, the most ignominious and degrading death that any man could suffer. It was the penalty in cases of assassination and deliberate murder. It was incurred by those who wilfully and wantonly slew a fellow-man with a stone or with an implement of stone or iron. It was likewise the punishment meted out to all persons who resided in a town the inhabitants of which had allowed themselves to be seduced to idolatry and paganism.

Strangulation was a form of death by suffocation. It was effected as in burning. The culprit stood up to his knees in loose earth. A soft cloth containing a cord was wound once round his neck. The ends being pulled in opposite directions, life was soon extinct. This mode of death was the punishment of one who struck his father or his mother; of any one stealing a fellow Israelite; of a false prophet; of an elder or provincial judge who taught or acted contrary to the decision of the Great Sanhedri of Jerusalem; and of some other crimes against public morals.

These four deaths, as above described, were the only modes of execution in accordance with Hebrew law.

*Green Bag.*

## LAW AND PROFESSIONAL NOTES.

By T. F. Uttley, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### THE JUDGE'S CHARGE AT LIVERPOOL.

In charging the grand jury at the Liverpool Assizes the judge said that the calendar showed that crime in the county was small, and the same remark would apply to the quality, excepting in one case. He congratulated the magistrates upon the fact that they had logically carried out the terms of the Assizes Relief Act. In some counties it was not so well carried out. In Liverpool, however, it was so thoroughly adhered to that he believed there was not one case in the calendar that should have been tried at the sessions. He had been on this circuit six or seven times and had seen at times over one hundred prisoners for trial at these assizes. The grave case with which the jury would have to deal was the one in which John Conway, a delegate and secretary to the Seamen's Union, was charged with the murder of a boy at Liverpool. A foul murder had, no doubt, been committed, but the murderer, whoever he was, when he threw the bag into the water seemed to forget that it would float. His lordship proceeded to review the evidence which connected the prisoner with the death of the boy, and considered that the grand jury, after hearing the evidence would be of opinion that there was a *prima facie* case against the prisoner. It could, however, be said on his behalf that there appeared to be no motive for the crime, nor did he (the judge) find one in looking over the depositions. He could not, however, leave this case without adding that if the evidence was true they need not go further to try to find out what the motive was.

### NOTICE TO A BANK.

An interesting point in banking arose at the Manchester Assizes recently, the question at issue being with regard to a bill of exchange for 1,500*l.* drawn by Messrs. Farbridge, Holliday & Co. and accepted by Messrs. Herford & Tomkinson. Messrs. Farbridge, Holliday & Co. are merchants in Manchester, and Messrs. Herford & Tomkinson also carried on business there till they suspended payment in the beginning of the present year. The two firms exported Manchester goods to China on joint account. Messrs. Herford & Tomkinson bought goods after consultation with Messrs. Farbridge, Holliday & Co., and consigned them to the China agents of the latter firm. The proceeds were remitted to England, and the two firms shared the profits or the losses. The transactions were financed by drafts of Messrs. Herford & Tomkinson upon Messrs. Farbridge, Holliday & Co. The bills were drawn at six months, and, as a rule, the proceeds of the sale in China arrived in time to retire the bills drawn in respect of them. At the beginning of this year a number of acceptances had matured before the corresponding funds arrived from China, and Messrs. Farbridge, Holliday & Co. were out of pocket to the extent of between 1,500*l.* and 1,600*l.* The joint account would, in the ordinary course of things, have been debited with interest at 5 per cent.

on the amount of the advance, and, as the rate of discount was low at the time, it was arranged, in order to put Messrs. Farbridge, Holliday & Co. in funds, that Messrs. Herford & Tomkinson should draw a bill upon them for 1,500*l.* at three months. This bill was now the matter in dispute. Messrs. Herford & Tomkinson paid the bill into the bank, and the plaintiff's case was that it was explained to the manager that a cheque would be drawn against it in favour of Messrs. Farbridge, Holliday & Co., and that it was not to affect Messrs. Herford & Tomkinson's account. Messrs. Herford & Tomkinson were in difficulties at this time, and being unable to obtain further advances from the bank suspended payment. The bank applied the bill towards the reduction of Messrs. Herford & Tomkinson's debit balance, and in a cross action, which was tried with the present issue, sought to recover the amount of the bill from Messrs. Farbridge, Holliday & Co. The judge said the issue was a very small one, the real point being whether the bank had notice that if they discounted the bill the money was hypothecated to meet a cheque drawn by Herford & Tomkinson in favour of Farbridge, Holliday & Co., or, in other words, that the 1,500*l.* which formed the proceeds of the bill was to be held and kept for the specific purpose of meeting a cheque which was to be drawn in favour of Farbridge, Holliday & Co. If the bank had such notice it was, as a matter of law, wrong in both actions; if it had not such notice, then in law the bank was right in both actions. The jury said they found that the plaintiff had not proved that due notice was given to the bank with respect to the special hypothecation of the bill, whereupon his lordship said that that was a verdict for the defendants in the first case, and, in the other, for the amount of the bill, and gave judgment to that effect.

### PENALTY FOR NOT COMMITTING BIGAMY.

This is the heading the newspapers have put to a case heard at the Nottingham Assizes, where an action for breach of promise was brought in which the daughter of a cabinet-maker sued an organ-builder for damages in respect of a breach of promise of marriage. Counsel for plaintiff said it was alleged in defence that at the time the promise was stated to have been made the defendant was a married man and the plaintiff knew it. He had pretended to be single, but was, in fact, a married man, and had endeavoured to get the plaintiff away. He began to pay attention to her, representing himself as a widower possessing some property, and plaintiff broke off an engagement she had entered into with another person in the town in order to become engaged to defendant. He promised to marry her and took her to Sheffield, where he bought her a wedding-ring. On the way back, however, he told her he was married, whereupon she was very indignant and refused to have anything to do with him. Defendant denied making the promise of marriage. He also stated that he never said he was a widower. The judge held that, while plaintiff might have acted with more circumspection, defendant's conduct had been mean and contemptible, and the jury awarded a verdict of damages and costs against him.

### COLLIE-DOGS AND FIRST OFFENCES.

Quarrels are continually taking place amongst neighbours about dogs, or, it may be, hens, or cats. No one who has been accustomed to keep such animals has doubtless ever been able to avoid a dispute. These differences sometimes culminate in proceedings, as was the case at Guildford. A bank manager had complained that a collie had frightened his horse and caused it to bolt, and that as a result the horse was so injured that it had to be killed, and he brought an action at the Guildford Assizes claiming damages against the collie's master. There was no evidence that the dog had misbehaved before. The learned judge, however, said that testimony to this effect was not necessary in the case of collies, because an Act recently passed for the protection of sheep singled out that species of the breed as punishable on a first offence unlike all other dogs, and the jury accordingly awarded 30*l.* as damages against the collie's master. If the clause of this Act were extended to all dogs and to the protection of every animal and human being many persons would doubtless consider it a boon, and it might in some degrees necessitate less strictness than is usual in the case of the unpopular muzzling orders.

### INSURANCE OF MANUSCRIPTS.

A warning has been issued by the Incorporated Society of Authors that a quire stock of books, if it should be destroyed by fire either at a printer's or a publisher's, is, in the great majority of cases, practically lost to an author if he should not have sold it out and out. In hardly any agreement, as pointed out, is provision made for insurance of this stock, and without insurance or negligence on the part of either publisher and printer the author must bear the whole loss of fire. Manuscript, it was alleged, could not be insured at all, no fire office being willing to undertake the risk. This allegation does not seem, however, quite correct, as an author states that he insured a manuscript in a certain company, paying 2*s.* 6*d.* per cent. on the value, and this insurance covered the risk at the author's own house, at the publisher's, and at the printer's. An Authors' Manuscript and Literary Insurance Company might prove a useful boon to authors.

### LEGAL OWNERS OF TREASURE TROVE.

At Rio Janeiro is a castle yclept San Antonio, which is now being demolished by order of the Brazilian Government. In the cellars of that edifice there have been dug up twelve iron-clamped chests and sixteen *sacs* containing 70,000,000 old Spanish dollars in gold, plus a leaden box filled with papers. One of these documents is a receipt given by a Father Anton Desarte, superior of the Jesuits' College at Rio, for 20,000,000 of gold dollars, to be paid by him as a tribute to King John of Portugal when he visited Brazil. In the eighteenth century the Marquis de Pomlal expelled the Jesuit order from Portugal, and it is conjectured that the Jesuits at Rio, hearing of this, hid the treasures just discovered. A list of the wealth was left in the leaden box, there being 70,000,000 dollars, 2,800 lb. of gold dust, and 20,000 lb. weight of gold ingots. To whom, it is asked, does this treasure now belong—to the Republic, the King of Portugal, the Jesuits, or the contractors who are demolishing the castle?

## ORDER OF COURT.

Thursday, July 30, 1891.

Whereas, the Right Honourable Lord Justice Fry has at my request consented to sit and act as an additional judge of the Chancery Division of the High Court of Justice, on July 31, 1891, and thenceforward up to the close of the present Trinity Sittings; and whereas it is expedient that the causes and matters assigned by the order dated May 12, 1891, to the Honourable Mr. Justice Vaughan Williams for the purpose of hearing the same or any application therein, should be heard or tried before such additional judge; now I, the Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, do hereby order that such of the several causes and matters so assigned which have not been disposed of by the said Mr. Justice Vaughan Williams, other than the cause of *Beaumont* v. *The Provident Assurance Company (Lim.)*, be accordingly transferred from the said Mr. Justice Vaughan Williams to the Right Honourable

Lord Justice Fry for the purpose only of hearing or of trial, and be marked in the cause books accordingly; and I do also order that such of the said causes and matters as remain undisposed of at the close of such sittings be retransferred (without further order) for the purpose aforesaid to the Honourable Mr. Justice Romer. And this order is to be drawn up by the registrar and set up in the several offices of the Chancery Division of the High Court of Justice. HALSBURY, *C.*

## ORDER OF TRANSFER.

Saturday, August 1, 1891.

WHEREAS, the Right Honourable Lord Justice Fry has at my request consented to sit and act as an additional judge of the Chancery Division of the High Court of Justice up to the close of the present Trinity Sittings; and whereas it is expedient that in addition to the causes and matters transferred by the order dated July 30, 1891, a portion of the causes and matters transferred to the Honourable Mr. Justice Romer for the purpose only of hearing or of trial, should be heard or tried before such additional judge; now I, the Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, do hereby order that the several causes and matters set forth in the schedule hereto, be accordingly transferred from the Honourable Mr. Justice Romer to the Right Honourable Lord Justice Fry for the purpose only of hearing or of trial, and be marked in the cause books accordingly; and I do also order that such of the said causes and matters as remain undisposed of at the close of such sittings be retransferred (without further order) for the purpose aforesaid to the Honourable Mr. Justice Romer. And this order is to be drawn up by the registrar and set up in the several offices of the Chancery Division of the High Court of Justice.

SCHEDULE.

Hazlehurst *v.* Rylands—1890 H. 1,193
Burdett *v.* Gorton—1891 B. 381
In re Coningham, dec. Coningham *v.* Coningham—1890 C. 2,978
Hall *v.* Hall—1890 H. 4,335
Driggs Ordnance Co. *v.* Driggs & Schroeder Ordnance Co. (Lim.)—1890 D. 1,883
Falk *v.* Falk—1891 F. 131
Molineaux *v.* Gartside—1890 M. 3,193
Vennell *v.* Meakin—1891 V. 19
Rothwell *v.* Abrahams—1891 R. 132
Cowood *v.* Vernon—1890 C. 1,143
New Skegby Colliery Co. (Lim.) *v.* R. W. Dodsley—1890 N. 1,042
Soppett *v.* Whiting—1891 S. 286
Isaacs *v.* Isaacs—1890 I. 1,457
Howell *v.* Broomhead—1890 H. 4,245
Layton *v.* Patent Lithographic Zinc Co. (Lim.)—1890 L. 2,165
In re Beckett, dec. Lyons *v.* Hart—1890 B. 1,488
Davey *v.* Hugill—1891 D. 316
Kelsey *v.* Hodgkinson—1891 K. 129
Ellissen *v.* Surrey Machinists Co. (Lim.)—1891 E. 18
Watts *v.* Paynter—1891 W. 51

HALSBURY, *C.*

## LONG VACATION NOTICE.

DURING the vacation, until further notice, all applications which may require to be immediately or promptly heard are to be made to the judges who for the time being shall act as vacation judges.

Mr. Justice Collins, one of the vacation judges, will, until further notice, sit in Probate, Divorce, and Admiralty Court I., Royal Courts of Justice, at 11 A.M. on Wednesday in every week, commencing on Wednesday, August 19, for the purpose of hearing such applications of the above nature as, according to the practice in the Chancery Division, are usually heard in Court.

No case will be placed in the judge's paper unless leave has been previously obtained, or a certificate of counsel that the case requires to be immediately or promptly heard, and stating concisely the reasons, is left with the papers.

The necessary papers, relating to every application made to the vacation judges (see notice below as to judges' papers), are to be left with the cause clerk in attendance, Chancery Registrars' Chambers (Room 136), Royal Courts of Justice, before one o'clock on the Monday previous to the day on which the application is intended to be made. When the cause clerk is not in attendance they may be left at Room 136, under cover, addressed to him, marked outside 'Chancery Vacation Papers,' or they may be sent by post, but in either case so as to be received by the time aforesaid.

In any case of great urgency the brief of counsel is to be sent to the judge by post, or rail, prepaid, accompanied by office copies of the affidavits in support of the application, and also by a minute, on a separate sheet of paper, signed by counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows: 'Chancery Official Letter: To the Registrar in Vacation, Chancery Registrars' Chambers, Royal Courts of Justice, London, W.C.'

On applications for injunctions, in addition to the above, a copy of the writ, and a certificate of writ issued, must also be sent.

The papers sent to the judge will be returned to the registrar.

The chambers of Mr. Justice Kekewich will be open on Tuesday, Wednesday, Thursday and Friday in every week, from 10 to 2 o'clock. Mr. Justice Collins will, until further notice, hear urgent summonses, which may be adjourned to him (Room 648), in the Royal Courts of Justice (Carey Street entrance), on Friday, August 14, at 10.30 A.M., and subsequently on Wednesday in every week, at 10 A.M., commencing August 19. A further time will be appointed for any cases that cannot then be conveniently disposed of.

The address of the judge for the time being acting as vacation judge in the Chancery Division can be obtained on application at the Chancery Registrars' Chambers, Room 136.

*Judges' Papers.*

The following papers for the vacation judge are required to be left with the cause clerk in attendance at the Chancery Registrars' Chambers, Room 136, on or before the Monday previous to the day on which the application to the judge is intended to be made:—

1. Counsel's certificate of urgency, or note of special leave granted by the judge.
2. Two copies of writ and two copies of pleadings (if any) and any other documents showing the nature of the application.
3. Two copies of notice of motion.
4. Office copy affidavits in support with exhibits, and also the affidavits in answer.

N.B.—Solicitors are requested, when the application has been disposed of, to apply at once to the judge's clerk in Court for the return of their papers.

NOTICE TO SOLICITORS.

*Chancery Registrars' Office.*

The Chancery Registrars' Office will be open daily. On Tuesday, August 18, and on the same day in every succeeding week during the vacation, the registrar in attendance will see solicitors requiring alterations necessary in orders to be acted on by the paymaster; but the order, and any necessary papers, and a notification of the amendment as required by rule 27 of the Supreme Court Funds Rules, 1886, ought to be left at his seat not later than 12 o'clock on the previous day.

Chancery Registrars' Chambers,
Royal Courts of Justice: July 29, 1891.

## CALENDAR OF THE COUNTY COURTS.

From August 10 to August 15.

| No. of Circuit | His Honour | Aug. 10 | Aug. 11 | Aug. 12 | Aug. 13 | Aug. 14 | Aug. 15 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Pitoulkes | — | Altrincham | — | Warrington | Birkenhead | — |
| 15 | Judge Turner | Middlesbrough | York | Thirsk | Helmsley | Knaresborough | Ripon |
| 19 | Judge Barber | Derby | Alfreton | Ilkeston | Bakewell | Buxton | — |
| 25 | Judge Jordan | Stoke | Hanley | Hanley | Uttoxeter | Tunstall | Cheadle |
| 54 | Judge Metcalfe | — | — | — | — | Bristol | Bristol |
| 55 | Judge Mackenochie | Shaftesbury | Wincanton | Crewkerne | Yeovil | Salisbury | — |
| 57 | Judge Paterson | Tiverton | Barnstaple | Bideford | Southmolton | Torrington | Axminster |

# Court of Appeal Register.

## APPEAL COURT I.

Before Bowen, L.J., and Kay, L.J.

Thursday, July 30.

*Pollock* v. *Sharpe* (application of plaintiff from refusal of Denman, J., and Wills, J., dated June 12, to order review of taxation of receiver's costs; heard July 28).—Dismissed.

Before the Master of the Rolls, Bowen, L.J., and Kay, L.J.

*Hamlyn & Co.* v. *Wood & Co.* (application of defendants for judgment or new trial on appeal from verdict and judgment, dated June 26, at trial before Mathew, J., with a special jury in Middlesex).—Allowed.

Friday, July 31.

*In re Browne & Wingrove* (*ex parte Gustav Ador*) (appeal of Gustav Ador from order of Mr. Registrar Giffard, dated June 23, refusing direction to trustee to pay dividend on admitted proof).—*Cur. adv. vult.*

*Crompton & Co.* (*Lim.*) v. *Phillips* (1890—C.—289). *Phillips* v. *Crompton & Co.* (*Lim.*) (1890—P.—317) (application of defendant C. H. Phillips for judgment or new trial on appeal from verdict and judgment, dated June 23, at trial before Day, J., and a special jury in Middlesex).—Part heard.

Saturday, August 1.

*In re C. W. Rogers, ex parte Holland & Hannen* (appeal of Messrs. Holland & Hannen from order of Cave, J., dated July 2, on motion of trustee to refund payment after bankruptcy).—Part heard.

Before Bowen, L.J., and Kay, L.J.

Monday, August 3.

*Cave* v. *Leslie* (appeal of plaintiff from order of the Lord Chief Justice and Mathew, J., dated April 9, dismissing action as frivolous and vexatious).—Order varied.

Before Lindley, L.J., Bowen, L.J., and Kay, L.J.

*In re C. W. Rogers, ex parte Holland and Hannen.*—*Cur. adv. vult.*

Tuesday, August 4.

*Crompton & Co.* (*Lim.*) v. *Phillips* (1890—C.—289).—*Phillips* v. *Crompton & Co.* (*Lim.*) (1890—P.—317).—Part heard.

Wednesday, August 5.

*Crompton & Co.* (*Lim.*) v. *Phillips* (1890—C.—289).—*Phillips* v. *Crompton & Co.* (*Lim.*) (1890—P.—317).—Refused.

*Monk and Wife* v. *Consolidated Co.* (*Lim.*) *and others* (application of plaintiffs in person, for judgment or new trial on appeal from verdict and judgment dated June 24, at trial before Day, J., and special jury in Middlesex).—Refused.

*Ritter* v. *Metropolitan Railway Company* (application of plaintiff for judgment, or new trial on appeal from verdict and judgment, dated June 27, at trial before Hawkins, J., with a special jury in Middlesex).—Refused.

## APPEAL COURT II.

Before Lindley, L.J., and Fry, L.J.

Thursday, July 30.

*Hick* v. *Rodocanachi, Sons & Co. and others* (appeal of defendants Raymond and Reid from judgment of Mathew, J., dated February 11, at trial without a jury in Middlesex; *cur. adv. vult.* June 23—present Lindley, L.J., Fry, L.J., and Lopes, L.J.).—Allowed.

*Levy* v. *Wartman & Co.* (appeal of defendant company from order of Romer, J., for North, J., dated July 24, restraining defendants from selling cigars and issuing circulars).—Dismissed.

*Welby* v. *Still* (appeal of defendants from order of Kekewich, J., dated July 7, upon summons refusing further particulars of claim).—Varied.

*London and North-Western Railway Company* v. *Lee* (appeal of plaintiffs from order of Denman, J., and Wills, J., dated June 23, for particulars of claim in respect of carriage of goods).—Dismissed.

Before the Master of the Rolls, and Fry, L.J.

*Medwin* v. *Gibson* (appeal of defendants from order of Denman, J., and Wills, J., dated July 15, affirming refusal to strike out counterclaim).—Dismissed.

*Morris* v. *Keyes* (appeal of plaintiffs from order of Denman, J., and Wills, J., dated July 6, setting aside orders for judgment for limited amount under Order XIV., and giving judgment for whole amount claimed).—Dismissed on terms.

*Singleton & Co.* v. *Faithfull* (appeal of plaintiffs from order of Denman, J., and Wills, J., dated July 15, for judgment in default of reduced payment into Court or security).—Allowed.

Friday, July 31.

No sitting.

Saturday, August 1.

No sitting.

Before Lindley, L.J., and Fry, L.J.

Monday, August 3.

*London Printing and Publishing Alliance* (*Lim.*) v. *Cox* (appeal of defendant from judgment of Williams, J., sitting as an additional judge of the Chancery Division, dated May 13, heard July 22—present, Lindley, L.J., Fry, L.J., and Lopes, L.J.).—Appeal allowed.

*Hanbury (petitioner)* v. *Hanbury (respondent)* (appeal of petitioner (C. M. Hanbury) from order of Jeune, J., dated July 7, for father's custody of children until October 24, with access by mother). — Appeal dismissed.

TUESDAY, AUGUST 4.

*Smith* v. *Rodgers* (appeal of plaintiff from order of Kekewich, J., dated May 1, discharging chief clerk's certificate with reference back to chambers—heard July 29). —Allowed.

WEDNESDAY, AUGUST 5.

No sitting.

REFRESHMENTS AT THE ROYAL COURTS OF JUSTICE.—In answer to Mr. Morton, on July 31, the Attorney-General said: Licenses are required at the Royal Courts of Justice because, being in several districts and refreshments being sold to the public, licenses are necessary. I am informed that licenses have never been considered necessary in the House of Commons on the ground that the buildings form part of a royal palace. (Hear, hear.) —In answer to Mr. Cobb, Mr. Jackson said: I am informed that the parties to the contract are the Permanent Secretary to the Lord Chancellor and Mr. Elliott, the contractor. I have no knowledge of the details of the arrangements in the Courts, and I should be inclined to doubt whether there are numerous members of the legal profession who have acquired habits of intemperance through any difficulty in obtaining tea or coffee in the Courts; but I will communicate with the Lord Chancellor's department, if the hon. member wishes it, or perhaps the hon. member will do so himself. (Hear.)—Mr. Cobb said he did wish it, as a representation would come with greater weight from the right hon. gentleman. He might inform the right hon. gentleman that he was wrong about members of the bar and habits of intemperance.—Mr. Jackson: Perhaps the hon. member will furnish me with the names of the members of the bar to whom he refers. (Laughter.)

THE MAYORALTY.—Owing to the unexpected retirement of Mr. Alderman Gray, who stood next in succession to the mayoralty of the City, some doubt recently arose as to which of the junior aldermen would present himself for election. Mr. Alderman Evans, whose year of office, but for Mr. Gray's resignation, would have fallen in 1893, has now intimated that he will be prepared to serve next year should the choice of the Livery and the Court of Aldermen be so indicated. His return, in these circumstances, will be unopposed. Mr. Alderman Evans has been a member of the Corporation since 1874, and was elected Alderman of Castle Baynard Ward in July, 1884. He served the office of sheriff of London and Middlesex in 1885–86 in the mayoralty of the late Sir John Staples.

TURF RECIPROCITY.—The stewards of the Jockey Club, in accordance with the resolution passed at a meeting held on April 29, issued a circular to the jockey clubs of Europe, America, and the British colonies, inviting a formal agreement of reciprocity for the purpose of preventing the following offenders under the rules of one country from engaging in racing in another—viz. (1) Persons found guilty of corrupt practices on the turf; (2) defaulters for stakes and forfeits; (3) jockeys whose licenses have been refused or withdrawn; and (4) stable lads discharged without a character. They have received letters of acceptance from the following: The Austrian Jockey Club, the Union Club (Berlin), the Hungarian Jockey Club, the Italian Jockey Club, the Calcutta Turf Club, the Turf Club of Western India, the Dutch Racing Association, and the Belgian Jockey Club.

## NOTICES FOR THE WEEK.

### ROTA OF REGISTRARS.

MONDAY, August 10. — Court of Appeal No. 2: Mr. Leach. Mr. Justice Chitty: Mr. Bolt. Mr. Justice North: Mr. Carrington. Mr. Justice Stirling: Mr. Beal. Mr. Justice Kekewich: Mr. Ward. Mr. Justice Romer: Mr. Jackson.

Tuesday, August 11.—Court of Appeal No. 2: Mr. Godfrey. Mr. Justice Chitty: Mr. Farmer. Mr. Justice North: Mr. Lavie. Mr. Justice Stirling: Mr. Pugh. Mr. Justice Kekewich: Mr. Pemberton. Mr. Justice Romer: Mr. Clowes.

Wednesday, August 12.—Court of Appeal No. 2: Mr. Leach. Mr. Justice Chitty: Mr. Bolt. Mr. Justice North: Mr. Carrington. Mr. Justice Stirling: Mr. Beal. Mr. Justice Kekewich: Mr. Ward. Mr. Justice Romer: Mr. Jackson.

The Long Vacation will commence on Thursday, August 13, and terminate on Friday, October 23, both days inclusive.

THE TEMPLE CHURCH.—The last service at the Temple Church, prior to the Long Vacation, will take place on Sunday, August 9, when the Very Rev. Dr. Vaughan, Dean of Llandaff, will preach in the morning. After that date the church will remain closed until Sunday, October 4.

GRAY'S INN.—The benchers of Gray's Inn have again resolved that from August 1 until September 30, inclusive, children (boys over ten years of age excepted) be admitted to the gardens without orders between 6 P.M. and 8 P.M. (wet days excepted). The gardens have for years past been practically open to the public, inasmuch as benchers' orders have been liberally given. This order is intended to benefit children of the very poorest class.

QUARTER SESSIONS.—Lord Coleridge, at Birmingham, finding that nine persons were lying in gaol awaiting their trial at the quarter sessions, which do not take place until October next, said that he regarded it as most objectionable that men, some of whom might be innocent, should be detained for months without being brought to trial. He accordingly had them all produced in Court, and discharged them on their own recognisances to appear at the next sessions. His lordship strongly expressed an opinion that, in exercising their discretion under the Assizes Relief Act as to whether they should commit to sessions or assizes, magistrates should pay the utmost regard to securing as early a trial as possible.

MR. NAPIER HIGGINS, Q.C.—Mr. J. Napier Higgins, Q.C., will retire from practice at the end of the present sittings. Mr. Higgins was called to the bar at Lincoln's Inn in 1851, and, after acquiring an extensive practice as a junior, was made a Queen's Counsel in 1872. For many years he divided with the late Mr. Glasse, Q.C., the leading business in Vice-Chancellor Malins's Court, and latterly the learned gentleman has practised in the Court of Mr. Justice North, of which he has been the leader for some time. Mr. Higgins is vice-president of the Council of Legal Education, and he has always been a strenuous advocate and supporter of the reforms recently effected in the mode of admission and education of law students in that institution. He has likewise always taken an active interest in all matters relating to the welfare of the bar, and the establishment of the Inns of Court Bar Library at the Royal Courts of Justice was almost wholly due to his initiative. The learned gentleman is also treasurer of Lincoln's Inn for the present year. Though retiring from practice, it is hoped that Mr. Higgins will continue to retain his place on the various committees connected with the bar.

Accident at the Middle Temple Library.—This week, while some workmen were engaged erecting the scaffolding for the repairs to be carried out at the Middle Temple Library, one of them fell therefrom and was picked up in an insensible condition. The unfortunate man was afterwards conveyed to the hospital.

Admiralty Jurisdiction.—In the City of London Court, on July 28, before Mr. Commissioner Kerr, under the Admiralty jurisdiction of the Court, the case of *Green and others* v. *Payne* was heard, in which the plaintiffs, bargeowners, carrying on business in the City, sought to recover 150*l.* damages occasioned to their barges by the defendant, Mr. G. F. Payne, Trinity House pilot.—Mr. Butler Aspinall, counsel for the defendant, objected to the jurisdiction of the Court, on the ground that a pilot who was in charge of a vessel by compulsion of law could not be sued under the Admiralty jurisdiction, as in this instance.—Mr. Laing, counsel for the plaintiffs, urged that that was not so.—Mr. Commissioner Kerr thought that the Court had no jurisdiction under the circumstances, and that he must dismiss the suit accordingly, but he hoped there would be an appeal, as the question was one of great importance to the City of London.

Trustees and Executors' Association.—A second meeting in furtherance of the establishment of this association was held at the Cannon Street Hotel on August 4. Mr. Stanley A. Latham presided. It was explained that the objects of the association were the co-operation and mutual benefit of trustees and executors of the United Kingdom, with a view to remedy, and, if possible, remove, such liabilities and responsibilities of trusteeship as appear to press harshly and unjustly upon trustees, and to obtain such amendments of the existing law as may seem desirable. The association will assist, by advice, legal assistance, or money grants, cases of difficulty and hardship arising from trusteeship or executorship amongst its members, and a series of monthly meetings will be held by the association at which members will be invited to read papers and discuss matters connected with the objects of the association. Meetings will also be held for the purpose of calling public attention to, and assisting the passing of, Mr. Goschen's Trustee Bill, which will be reintroduced into the House of Commons next session. Resolutions embodying those intentions were adopted, and it was also resolved that the association should consist of a president, two or more vice-presidents, general council, executive committee, and the usual officers. It was further decided that an annual meeting and conference of members of the association should be held in London during the month of July. A provisional executive committee of eight gentlemen was formed, and Mr. T. Bowden Green, 1 Finsbury Circus, E.C., was requested to act temporarily as secretary of the association.

Solicitors as Advocates in County Courts.—In July, 1890, at a general meeting of the members of the Incorporated Law Society, a motion was brought forward by Mr. Charles Ford, of London, and seconded by Mr. C. T. Sanders, of Birmingham, and carried, calling for the repeal of so much of section 72 of the County Courts Act, 1888, as prohibits the solicitor of a suitor in a County Court from retaining another solicitor to appear in such Courts as the advocate for such suitor. In the following August Mr. Charles Ford issued a circular letter to all the provincial law societies of England and Wales inviting their opinion upon the above-named resolution, and we understand that he received replies from, among others, the following law societies expressing an unqualified approval of the resolution, and in the majority of cases the governing bodies of such law societies have, since August, 1890, adopted similar resolutions. The law societies in question are as follows: Hull, Dewsbury, Leeds, Chester and North Wales, Swansea, Blackburn, Liverpool, Birmingham, Berkshire, Oxfordshire, Great Yarmouth, and the Associated Provincial Law Society. If country law societies are really in earnest upon this subject something more must be done. A deputation should wait upon the Lord Chancellor, and a bill providing for the repeal of the obnoxious clause should be introduced into Parliament. We believe, as a matter of fact, that it is not an uncommon practice for solicitors who practise as advocates in County Courts to take a direct retainer from the client of another solicitor who wishes his professional brother to represent the client as a County Court advocate.

The Long Vacation.—Mr. Justice Jeune and Mr. Justice Collins will be the two Long Vacation judges, and the latter will sit during the first part and Mr. Justice Jeune will take the second half of the vacation. One of the two vacation judges will sit in open Court every Wednesday during the vacation, commencing on Wednesday, August 19, for the purpose of hearing *ex parte* motions and applications in the Chancery Division requiring to be immediately and promptly heard, but no case will be put in the Court paper unless leave has previously been obtained on a certificate of counsel that it is urgent. Queen's Bench summonses and applications in that division will be heard at Judges' Chambers, Strand, before one of the Vacation judges every Tuesday and Thursday during the Vacation, which commences on Wednesday, August 12, and ends on Friday, October 23.

## BIRTHS.

On July 30, at 25 Devonshire Terrace, Hyde Park, the wife of T. Willes Chitty, Esq., of the Inner Temple, of a son.

## MARRIAGES.

On July 1, at Riverside, Fort Hare, South Africa, Henry Timson Lukin, Lieutenant Cape Mounted Riflemen, eldest son of Robert Henry Lukin, Esq., Barrister-at-Law, to Lily, third daughter of M. H. Quinn, Esq., of Fort Hare, South Africa.

On July 28, at Elgin, N.B., Robertson Barclay Gordon, Solicitor, Elgin, youngest son of the Rev. George Gordon, LL.D. (late of Birnie), Braebirnie, Elgin, to Marjory Frances, second daughter of the late George Duff, Esq., M.D., Elgin.

On July 30, at St. Mary Abbots, Kensington, Roandeu Albert Henry Bickford-Smith, Barrister-at-Law, eldest son of William Bickford-Smith, M.P. for Truro, to Caroline Louisa Marianne (Carina), only daughter of J. E. Hilary Skinner, of the Northern Circuit.

On July 30, at St. Gabriel's, Warwick Square, S.W., William Albert, son of the late Dr. William Boswell, of Quebec, to Florence Helen, daughter of W. D. Rotch, Barrister-at-Law, of Waterloo, Liverpool.

On July 30, at St. Edward's, Romford, Joseph Child Priestley, Barrister-at-Law, of the Inner Temple, younger son of Dr. Priestley, of 17 Hertford Street, to Annette Maud Warner, younger daughter of Ralph George Price, Esq., of Marshalls Park, Romford.

On July 30, at St. Margaret's Church, Lowestoft, Charles Blackwell Foster, second son of Francis G. Foster, Solicitor, Norwich, to Emily Caroline Phyllis, younger daughter of James Ray, M.R.C.S., of Oulton Broad, Lowestoft.

On Aug. 1, at the Parish Church, Albury, Surrey, James Thomas Gruning Donaldson, Barrister-at-Law, second son of the late James Smollett Donaldson, Esq., to Minnie, second daughter of the late John Beevis, Esq., of Broadwindsor, Dorset.

On Aug. 1, at St. Thomas's, Portman Square, Arthur Vaughan Williams, son of the late Judge Vaughan Williams, to Evelyn, only daughter of Thomas Gooch, of Shantock, Hemel Hempstead, Herts.

On Aug. 4, at St. John's Church, Putney, Harry Graham Bennet, youngest son of the late J. C. Graham Bennet, Solicitor, of Hackney, to Florence Eleanor Marian, eldest daughter of George Hampton, of Woodfield, Putney Hill, S.W.

## DEATHS.

On July 11, at Simla, of influenza, Elizabeth, the beloved wife of Charles Arthur Roe, Bengal Civil Service, Judge of the Chief Court, Lahore, Punjab, aged 41.

On July 24, at his residence, Gibraltar Place, Chatham, Matthew Spray Stephens, Solicitor, in his 93rd year.

On Aug. 1, Thomas Keene, of 36 Brunswick Square, and 15 Seething Lane, E.C., Solicitor, in his 57th year.

On Aug. 3, at Ashby-de-la-Zouch, William Edward Smith, Solicitor, aged 73.

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# The Law Journal.

*SATURDAY, AUGUST* 15, 1891.


## 'OBITER DICTA.'

Court of Appeal No. I. adjourned on Monday last for the Long Vacation. Owing to the absence of the Master of the Rolls and Lord Justice Lopes the other branch of the Court had not been sitting for some ten days previously. The state of business in both divisions is, however, very satisfactory, there being but few arrears. The somewhat early adjournment was therefore fully justified after a continuous sitting of nearly two months and a half.

Only eight judges of the High Court were sitting on Wednesday, the last day of the sittings. The bench of the Chancery Division was represented by Mr. Justice Stirling and Mr. Justice Romer, while in the Queen's Bench Division two Divisional Courts were sitting to hear motions, composed of Mr. Justice Denman and Mr. Justice Williams and Mr. Justice Wills and Mr. Justice Charles respectively. In the Probate and Divorce Division Mr. Justice Jeune and Mr. Justice Collins both sat and took undefended Divorce causes.

After a long and distinguished career at the Chancery Bar Mr. Napier Higgins, Q.C., has retired into private life. The respect and goodwill with which the learned gentleman is regarded by both bench and bar found appropriate expression in the kindly remarks made by Mr. Justice Romer on Tuesday last.

Another recent social event interesting to the legal profession is the marriage of Mr. Justice Wright, which took place on the 11th inst. in the presence of Lord and Lady Coleridge, Lord and Lady Esher, and many other distinguished persons. The wedding of the judge —still a comparatively young man—is significant of the much earlier age at which some of the most distinguished members of the bar have of late years been raised to the bench. The advantage of this to the public is beyond doubt; but whether it tends to relieve the increasing competition in the front rank of the bar can scarcely be foretold at present.

The Long Vacation has now at last commenced, and by the time these lines are printed the majority of lawyers will be disporting themselves in various manners amid the attractions of some one or other of the many hundreds of places of refreshment with which the face of Europe is so plentifully studded. The question cannot but arise, however, with the shortening days, why should not the Long Vacation have an earlier beginning? It may well be doubted whether those who penned the Long Vacation order of 1884, whereby the Trinity Sittings of the Supreme Court were extended from August 8 to August 12, made a step in the right direction, and whether it would not have been better to have arranged for a holiday beginning at least as early as August 1, and ending earlier in October.

The arrangements for the Plymouth meeting of the Incorporated Law Society are now complete. A very attractive programme has been prepared, including visits to the chief places of interest in the town, while the 'excursions' range from St. Michael's Mount to Princetown on Dartmoor, with a trip up the Tamar to Calstock. The 'business' of the meeting will consist, as usual, of the president's address, and the reading and discussion of papers by members of the society. Whether the earlier date fixed for the provincial meeting this year will have the effect of increasing the attendance remains to be seen. Country solicitors who are interested in brewster sessions will probably find some difficulty in getting away during the last week in August.

Mr. Justice Stirling's judgment in the Marquis of Ailesbury's application for leave to sell the Savernake settled estate was characterised by sound common sense. While the question of an appeal is still open it would be unfair to express too strong an opinion on

the merits of the case; but this at least may be said without imprudence. The power given to the Courts to deal with 'settled estates' was certainly intended to be used for the advantage of all the persons interested in a property, and not as an inducement to extravagant living and improvidence. The ultimate result will be looked for with much interest.

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In dealing with an appeal from Chambers on Wednesday, Mr. Justice Williams stated that the result of his experience at the bar and upon the bench was that English witnesses who are not parties to the proceedings usually speak the truth, but that the litigants themselves do not, but generally swear to whatever they think will suit their case. He added that, in his opinion, the best remedy for this growing practice on the part of suitors was the infliction of very severe punishment whenever perjury was detected.

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The good-nature of the judge, rather than any special circumstances, seems to have been responsible for the adjournment of the 'Salvation Army' trial at Lewes last Saturday. Neither of the counsel engaged, nor the parties themselves, appear to have asked for delay; and the suggested compromise has now been rejected by the Eastbourne Corporation. Meantime a sort of armed truce has prevailed; and, in the interests of all concerned, the sooner a final and legal settlement is arrived at the better.

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Lovers of animals will note with much satisfaction that Mr. Montagu Williams is not deterred by the success of appellants to quarter sessions from inflicting severe punishment in flagrant cases of cruelty. Where the owners of horses who are guilty of cruelty are well-to-do men, 'fining,' said the magistrate, 'is simply trifling with the law.' A sentence of two months' hard labour is, on the other hand, bound to act as a warning and a deterrent.

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We are glad to observe that the defects of the one-judge system on circuit, upon which 'A Junior' has twice descanted in our columns (see *ante*, pp. 493, 512), are now being prominently brought into public notice by a correspondence between the Lord Chief Justice of England and Mr. Buszard, Q.C., who had approached the Lord Chief Justice on behalf of the Midland Circuit 'in accordance with a resolution unanimously passed at a meeting of the circuit.' The time for the trial of causes on that circuit has been so short that the members of the circuit represent that it is necessary to have two judges at the more important towns. The Lord Chief Justice in reply says that 'the present state of things is the result of an arrangement come to after much consideration between the Government, the Treasury and the judges, and there will be great difficulty in making any serious alterations,' but promises to bring the matter before the judges, and, what is of more importance, declares that 'the circuit may rely upon his sincere wish that their desire, so far as it can be, shall be gratified.' The Order in Council as to circuits which was issued on June 26, 1884, no doubt requires careful reconsideration, and so does the scheme for summer assizes set out in the first schedule thereto, to which effect is given by rule 2 of that order, whereby (as might have been expected) the scheme is to be put in force only 'so far as may be practicable and the business to be done may allow.' Under that scheme, we may observe, *two* judges are to give their services at Durham, York, Leeds, Exeter, Bristol, Winchester, Stafford, Nottingham, *Lincoln*, *Derby*, Warwick, Birmingham, Chester and Swansea. It is provided by rule 9 that 'in order to enable the judges, so far as may be possible, *to leave no cause untried at any place on any circuit*, one of the judges in London shall, with the sanction of the Lord Chancellor, and a request of the judge or judges on any circuit, proceed to any place on such circuit in aid of such judge or judges for such time as may be necessary.'

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A modification, therefore, of the one-judge system may be considered as impending. What direction should this modification take? For ourselves, we have no hesitation in recommending the grouping of towns for the purpose of the trial of causes, in accordance with the suggestion of 'A Junior' in our columns. Two or three years ago, it will be remembered, a plan of grouping towns for assize purposes *generally* was set on foot, but had to be dropped owing to the strong local opposition which it evoked. The strength of this opposition would be very greatly decreased if grouping for the trial of *causes only* were to be set on foot. Let the Bar Committee take up a scheme for 'reasonable grouping and no remanets,' let them push this scheme steadily forward to success, and they will soon double the number of their subscribers. As a representative body, *whose constituents are the whole bar*, they have the right to make themselves heard. As for the statutory power to make the required alterations, that is to be found in subsection 4 of section 23 of the Judicature Act, 1875. Orders in Council may provide 'for the regulation of the venue in all cases, civil or criminal, triable on any circuit or elsewhere.'

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A curious point arose in *In re Reynolds; Williams* v. *Mitchell* (Notes of Cases, p. 128), where real estate was settled in trust for such persons (not being her present husband or any friend or relative of his) as M., a married woman, should by deed or will appoint. M. (her husband being then dead), by her will, made a general devise of her real estate, and the question was whether the will operated as an execution of the power under the Wills Act, s. 27. Mr. Justice Kekewich held that the exception of any friend or relative of the husband was not so vague that it could not be taken into account, and on this footing had no difficulty in holding that the power was not a power to appoint as the appointor might 'think proper' within section 27 of the Wills Act. His lordship, however, expressed his opinion that the exception of the appointor's husband would not in the events which happened have prevented the power being so executed, since at the date of its execution the husband was dead; and said that he saw 'no reason why a power in its inception limited by an exception should not become a general power free from exception by subsequent events; why a power to appoint to all the world except A., B., and C. might not become a power to appoint to all the world by the death of A., B., and C. before the power was executed.'

The question, of course, only becomes of importance in considering the execution of such a power under section 27.

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In *In re Dick; Lopes* v. *Dick*, 60 Law J. Rep. Chanc. 177; L. R. 1891, 1 Chanc. Div. 423, the Court of Appeal took a wider view of the effect of the Trust Investment Act, 1889, than Mr. Justice Stirling in the same case was disposed to take, and held that the power to vary investments in section 3 of the Act applies to all investments authorised by the Act, whether made under the Act or not, so as to enable trustees of a will containing no power of varying securities to vary them accordingly. The Court, said Lord Justice Kay, should 'look at what was the scope and intention of the Act,' and construe it 'in such a manner as will best carry out its general purpose and object.' We cannot help thinking that Mr. Justice Kekewich construed the Act in a different and narrower spirit in the case of *Owthwaite* v. *Owthwaite* (Notes of Cases, p. 131) when he held that the additional powers conferred by the Act were not applicable to the case where a testator directed his trustees to appropriate a fund in the securities authorised by his will to answer an annuity with a view to release the rest of his estate from the charge, and that in such a case trustees are restricted to the actual securities authorised by the will. The will contained no express prohibition, and therefore it was admitted that, under section 6 of the Act, the trustees could invest in the further securities authorised by the Act, but they could not, said Mr. Justice Kekewich, make the appropriation out of such investments to answer the annuity. The distinction may be sound, but it is certainly a fine one.

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The case of *Warton* v. *Parrott*, finally decided (after two trials) by the Court of Appeal on the 8th inst., is a good illustration of the difficulty of getting over the rule that the person liable for nuisance caused by the non-repair of premises is *primâ facie* the occupier, not the owner. The plaintiff had sustained injuries from the ruinous state of a wall on property owned by the defendant, but let to and occupied by a third party; and his first difficulty was to show that the obligation to repair lay on the lessor. The Court, in conformity with the authorities, refused to admit the fact that the lessor had repaired the wall after the accident as evidence that he was under a legal obligation to do repairs. Learning that there was a lease in existence, they declined to discuss the case without seeing it. The lease, however, was unstamped, and the plaintiff was compelled to give an undertaking to pay the penalty for not stamping before he could use it in evidence—a rigorous application of the law which bears hardly on a stranger to the lease. As the lease when produced proved that the liability to repair was imposed on the lessee, the plaintiff's last chance was to prove that the wall had been ruinous at the date of the lease. On this point the jury at the second trial found for the defendant; and there being evidence on which a jury might reasonably be of this opinion, the Court of Appeal refused to disturb their finding, remarking that there was no question of law involved. Indeed, the law is sufficiently clear that, where premises are let on a repairing lease, the lessor is free from liability for non-repair unless the premises were to his knowledge defective at the date of the demise, so that he can be said to have authorised the continuance of the nuisance.

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Is it not high time that the Elementary Education Acts should be consolidated? The great Act of 1870 has now been five times broken in upon by amendments of importance. In 1873 the very miscellaneous statute 36 & 37 Vict. c. 86 dealt with School Board elections, united school districts, and other matters; in 1876 compulsory education was established by 39 & 40 Vict. c. 79, an Act of forty-eight sections and four schedules; in 1880 'further provision' was made as to bye-laws requiring the attendance of children at school under the Elementary Education Acts; last year an 'Education Code, 1890, Act 1890,' had to be passed to render operative certain articles in the innovating Education Code of that year, and now the Act of 1891 has almost established free education. Meanwhile annual Codes promulgated by the Education Department of the Privy Council under the authority of section 97 of the Act of 1870 have so greatly altered the law of elementary education that it may be suggested that the Code of 1892 might with great advantage be scheduled to a consolidating bill which would give it the force of an Act of Parliament, and make it better known than it is likely to be if it continues to be issued merely as a Parliamentary paper.

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Mr. Ford (see *ante*, p. 532) carried in July, 1890, a resolution at a meeting of the Incorporated Law Society 'calling for the repeal of so much of section 72 of the County Courts Act, 1888, as prohibits the solicitor of a suitor in a County Court from retaining another solicitor to appear in such Court as the advocate for such solicitor.' The section in question is mainly taken from section 1D of the County Courts Act, 1852, but words providing that 'the right of a solicitor to address the Court shall not be excluded by reason only that he is in the permanent and exclusive employ of another solicitor' were newly added in 1888. It appears that in many cases provincial law societies have, since 1890, adopted similar resolutions. We greatly doubt, however, whether Parliament would be induced to reopen a question which, looking to the amendment which we have referred to, was at all events considered so short a time ago as that of the passing of the Consolidation Act of 1888.

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Presumably the form of legacy hitherto adopted to a charitable institution will now disappear. The Mortmain and Charitable Uses Act, 1891, received the royal assent on August 5 last, and applies to the wills of testators dying after that date. While the estates of persons dying on or before August 5 are being administered, the old learning as to pure and impure personalty, and as to a bequest to charity of an interest in land, must not be forgotten, but, in regard to testators dying after that day, 'money secured on land or other personal estate arising from or connected with land' will be able to be freely left to charities. The provisions of the new Act are so simple that we wonder that the present restrictions on charitable bequests have been endured so long. Any direction for laying out money in land given by the will of

any testator dying now or in the future will be simply cut out of the will, but the Charity Commissioners or a judge (even at chambers) can order the direction to be carried into effect if satisfied that such land is required for actual occupation for the purposes of the charity. Land can be devised to charitable uses, but will have to be turned into personalty, unless the beforementioned authorities are satisfied as aforesaid. It may startle us at first to see that it is not to extend to Scotland or Ireland, but neither the Georgian Mortmain Act nor the Mortmain and Charitable Uses Act, 1888, extend to either of those countries (Tyssen's 'Charitable Bequests,' p. 172, and 51 & 52 Vict. c. 42, s. 11).

## TWO POINTS ON A SOLICITOR'S RETAINING LIEN.

Two points of great importance to the profession were decided by the Court of Appeal in *In re Taylor, Stileman & Underwood*, 60 Law J. Rep. Chanc. 525—the first as to the extent of a solicitor's retaining lien; the second as to its discharge by reason of the solicitor taking a security for his costs. In respect of the first point the solicitors set up their lien not only for their actual costs, charges, and expenses, but also for payments made on behalf of the client, such as the taxing officer would take into account under the common order for taxation, but which he would have no power to moderate. The Court held that the lien could not be sustained for these advances, and laid down as a fair working test of what can and what cannot be brought under the lien that the lien extends to all items properly included in the bill of costs, charges, and expenses which the taxing-master has a right to consider, and, if necessary, moderate, but not to advances, which do not come within that category. The only authority cited in argument on this point appears to have been *In re Galland*, 55 Law J. Rep. Chanc. 478; L. R. 31 Chanc. Div. 296, which decided that a solicitor has no retaining lien for costs which he recovers by statute and not by contract between himself and his client. The case proceeded on the basis that the retaining lien arises out of contract. A similar view was taken in *In re Sharpe*, 1 Dowl. 432, where a solicitor was held to have no lien on deeds for expenses incurred by him in consequence of applications made to him by various claimants for the deeds. These authorities, however, have little direct bearing on the question before the Court in *In re Taylor*, where there was no dispute as to the existence of the contractual relation. More to the purpose is the passage from Sir Thomas Plumer's judgment in *Woorall* v. *Johnson*, 2 J. & W. 214, 218, quoted by Lord Justice Kay to the effect that a solicitor's lien 'does not extend to general debts, but only to what is due to him in the character of attorney.' Other cases bearing on the subject are *Irving* v. *Viana*, 2 Y. & J. 70, and *Christian* v. *Field*, 2 Har. 177, 183, which show that a second solicitor in an action who pays off the first on succeeding to his place has no particular lien for the amount so paid. On the other hand, it was held in *Lambert* v. *Buckmaster*, 2 B. & C. 616, that the general lien will cover the solicitor's costs of an action brought by him against the client to recover his bill of costs in respect of which the lien is claimed. This decision was approved in the House of Lords in *Gray* v. *Graham*, 1 Pat. Scotch App. 615, 618. Lastly, in *In re Hill*, L. R. 33 Chanc. Div. 216, the particular lien on a fund was held to extend to the costs incurred by the solicitor in proving his retainer (which was disputed by the client), even though incurred after the date of the order directing taxation. So far as we are aware, these decisions represent the reported cases on the subject, and appear to be all of them consistent with the decision of the Court of Appeal in *In re Taylor*.

The other point before the Court arose in this way. The solicitors, while still acting for the client, took from her and her husband a joint and several promissory note for payment of the amount of their bill on demand with interest at the rate of 5 per cent., and this the Court held to amount to a discharge of the lien. Inasmuch as the security was plainly inconsistent with the lien—since a bill of costs for non-contentious business will only carry 4*l.* per cent. interest, and that only for one month after delivery of the bill—the case was indistinguishable from *Roberts* v. *Jefferys*, 8 Law J. Rep. (o.s.) Chanc. 137, which the Court of Appeal approved and followed, but at the same time the Court went a good deal further, and laid down that where a solicitor takes a security for his costs from a client, for whom he is still acting, the *primâ facie* inference, in default of evidence to the contrary, is that he has waived his lien. This proposition we believe to have been laid down for the first time in these broad terms, though it was discussed and considered an open question in *Brownlow* v. *Keating*, 2 Ir. Eq. (1840) 243. The following passage from Lord Justice Kay's judgment will show the reason and the limit of the rule: 'We are dealing here,' he says, 'with a case between a solicitor and his own client. A solicitor has a duty to perform towards his client, to represent to his client all the facts of the case in a clear and intelligible manner, and to inform him of his rights and liabilities; and where you find a solicitor dealing with his client, and taking from him such a security as was given in this case, not expressly reserving his right of lien, I quite concur in thinking that this is a case in which the inference ought to be against the continuance of the lien.'

## UNWRITTEN CHAPTERS IN THE LAW OF DESIGNS.

### VII.

(*Continued from page* 523.)

### Fraudulent or Obvious Imitation.

The 'fraudulent or obvious imitation' of a registered design is (subject to certain statutory conditions) both punishable as an offence (Designs Acts, 1883–88, s. 58) and actionable (*ib.* s. 59). The meaning of the words which we have placed in inverted commas was considered in the cases of *Grafton* v. *Watson*, 1884, 50 L. T. (N. S.) 420, and 51 L. T. (N. S.) 141, and *Sherwood & Cotton* v. *The Decorative Art Tile Company*, 1887, 4 P. O. R. 207.

We will first consider the facts of these cases, and then endeavour to state in general terms the law as they establish it.

*Grafton* v. *Watson*.—Here both the plaintiffs and the defendants were calico printers. The plaintiffs had registered four designs, and some months after registration discovered that goods bearing designs similar in effect to theirs were being sold by the defendants. The defendants' designs did not actually reproduce the *minutiæ* of the plaintiffs' designs, but they were a com-

bination of similar drawings so arranged and coloured as to produce a similar effect. The defendants admitted that they had submitted the plaintiffs' designs to their artist in Paris, so that he might, whilst producing the same effect, which was the fashion in vogue, avoid imitating the *minutiæ* of the plaintiffs' design. The question arose whether a registered design, consisting of a dominant and of subordinate parts so arranged as to produce a certain general effect, could be infringed by a design producing a similar effect, although such design imitated neither the dominant nor the subordinate parts of the original and registered design. It was held by Mr. Justice Chitty and by the Court of Appeal that the defendants' design was a 'fraudulent or obvious imitation' within the meaning of section 58 of the Designs Act, 1883, as the general effect of the defendants' design was a reproduction of that of the plaintiffs', and could not have been produced without copying the plaintiffs' ideas.

*Sherwood & Cotton* v. *The Decorative Art Tile Company*, 1887.—Here the plaintiffs, the registered proprietors of the copyright in a design for a tile, brought an action for the infringement thereof under section 58 of the Designs Act, 1883. The defendants' tile, of which the plaintiffs complained, though resembling the plaintiffs' registered design in most respects, differed from it in many details. It was held by Mr. Justice Manisty that the defendants' tile was a fraudulent, though not an obvious, imitation of the plaintiffs'. The following appears to be the judicial construction of the words 'fraudulent or obvious imitation,' as settled by these cases.

1. The defendant's design must be *in fact an imitation* of that of the plaintiff's. Cf. the judgment of Lord Justice Cotton in *Grafton* v. *Watson*, 51 L. T. (N.S) 144.

2. An obvious imitation is not an exact copy, nor yet an imitation obvious at a glance to the uneducated or unskilled eye. It is an imitation obvious to the judge or to a jury with the assistance of experts—persons conversant with the particular trade.

This proposition deserves and will repay analysis.

'*Not an exact copy.*'—In the leading case of *Holdsworth* v. *M'Crea*, L. R. 2 H. L. 380, an action for the infringement of a design registered under the old law by the simple deposit of a pattern, Lord Chelmsford had said: 'The designer is under this disadvantage, that when he registers a pattern of material there is no infringement unless it is *exactly copied*.' Of course, as we have seen in a previous paper, he merely meant that the man who registered a design as a whole could not claim each part of it—could not say, for instance, to somebody else, 'You cannot use a certain style which is found there, or use that style in a different situation.' But the ingenuity of counsel attempted to twist Lord Chelmsford's language into meaning that a defendant had only to convert the position of a star, or make some other trifling alteration, in a registered design in order to pirate it with impunity. Promptly crushed by Vice-Chancellor James and Lord Hatherley in *M'Crea* v. *Holdsworth*, L. R. 6 Chanc. App. 418, this attempt was renewed in *Grafton* v. *Watson*. But Mr. Justice Chitty and the Court of Appeal were not misled, and they 'slew it in the light.'

'*Nor yet an imitation obvious . . . . to the uneducated or unskilled eye.*' These are the words of Mr. Justice Chitty. It is interesting to note that he held a directly contrary opinion during the argument (see 50 L. T. (N.S.) 420).

'*It is an imitation obvious to the judge,*' &c.—The question of whether there is or is not an imitation is to be determined by the eye (cf. *The Hecla Foundry Company* v. *Walker, Hunter & Co.*, 1889, 6 P. O. R. at p. 559). The two designs should be placed side by side. But the judge may, and ought to (*Mitchell* v. *Henry*, L. R. 15 Chanc. Div. 181), take into account and hear evidence as to the state of knowledge at the time of registration and in the respects in which the design was new or original, when considering whether any variations from the registered design appearing in the alleged infringement are substantial or immaterial (*per* Lord Herschell in *The Hecla Foundry Company* v. *Walker, Hunter & Co., ubi sup.*).

In the same connection, some sentences from the judgment of Mr. Justice Chitty in *Grafton* v. *Watson* may be quoted with advantage. One of the plaintiffs' designs consisted of an acorn and spray, in which the acorn was the dominant and the spray the subservient feature. The defendants' design, contrasted with the acorn pattern, consisted of what is called a mangostene —the contour of which closely resembled that of the acorn—and spray. 'The test,' said his lordship, 'is not merely to look at the two designs side by side, though no doubt that is one element of comparison in coming to a conclusion, but it is not the whole test. I think the designs should be looked at together, but then consideration should be given to what would be the effect supposing they were seen at different times or . . . at a little distance off. . . . It should be considered, also, how the patterns would look when worn as a dress, or as an apron, or used as a covering for furniture.'

This passage should be compared with that in which the Patent Office Inquiry committee of 1887 deal with the test of resemblance between two trade-marks. It is not so well known as it should be, and its adaptability to forensic purposes has, apparently, not been perceived. 'By section 72, subsection 2, of the Act of 1883 the comptroller is directed not to register with respect to the same description of goods a trade-mark *so nearly resembling* a trade-mark already on the register with respect to such description of goods as to be calculated to deceive. . . . Two marks, when placed side by side, may exhibit many and various differences, yet the idea left upon the mind by both may be the same, so that a person acquainted with the mark first registered and not having the two side by side for comparison might well be deceived, if goods were allowed to be impressed with the second mark, into a belief that he was dealing with goods which bore the same mark as that with which he was acquainted. Take, for example, a mark representing a game of football. Another mark may show the players in a different dress and in very different positions, and yet the idea conveyed by each might be simply a game of football. It would be too much to expect that persons dealing with trade-marked goods and relying, as they frequently do, upon the marks should be able to remember the exact details' (Report, pp. viii. ix. par. 15). And then the committee go on to recommend the substitution of the words *having such resemblance to* for the words *so nearly resembling*—a recommendation to which the Act of 1888 gave legislative effect.

3. A 'fraudulent imitation' is an imitation not obvious but varied for the purpose of perpetrating a fraud (*per* Manisty, J., in *Sherwood & Cotton* v. *The Decorative Art Tile Company, ubi supra*).

# Reviews.

## CARVER ON THE CARRIAGE OF GOODS.

*The Carriage of Goods by Sea.* By Thomas Gilbert Carver, M.A., of Lincoln's Inn, Barrister-at-Law. Second Edition. London: Stevens & Sons (Lim.). 1891. Price 32*s.*

The new edition of this book contains no changes in arrangement. There are no fresh chapters, and hardly any old heading has been altered except in the chapter on 'Demurrage.' It is a tribute to the excellence of the plan of this work that it has been possible, without any modification, to introduce 140 fresh cases, and yet with no sacrifice of the painstaking clearness which is the special characteristic of the book. Some seventeen pages of text have been added, and a little further room has been gained by a more economical distribution of type, and by the omission from the notes of what may be called the shipowners' bill of lading, and by the transference of the Liverpool bill of lading to an appendix (whither one may hope it will be followed in the next edition by the average statement on pp. 437–39). The space thus obtained has been chiefly filled by sixteen additional sections scattered through the book dealing with the new cases of most importance. The references to all the new cases—several of them Scotch—are careful, though they do not, of course, exhaust all the cases of the period; in the first year, for instance, one notices such omissions as *Newall* v. *The Royal Exchange Shipping Company*, 33 W. R. 868, on the subject of jettison, and *Price* v. *Thomson*, 22 Sc. L. R. 690, on demurrage. The references in the body of the work to the reports of cases are still most meagre and unsatisfactory. The list of cases has been improved by the correction of numerous misprints, but still refers to the sections, instead of, as it ought to do, to the pages of the text. Each page, however, in this edition contains in its upper marginal corner the number of the section to which it relates, and this facilitates reference. The index has been considerably extended, and the York Antwerp average rules of 1890 will be found in an appendix.

## MACLEOD ON BANKING.

*The Elements of Banking.* By Henry Dunning Macleod, M.A., of Trinity College, Cambridge, and of the Inner Temple, Barrister-at-Law. Longmans. 1891.

The purpose of this work, the author tells us, is to exhibit in the simplest language possible the mechanism of the great system of credit banking and the foreign exchanges, and to explain the reasoning upon which the principle of currency is founded. The author has certainly written an interesting work which contains a great deal of information. Thus, on page 18, we are told of some of the many substances which nations have at different times adopted to represent money. Copper skewers, carved pebbles, leather discs, shells, blocks of compressed tin, and dried squirrel skins have at different times been employed to represent this universal want. In chapter viii. we have a discussion on the Bank Charter Act of 1844. The Bills of Exchange Act, 1882, set out *in extenso*, concludes the volume. Here something in the nature of comment or annotation would have been a desirable adjunct.

# Correspondence.

## INTERNATIONAL FISHERY DISPUTES.

Sir,—In your issue of August 1 you were good enough to refer to my pamphlet 'International Fishery Disputes' in complimentary terms, and at the same time you take exception to my proposals for specific reasons which I should be glad if you will permit me to take up.

(*a*) You say that it will be a long time before any Government can be expected to surrender its territorial rights over the waters adjacent to its own coasts.

(*b*) That the policy that leads to the admission of foreign merchantmen to a country's ports would prevent those ports being opened to foreign fishing vessels as a base for fishery operations in the adjacent seas.

(*c*) Except for some equivalent concession.

(*a*) In reply I would say I distinctly hold to maintaining fishing rights within territorial waters although I object to 'territorial rights' barring the common right of way through such waters. It is a universal and undisputed custom for vessels of all nationalities, especially wind-bound sailing vessels, to anchor under any headland of any country, port or no port, and thus to enter and occupy territorial waters without let or hindrance, although not in distress. The word 'adjacent' is employed in the Australian extra-territorial Acts as referring to waters *beyond* territorial waters, whereas you appear to apply it to territorial waters themselves in this case.

(*b*) You imply that the policy dictating the extent of commercial intercourse with foreigners is one of gain only, and that this would, if followed, prevent foreign fishing vessels using a country's ports as a base of operations in the adjacent seas. Here you take the correct sense of the term 'adjacent,' but I think that the policy that admits of commercial intercourse between foreign nations is twofold in character:

1. The desire for commerce—that is, the exchange of surplus products and the desire for profit.
2. The fostering of peace and goodwill by the cultivation of the acquaintance and friendship of strangers.

But for ships there could be no interchange of letters or goods between Great Britain and other countries, and peace without intercourse would be a mockery, unstable, and simply a suspension of formal hostilities, such as the peace with Spain during the piratical operations of our old navigators on the 'Spanish Main.' But, assuming for the moment the policy to be one of gain only, the exclusion of foreign fishing vessels from the conveniences of our ports cannot be gain for all, as it prevents them from buying stores and food from our merchants and producers, and deprives our steamers of the profit in transhipping the catch to other places. Individual rival fishermen may benefit by enhanced prices for their catch if their rivals are forced to quit, but how about the poorer long-shore folk who sell bait and ice, &c.? The ridiculous spectacle of Newfoundland blockading her own vessels bound to the Frenchmen with bait is a sufficient answer. You may urge that by preventing foreigners from competing in a fishery open to all the number of our own vessels would increase and their places would be taken, but experience does not favour this answer, as capital is not always available. This is exemplified in Western Australia and the pearl-

ing industry. On the other hand, if we deny foreigners access to our coasts we invite not only similar treatment for our fishermen by foreigners in other parts of the world, but also we risk the loss of markets for our trade generally in retaliation, and the artificial destruction of our neutral markets, as instanced by the French bounties on French-caught cod sold in Spain and Italy.

(*c*) I stipulate for several important equivalents—viz.:—

1. The prohibition of all bounties interfering with neutral markets.
2. The establishment of international commissions to preserve ocean fisheries from injury.
3. The grant of extraordinary powers to the country adjacent to any ocean fishery to call to account foreign offenders against municipal laws notwithstanding their escape beyond territorial waters.
4. The reciprocal treatment of British fishermen by foreign nations.

T. W. HAYNES.

4 Fenchurch Avenue, London, E.C.
August 10.

## COLLIE-DOGS AND FIRST OFFENCES.

SIR,—Referring to 'Law and Professional Notes' in your paper this week, I should like to have the statute referred to by Mr. Uttley, and alleged by him to have been acted upon by the judge at Guildford Assizes in an alleged dog case.

The last Act I am aware of upon the subject is the 28 & 29 Vict. c. 60, and this makes no mention in particular of 'collie-dogs.' But legislation is so brisk nowadays that there may have been a later Act. If so, perhaps Mr. Uttley would mention it.

TEMPLAR.

August 11.

SIR,—With reference to the paragraph on p. 528 in the current issue of the LAW JOURNAL under the above heading, Mr. Uttley's statement of the learned judge's decision is evidently taken from the garbled and absurd version which appeared in one of the daily papers, and, if only for the sake of the reputation of Mr. Justice Mathew, who tried the case at Guildford Assizes, it seems proper that the real decision of his lordship should be presented to your readers.

The claim was for damages to the plaintiff's horse and trap occasioned by the defendant's dog. The general rule of law is that 'every dog has one worry,' but an exception is engrafted upon this rule in favour of sheep and cattle by 28 & 29 Vict. c. 60, which provides that the owner of every dog shall be liable in damages for injury done to any cattle or sheep by his dog, and it shall not be necessary for the plaintiff to show a mischievous propensity in such dog or the owner's knowledge. The case of *Wright* v. *Pearson*, 9 Bar Rep. 849, decided that 'horses' were 'cattle' within this section, so that as regards the damage to the horse it was not necessary for the plaintiff to prove previous mischievous propensity to the knowledge of the owner; but as regards the damage to the trap such proof was necessary, as damage to the trap did not come within the protection afforded by the statute. At the trial the plaintiff succeeded in proving (1) the facts of the accident; (2) previous mischievous propensity of the dog; (3) scienter of the owner; (4) the damages to the horse and trap; and judgment accordingly was given in his favour in respect of the damages to both horse and trap. It is quite untrue that the judge stated (as reported in the daily paper) that the Act 28 & 29 Vict. c. 60, was passed for protection against *collies* and applies to them only. The Act applies to all dogs—

> Both mongrel, puppy, whelp, and hound,
> And curs of low degree.

CHAPPELL & GRIFFITH.

31 Golden Square, W.

## BUSINESS AT ASSIZES.

THE following correspondence which has passed recently between Mr. Buszard, Q.C., and the Lord Chief Justice has been sent to us for publication:—

To the Right Honourable Lord Coleridge, Lord Chief Justice of England.

My Lord,—The members of the Midland Circuit desire respectfully to lay before your lordship the following matters with regard to the administration of Justice on this circuit:

1. For a very considerable time past the trial of criminal cases and causes by one judge at the more important towns has produced, not only great inconvenience and expense to litigants, witnesses, jurors, and others, but has so limited the time for the trial of causes as to amount almost in some instances to a denial of justice, parties often having been compelled to withdraw the record, change the venue, or otherwise dispose of the cases for want of time to try them.

2. It often occurs at our assize towns that the time is not more than sufficient for one judge to try the criminal cases; and even this is frequently only accomplished by the judge sitting till very late at night, which imposes too severe a strain upon all persons connected with the administration of justice.

3. Since the one-judge system has been in operation there has seldom been sufficient time to try, without undue pressure, the civil causes at the important towns of Leicester, Lincoln, Nottingham, and Derby.

4. It is impossible to forecast with any degree of accuracy how long the criminal business is likely to last. The result is that the parties, solicitors, and witnesses in the civil actions are necessarily kept waiting during most of the assizes, at very great expense, and often with a slender chance of trying their cases after all.

5. Therefore, taking advantage of your lordship's presence at these assizes, we respectfully submit the above matters for your consideration, especially the necessity of having two judges at the more important towns, and would request you to use your influence to secure the due and speedy trial of civil actions in the districts in which the causes of action arise; so that the inconvenience and hardship which are above indicated may be removed, and the efficiency of the circuit system may be restored for the benefit of the public.

Signed on behalf of the Midland Circuit, in accordance with a resolution unanimously passed at a meeting of the circuit held on the 23rd day of July, 1891.

(Signed) MARSTON C. BUSZARD.

Judge's Lodgings, Edgbaston, Birmingham:
August 1, 1891.

My dear Buszard,—I wish to put in writing that which I told you in substance at Nottingham by word of mouth as to the desire of the circuit to have two judges at more places than is the present rule. I think, with some modifications, the wish of the circuit is a very reasonable one; but unless you are actually engaged in the working of the judicial system, and have practically to strike a balance

between the conflicting claims of London and the provinces, you can hardly appreciate as they deserve the very great difficulties of the task.

Personally, as you are aware, I have no authority to make the change suggested by the circuit. The present state of things is the result of an arrangement, come to after much consideration, between the Government, the Treasury, and the judges, and there will be great difficulty in making any serious alterations in it.

I will, however, bring the matter before the judges, and the circuit may rely upon my sincere wish that their desire, so far as it can be, shall be gratified.

Will you kindly communicate this to the circuit for me, and believe me to be always

Faithfully yours,

COLERIDGE.

Marston C. Bussard, Esq., Q.C.

---

The following correspondence on the same subject has since appeared in the *Times*:—

Sir,—There are two ways in which the great evil of our present assize system might be remedied. They have been frequently suggested in the *Times* and other publications by myself and others, but hitherto with little success. The subject being recalled to mind by the correspondence you published for Mr. Buszard, Q.C., yesterday, permit me to repeat these suggestions. *Gutta cavat lapidem.*

The first is an heroic remedy. Abolish the assizes in civil cases altogether, and establish Courts in the country with judges who should be members of the High Court of Justice, and sit locally in appointed districts for the trial of all causes brought before them. Why not? Why should justice be administered daily, except in vacation times, in London, but only twice a year at Birmingham, Bristol, Liverpool, Exeter, Norwich, and other populous districts; and why should London jurors be compelled to give their time and leave their own business to try the causes of country litigants?

Another remedy might be to require all civil causes to be commenced in the district in which the litigants live or carry on their business, with liberty to the High Court to remove them for trial in London, upon sufficient cause being shown for it, and thus reversing, as I think advantageously, the present system, under which so many causes commenced in the High Court in London are remitted for trial to the country. This might reduce the number of judges required in London, and would not necessarily increase the total number of judges, since in many districts judges of County Courts might be appointed to preside in the new Courts, upon being relieved of their jurisdiction in small debt cases, which might be left to the registrars, with power to refer to the judge when deemed necessary.

Other advantages would result from the adoption of either of these suggestions. For instance, it would greatly relieve the sheriffs, who now complain so much of the burden cast upon them by the present inefficient assize system; and, moreover, it would benefit the country in a pecuniary point of view and otherwise, by inducing barristers to locate themselves with their families and to spend their professional incomes where they earn them.

I am, Sir, yours obediently,

JOHN J. POWELL.

The Lawn, Denmark Hill: Aug. 7.

---

Sir,—The second of the two suggestions made in the letter of Judge Powell, which appears in your issue of this morning, which is to the effect that the system of 'districts' should apply to cases in the High Court as well as to the County Courts, perhaps deserves some support from the fact that, although there has been no concerted action, or even communication, between Judge Powell and myself, the same practical suggestion has independently occurred to us both—and probably to others also. On May 28 last I had agreed to second a motion for a royal commission to inquire into the working of the Judicature Acts, to be made by Mr. Atherley-Jones on that evening. Such, however, is the want of interest shown by our legislators in this important question that, when the debate should have commenced, only thirty-eight members (or two short of the necessary forty) were present. Having thus failed to obtain an opportunity of stating my views in public, the speech which I had then intended to make was communicated to legal sources, and it appeared in the *Law Times* of June 13 last, a reprint of which I enclose you. In that speech the following remarks occur:—

'The system of allowing a plaintiff to name the place of trial wherever he pleases works extremely badly. You tell your judges that they should spend half their time in London and half in the country. Having regard to the absolute necessity for the judges to periodically travel into the country to transact criminal business, I do not see how this can be avoided. But you do not make any provision for insuring that, when the judges are in the country, they shall have anything to do. The consequence of this is that, in places like Middlesex or London, suitors cannot get their cases speedily tried, because the Courts are blocked with disputes coming from a distance. For example, one of the quickest and most eminent of our judges was occupied four days during last sittings in trying a dispute as to who should pay for the funeral of an old lady who lived, died and was buried at Chester. On the other hand, you send a judge down to Chester, either to find nothing to occupy him, or to try a man for stealing a leg of mutton or a pair of boots. The judges themselves, when they get the opportunity, do not hesitate to severely condemn the system—or rather want of system—which brings about the present ludicrous waste of time. Within the last few months I have heard certainly three of them comment pretty severely upon it, and I believe that the whole of the judges entertain similar opinions. As the remedy for this I would adopt the County Court rule, under which a plaintiff is reasonably restricted in the selection of the place of trial. Indeed, the County Court rule could be easily applied to the High Court by the mere substitution of the word "county" for the word "district," and the making of some other very small changes. This rule, as I would apply it to the High Court, would run then somewhat thus: "Every action, other than actions which by these rules are specially assigned to the Chancery Division, shall be tried in the county where the defendant resides, or in which the cause of action wholly or in some material part arose, or in the next adjoining county thereto; provided always that, for good cause shown, a master may direct that any action shall be tried in any county or place other than that directed by this rule."'

It will be, I think, found by anyone who goes into the subject with care that the *crux* of the situation is to obtain a local administration of justice without the drawback of the too great local knowledge and consequent (unconscious) prejudice which generally attaches where there is a local judge. In a small way, I have myself felt conscious of this difficulty in dealing with cases arising in the small local Court of which I have the honour of being the judge. And, on this ground, it is, I believe, the almost universal opinion now that small local Courts of civil jurisdiction ought to be abolished.

How can this difficulty best be met? The system of the judges taking a constant change of circuits meets it in the High Court. I would meet it in the local Courts in a somewhat analogous manner. I would convert all existing County Courts into 'district Courts,' and render them

all 'districts' of the High Court. I would appoint those who are now 'County Court judges,' and all persons in future appointed to a similar position, to be 'district judges of the High Court,' and I would at the end of each specified period (say of three years), by order of the Lord Chancellor, appoint each judge to a particular district for the period specified (say, for instance, three years). As a recompense to existing and future district judges for the additional duties and continual expense of moving which would thus be entailed upon them, I would give them the improvement in their position by their becoming judges of a branch of the High Court, with a prospect of promotion to a higher position in that Court, and I also would give them a large addition to their salary, which I would make 2,500*l.* a year, or an increase of 1,000*l.* a year; and I would relieve them of the smaller, and what I may term the 'debt-collecting,' portion of their duties, by extending the already existing jurisdiction of the registrars (which, I believe, works well) from 40*s.* to 5*l.*

Such a change as that which I above advocate is apparently strongly supported by the existing state of circuit business. I believe that it is pretty well the same on all the circuits, but I can, at least, personally answer for one. On that the great majority of the cases tried have been petty actions which really might (under a proper system) well have been disposed of in a district Court, while that such was their character was pretty well proved by the fact that most of them were, on one side or the other, and many on both sides, deemed only of sufficient importance to require the services of a junior 'single-handed'—in fact, tried as they would have been in a County Court.

The change would involve the following additional advantages: That it would have the practical result (often advocated) of generally attaching all the interlocutory proceedings in every action to the judge before whom such action is eventually tried; that while actions for libel, slander, and breach of promise of marriage or seduction cannot now be tried in the County Court, and consequently, however paltry and frivolous they may be, if the plaintiff be successful, now 'carry costs,' all actions of every description, up to a named amount, could well be tried in a district Court; that it might well be the law that all actions claiming less than a specified sum must be tried in the district Court, unless, for some sufficient cause shown to it, the High Court expressly directed that it should be tried before itself (this question of where the trial ought to take place thus being, it will be noted, settled at the commencement of the proceedings and not left, according to the present upside-down procedure, to be discussed at their close and after all the expense of the mode of trial actually adopted has been incurred); and that there is no reason why the system of 'districts' suggested above should not (in place of the present inconvenient and obsolete arrangement of counties) be eventually extended to criminal as well as civil matters, subject (thus settling the much-agitated question of a Court of Criminal Appeal) to an appeal, under proper regulations, to the same tribunals as in a civil case.

I am, Sir, your obedient Servant,

G. PITT-LEWIS.

4 Paper Buildings, Temple: August 10.

---

Sir,—As Lord Coleridge lends the weight of his disapproval, a revision of the existing circuit system must be seriously pressed upon the authorities.

I venture to think that the whole of the legal profession, from the Lord Chancellor down to the humblest articled clerk, sees the muddle, but there are the widest differences as to the remedy.

The metropolis demands sittings *de die in diem*. The provinces are starved in the endeavour to do impossibilities. On the other hand, the business at some country places is not worth the attention it gets.

I shall try to persuade the Law Congress, which meets at Plymouth on the 25th inst., to vote for a resolution recommending assizes at large centres only, and suspension of London Nisi Prius work, instead of pretending to combine the two—the result being fragmentary and vexatious to London litigants and their witnesses.

I am, Sir, yours faithfully,

FRANCIS K. MUNTON.

North Devon: August 10.

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# Court of Appeal Register.

## APPEAL COURT I.

Before LINDLEY, L.J., BOWEN, L.J., and KAY, L.J.

### THURSDAY, AUGUST 6.

*Regina* v. *A. H. Rourke* (appeal of Eleanor G. Thompson (prosecutrix) from order of Cave, J., and Smith, J., dated July 25, discharging rule *nisi* for *habeas corpus*).—Part heard; stand over.

*Wallis* v. *Edwards* (application of defendants for judgment or new trial on appeal from verdict and judgment, dated June 30, at trial before Grantham, J., and a common jury in Middlesex).—Dismissed.

*Patten* v. *Potts* (application of defendants for judgment or a new trial on appeal from verdict and judgment, dated June 22, at trial before Mathew, J., and a jury at Durham).—Dismissed.

### FRIDAY, AUGUST 7.

*In re Brown & Wingrove* (*ex parte Gustav Ador*) (appeal of Gustav Ador from order of Mr. Registrar Giffard, dated June 23, refusing direction to trustee to pay dividend on admitted proof).—*Cur. adv. vult.*

*In re C. W. Rogers, ex parte Holland & Hannen* (appeal of Messrs. Holland & Hannen from order of Cave, J., dated July 2, on motion of trustee to refund payment after bankruptcy, heard August 3).—Allowed.

*In re F. L. Malgarini, ex parte F. L. Malgarini* (appeal of debtor in person from order of Mr. Registrar Brougham, dated June 19, upon debtor's application, refusing approval of scheme of arrangement).—Dismissed.

*Horner* v. *Potts* (application of defendants for judgment or new trial on appeal from verdict and judgment dated June 22, at trial before Mathew, J., and a jury at Durham).—Judgment for plaintiff as to part of claim, and for defendants as to other part.

### SATURDAY, AUGUST 8.

*Warton* v. *Parrott* (application of plaintiff for judgment or new trial on appeal from verdict and judgment dated June 29, at trial before Mathew, J., and a special jury in Middlesex).—Refused.

### MONDAY, AUGUST 10.

*In re Hilliard and others, solicitors, ex parte Arthur & Co.* (appeal of Arthur & Co. from order of Romer, J., for North, J., dated July 24, refusing discharge of order for taxation).—Dismissed.

*In re Peter Gapper, deceased.*—*Gapper* v. *Crocker* (appeal of plaintiff from order of Kekewich, J., dated July 31, refusing application for trustees to exercise powers of advancement).—Dismissed.

## CALENDAR OF THE COUNTY COURTS.

FROM AUGUST 17 TO AUGUST 22.

| No. of Circuit | His Honour | Aug. 17 | Aug. 18 | Aug. 19 | Aug. 20 | Aug. 21 | Aug. 22 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Birkenhead | — | Warrington | — | — |
| 15 | Judge Turner | Barnard Castle | Stockton-on-Tees | Darlington | Richmond | Guisborough | Northallerton |
| 19 | Judge Barber | Belper | Derby | Burton | Wirksworth | Ashbourne | — |
| 28 | Judge Jordan | — | Longton | Atherstone | Burslem | — | — |
| 54 | Judge Metcalfe | Bristol | Bristol | Bristol | Bristol | — | — |
| 55 | Judge Machonochie | — | Dorchester | Bridport | Weymouth | Blandford | — |
| 57 | Judge Paterson | Honiton | Chard | — | — | — | — |

## HONOURS AND APPOINTMENTS.

MR. GEORGE SAMUEL TINKLER, of Wandsworth, S.W., has been appointed a Commissioner for Oaths. Mr. Tinkler was admitted in 1860.

Mr. Edward Alfred Chandler, of 4 Park Prospect, Little Queen Street, Westminster, S.W., has been appointed a Commissioner for Oaths. Mr. Chandler was admitted in 1876.

Mr. William Jackson Perkins, of Guildford, has been appointed Registrar of the County Court held at Guildford and Godalming (Circuit No. 45), in succession to the late Mr. H. F. Day, of Godalming. Mr. Perkins was admitted in 1881, and was a Law Society's prizeman at the June Honours Examination of that year.

Mr. Montagu Luff, B.A. Cantab., of Blandford, Dorset, has been appointed Clerk to Justices for the Wimborne Division and also Clerk to the Guardians of the Wimborne and Cranborne Union, in succession to Mr. Frank H. Tanner, dec. Mr. Luff was admitted in 1887.

Mr. Montague Herbert Grover (of the firm of Grover & Grover), of Cardiff, has been appointed a Commissioner for Oaths. Mr. Grover was admitted in 1882.

Mr. David Mainland Dodd, of Newcastle-on-Tyne, has been appointed a Commissioner for Oaths. Mr. Dodd was admitted in 1882.

JUDGE BERESFORD.—Owing to advanced years and failing health, Judge Beresford, who presided over the County Courts in the western district of South Wales, has signified his intention to resign. For several months past his duties have been attended to by his son, Mr. Cecil Beresford, deputy judge.

SOLICITORS' BENEVOLENT ASSOCIATION.—The usual monthly meeting of the board of directors of this association was held at the Law Institution, Chancery Lane, London, on Wednesday, the 12th inst., Mr. Richard Pennington in the chair. The other directors present were Messrs. W. Beriah Brook, J. H. Kays, Sidney Smith, Frederic T. Woolbert, and J. T. Scott (secretary). A sum of 706*l.* was distributed in grants of relief, eleven new members were admitted to the association, and other general business was transacted.

THE RETIREMENT OF MR. NAPIER HIGGINS, Q.C.—In the Chancery Division on August 11, at the conclusion of the business, Mr. Justice Romer, addressing Mr. Napier Higgins, Q.C., said: I believe, Mr. Higgins, this is the last case in which you will appear in these Courts.—Mr. Higgins, Q.C.: I believe so, my lord.—Mr. Justice Romer: Then, will you allow me, as an old friend and former junior of yours—one who has known you now for many years, and who is very glad as a judge to be able to make these observations—to express my hope, which I am sure is shared by all your old comrades at the bar, that on your retirement you may have many years of happy life, and enjoy the repose you have so well earned by your long and distinguished career at the bar.—Mr. Higgins: I am much obliged to your lordship.

THE FREE EDUCATION ACT.—The vicar of Yarmouth (the Rev. W. Donne) has published a statement to the effect that under the new Education Act all the voluntary schools of the town, in which 3,000 children are being educated, will suffer loss to the amount of at least 400*l.* a year. He adds: 'The balance will have to be made up, and Church folk will have to give the most of it. It is no use hiding this fact. If Chuch folk wish the managers to retain the 3,000 children within the influence of definite dogmatic Church teaching, some hard work and much self-denial lie before them in the next ten years. The next ten years will see the Church schools once more established, or will see the schools governed by the School Board, and at least 7,000*l.* a year added to the rates.'

## BIRTHS.

On Aug. 2, at Worthing, the wife of Edward Francis Collet, Solicitor, of a daughter.

On Aug. 4, at 19 Courtfield Road, South Kensington, the wife of R. Wright-Taylor, of Lincoln's Inn, Barrister-at-Law, of a daughter.

On Aug. 5, at Ringwood, Hants, the wife of Francis A. Johns, Solicitor, of a son.

On Aug. 5, at Oakley Lodge, Weybridge, the wife of Frank Newbolt, of the Inner Temple, Barrister-at-Law, of a daughter.

On Aug. 6, at Lorne House, Tenby, the wife of T. Aneuryn Rees, Solicitor, of a daughter.

On Aug. 9, at 6 Rusham Road, Balham, S.W., the wife of J. King Farlow, Jun., Solicitor, of a son.

On Aug. 11, at 43 Thurloe Square, S.W., the wife of George M. Parker, Esq., Barrister-at-Law, of a daughter.

## MARRIAGES.

On Aug. 6, at St. Ninian's Cathedral, Perth, James Currie Macbeth, B.L. Edin., Solicitor, Dunfermline, to Medina, eldest daughter of W. W. G. Irvine, Tayside, Newburgh-on-Tay.

On Aug. 8, at St. Botolph's Church, Boston, Lincolnshire, Edward Brackenbury Myddelton, fifth son of the late Rev. Thomas Myddelton, of West Stockwith, Notts, to Sarah, third daughter of the late Henry Harwood, of Boston, Solicitor.

On Aug. 8, at St. Peter's, Bayswater, Arthur Lee Ellis, of 6 Westbourne Terrace, Hyde Park, and of Lincoln's Inn, Barrister-at-Law, second son of the late Henry S. Ellis, of Fair Park House, Exeter, to Harriet Louisa, younger daughter of the late Surgeon-Major Charles R. Nicoll, F.R.C.S., Eng., late Grenadier Guards.

On Aug. 8, at Ecclesall, Frank Alexander Milne, of Lincoln's Inn, Barrister-at-Law, eldest son of the late Frank Milne, Esq., of Monken Hadley, Middlesex, to Alice Emily, youngest daughter of Mrs. Burne, of Pyebirch Manor, Ecclesall, and the late T. S. H. Burne, Esq., of Loynton Hall, Staffs.

## DEATHS.

On July 31, at 6 Moreton Crescent, Exmouth, John Jackson Smale, eldest son of the late Sir John Smale, Chief Justice of Hong Kong, in his 57th year.

On Aug. 1, at Bradford, Wilts, Sophia Mary, widow of William Merrick, of the same place, Solicitor, in her 70th year.

On Aug. 5, at 1 Prince's Square, W., Theodore Thomas, Barrister-at-Law, of Lucknow, aged 54.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d.* DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

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# The Law Journal.

*SATURDAY, AUGUST* 22, 1891.

## 'OBITER DICTA.'

An important enactment affecting the mode of dealing with certain juvenile offenders was passed towards the end of the session. The Reformatory and Industrial Schools Act, 1891 (54 & 55 Vict. c. 23), which consists of only two sections, provides in effect that if a youthful offender detained in or placed out on license from a reformatory or industrial school conducts himself well the managers of the school may, with his own consent, apprentice him to, or dispose of him in, any trade, calling, or service, or by emigration, notwithstanding that his period of detention has not expired, and the apprenticing, &c., is to be as valid as if the managers were his parents. By a proviso, however, the consent of the Secretary of State is made necessary where the child is to be disposed of by emigration, and in any case, unless he has been detained for twelve months.

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From a return recently issued of Quarter Sessions Boroughs, with the number of prisoners tried at each Court during the last three years, it appears that in three boroughs no prisoners were tried during the three years, in some only one prisoner and in many others not more than an average of one or two yearly. Mr. Matthews, being asked by Mr. Talbot in the House of Commons whether he would consider 'the propriety of gradually bringing this inconvenient system to an end,' stated that he had known some boroughs to avail themselves of the provisions of the Local Government Act, 1888, whereby they may obtain a revocation of the grant of quarter sessions made under section 160 of the Municipal Corporations Act, 1882. The provisions referred to are contained in subsection 7 of section 38 of the Act of 1888, by which the Queen, on petition from the council of any quarter sessions borough which contained, according to the census of 1881, a population of less than 10,000, by Order in Council may revoke the grant of a Court of Quarter Sessions to the borough, *and make such provision as to Her Majesty seems proper for the protection of interests* existing at the date of the revocation. By the same subsection, on a similar petition, the Queen may by letters patent revoke the grant of a commission of the peace (see section 156 of the Municipal Corporations Act, 1882) for any of such smaller boroughs. It will not, of course, follow that because the grant of a Court of Quarter Sessions is revoked, the grant of a separate commission of the peace will be revoked also, nor even is it necessary, looking to the original jurisdiction of the recorder (see section 165 of the Municipal Corporations Act, 1882), that the revocation of the grant of a separate Court of Quarter Sessions should be accompanied by the revocation of the grant of a separate commission. But we believe we are correct in saying that in no borough subject to the Municipal Corporations Act is there a Court of Quarter Sessions without a separate commission, though there are not a few boroughs in which there is a separate commission without a separate Court of Quarter Sessions.

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The Alien Registration Act is being so carefully and strictly (see *ante*, p. 411) enforced by the authorities that the compilation of immigration statistics will be an easy matter. The penalties under this Act are very severe. In addition to the penalties for making or uttering false declarations (offences not very likely to be committed), the penalty on any master of a ship neglecting (an offence likely enough to be committed), to declare the number of aliens on board his ship is 20*l.*, and the further sum of 10*l.* for each alien who shall have been on board at the time of the arrival of the ship, 'or who shall have, to his knowledge, landed therefrom within this realm.' Nor is it only the masters of ships who have to make returns. The alien himself is to show his passport, if he has any, and also to declare his name and to what country he belongs, to the chief officer of customs at the place of debarcation, under pain of forfeiting 2*l.* All offences against the Act are to be prosecuted within six months before two justices of the peace where the offence is committed, who may commit the offender to prison in default of payment of any penalty not exceeding 20*l.*

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The important question whether a private firm is entitled to register under the Companies Act, 1862, was recently considered in *Regina* v. *The Registrar of Joint-Stock Companies*, in which judgment had been reserved for some time. The surviving partner in the

publishing firm of Allen & Co. with six others desired to be registered as a company. The registrar of joint-stock companies, obeying the instructions of the Board of Trade, declined to register, and application was made to the Divisional Court for a *mandamus* to compel him. The principal objections urged by the Attorney-General were that the body before the Court was not a company constituted by law, and that the only reason for applying for registration was in order that the company should be wound up. The Court, however, considered that the words 'constituted by law' were not intended to exclude companies constituted by agreement, and that section 180 of the Companies Act, 1862, conclusively disposed of the objection taken that registration ought not to be allowed if the only object was winding up. It appears that during the last three years doubts and difficulties have frequently arisen at the office of the registrar of joint-stock companies on the subject of the registration of private firms, and that a decision on this point was urgently needed.

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It is the humour of many persons not members of the legal profession to avow contempt for the laws of evidence as administered in a Court of law. For instance, in the immortal trial of *Bardell* v. *Pickwick*, when Sam Weller added to his answer to the counsel's question the words 'as the soldier said ven they ordered him three hundred and fifty lashes,' the judge interposed, 'You must not tell us what the soldier or any other man said; it's not evidence.' This, according to Judge Pitt-Taylor in his 'Law of Evidence' (7th edit. p. 487, n.), is an amusing caricature of 'the rule excluding hearsay evidence, or rather the mode in which that rule is frequently misunderstood in Courts of justice.' Many, possibly even in the legal world, think that the rules are merely arbitrary and not founded upon the nature of things. It is refreshing then to come across the recognition of the correctness of the legal rules by so great a scholar and writer as Dr. Abbott, late Head-Master of the City of London School, in his recent work, 'Philomythus.' On p. 86 he says: 'What is "legal proof?" It is simply proof of the ordinary kind, by evidence direct and indirect, but stronger and stricter. Legal proof, being seldom required except where facts are affirmed and denied by interested parties, requires (in a greater degree than ordinary proof) that the evidence shall be deliberate, hence the use of the oath; free from exaggeration or misunderstanding, hence the rejection of hearsay evidence; consistent and truthful, hence the demand that every witness shall undergo cross-examination; free from suspicion, hence the preference of evidence as to character (and even of evidence as to facts) coming from witnesses who have no interest, one way or the other, in the ultimate decision. Occasionally, in the excessive desire to serve order, law has unfairly favoured despotism, and in the excessive desire to be fair to the accused it has foolishly excluded evidence that might have fairly helped the accused. But, on the whole, it may be said that legal proof is of the same kind as ordinary proof, only superior in degree.' That is a noble eulogy, and Dr. Abbott should be told that at least some part of the evidence which he deems to have been foolishly excluded will shortly be admitted on behalf of the accused.

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At the Birmingham Assizes the Lord Chief Justice of England (see *ante*, p. 531), finding nine prisoners awaiting their trial at Birmingham Quarter Sessions, discharged them from gaol on their recognisances to appear there, regarding it as most objectionable that men, some of whom might be innocent, should be detained for months without being brought to trial. The Lord Chief Justice also said 'that in exercising their discretion under the Assizes Relief Act as to whether they should commit to sessions or assizes, magistrates should pay the utmost regard to securing as early a trial as possible.' What discretion have magistrates under the statute referred to (52 & 53 Vict. c. 12), passed 'to relieve the Courts of Assize from the trial of persons charged with offences triable at quarter sessions?' Section 1 of the Act enacts that whenever any person has been committed to gaol charged with an offence triable at quarter sessions, the persons bound over to prosecute *shall be* bound over by the committing justices to attend for that purpose at the next practicable Court of quarter sessions having jurisdiction to try such person, 'unless such justices for special reasons think fit otherwise to direct.' We cannot think that the *mere* distance of time of sessions, as compared with that of assize, would constitute a 'special reason' within these words, and it is even doubtful whether Rules of Court which may be made under section 6 of the Act, providing that justices should have regard to such distance, would be carrying the Act into effect within the meaning of that section. It seems to us that an amending bill will be required to enable justices to administer the Assizes Relief Act in the manner suggested. Section 3 of the Act amply provides for the discharge of prisoners by a judge of assize, on the application of the prisoners themselves, who have been committed for trial at quarter sessions but not tried there.

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We are glad to observe that the Slander of Women Bill, by which imputation on a woman's chastity is made actionable without special damage, is amongst those which have received the royal assent. Threatened at one time by the serious opposition of the Lord Chancellor, the bill has been saved by the insertion of a clause cutting down a plaintiff's title to costs. It is very remarkable that a reform which has so frequently been advocated by so many high judicial authorities has been so long delayed. Lord Holt was the first, in *Ogden* v. *Turner*, 2 Salk. 696, to lay down the law as it has continued since his time till now, and the ground of his decision was that 'this kind of defamation is punishable by a spiritual Court,' so that even the reason for the law ceased to exist so far back as 1855, when, by 18 & 19 Vict. c. 41, the jurisdiction of the Ecclesiastical Courts in suits for defamation which had become 'grievous and oppressive to the subjects of this realm' was formally abolished.

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A full note of the proceedings on the special case stated in *Cleaver* v. *The Mutual Reserve Fund Life Association* (*The Maybrick Insurance Case*) appears in our last week's Notes of Cases at p. 136. A careful reading of that note will show that the judgment against the plaintiff in that case is theoretically a conditional one only, to the effect that *if it be proved* in Mr. Cleaver's action that the convict Maybrick intentionally poisoned her husband, as the jury found, it will follow that Mr. Cleaver's action is barred. 'It is impossible to conceive a stronger case against public

policy,' said the Court. But the further question, whether the conviction is conclusive or even *primâ facie* evidence in Mr. Cleaver's action, remains as yet undecided.

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The Savings Banks Act, 1891 (54 & 55 Vict. c. 21), is one of the most important statutes of the late session, and being, as it was, a remanet of the session of 1890, was very greatly needed. It contains nineteen sections, almost entirely directed to improving the position of trustee savings banks. The establishment of a general inspection committee is provided for, and it is enacted that the office of trustee is to be vacated for twelve months' non-attendance at meetings, that trustees are to present their accounts in such form as may be prescribed by those personifications of financial wisdom the National Debt Commissioners. The powers of the banks to make special investments are also made subject to very many restrictions, the most important of which is that 'the money received for investment after the commencement of this Act shall not be invested in any manner not for the time being authorised by law in the case of investment by trustees, and shall not be invested on mortgage of land or any interest in land.'

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A correspondent of the *Times* states that the Local Government Board contemplates ordering the destruction of the enumeration-books of the censuses of 1851 and 1861, which have been for many years stored in the clock tower at Westminster, the object of the proposed destruction being presumed to be to obtain a little more storage room. We hope that nothing of the sort will be done. The particulars contained in these enumeration-books may often turn out to be of very great use in tracing out pedigrees, and in establishing the rights of persons who have emigrated to succeed to property or to make good claims to unclaimed dividends in bankruptcy or on Government Stock; and it seems to us that, instead of destroying such books, the Local Government Board would do well to render them more accessible and intelligible to the public by the preparation of indexes. Perhaps one of the learned societies would take up the matter, which, looking to the fact that the establishment of a permanent census office is under consideration, should be agitated pretty soon, or the books may be destroyed before their real value has been properly appreciated.

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At this time of year, when so many persons are taking houses or lodgings for short periods, it is well to direct attention to the provisions of the Sanitary Acts which have been framed specially for their protection from infectious diseases. By section 128 of the Public Health Act of 1875 'any person who knowingly lets any house, room, or part of a house in which any person has been suffering from any dangerous infectious disorder, without having such house, &c., disinfected,' is liable to a penalty not exceeding 20*l.*; and it is added that, 'for the purposes of this section, the keeper of an inn shall be deemed to let part of a house to any person admitted as a guest into such inn;' and by section 129 any person letting any house, &c., 'who, on being questioned by any person negotiating for the hire as to there being, or within six weeks having been, therein any person suffering from any dangerous infectious disorder, knowingly makes a false answer to such question,' is liable to a similar penalty 'or to imprisonment, with or without hard labour, for a period not exceeding one month.' Nor is this all. The Infectious Diseases Prevention Act, 1890 (which is an adoptive Act), by section 7 imposes a penalty of not more than 20*l.* on every person ceasing to occupy any house, &c., in which any person has within six weeks previously been suffering from any infectious disease without having such house, &c., disinfected or without giving notice to the owner of the existence of such disease, and a similar penalty on every such person who falsely answers questions directed to these important points. Influenza has not been declared to be an infectious disease within the meaning of the Act of 1890, which as yet (see sections 2 and 6 of the Infectious Diseases Notification Act, 1889) applies only to 'smallpox, cholera, diphtheria, membranous croup, erysipelas, scarlatina, scarlet fever, and the fevers known as typhus, typhoid, enteric, relapsing, continued, or puerperal.' A ghastly list!

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The 'Author' of this month contains a lengthy opinion of Sir H. Davey and Mr. Rolt upon five questions submitted to them in connection with the American Copyright Act. The writers are of opinion that copyright in books is conferred on aliens by Great Britain on substantially the same basis as on British authors, so that as law officers have advised, and as the President of the United States has assumed our law to be, the American Copyright Act fully applies to British subjects; but they point out that by virtue of 25 & 26 Vict. c. 68, copyright in paintings, drawings, and photographs is expressly confined to British subjects resident in the dominions of the Crown, so that the American Copyright Act cannot be properly applied to them. Musical and dramatic compositions appear to be in a somewhat doubtful position. It is also stated to be the opinion of the writers that the date of the first publication of a book as recognised by the English Courts is the date upon which the book is first offered to the public generally; that English authors will be entitled to American copyright in alterations, revisions, or additions to their books previously published in the States, unless the additions form part of a series or of a work published in parts in course of publication at the time when the American Copyright Act took effect.

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## ENGLISH *CAUSES CÉLÈBRES*.—I.

### Regina *v.* Palmer.

Till the middle of the present century strychnia was, forensically speaking, all but unknown. Prussic acid, antimony, opium, and, above all, arsenic, served the purposes and seemed to exhaust the ingenuity of the poisoner, and retribution followed swiftly and surely in the footprints of crime.

On the night of November 22, 1855, John Parsons Cook, a young gentleman of means, once a solicitor's clerk, but at the date in question only an *habitué* of the turf, died suddenly in convulsions at the Talbot Arms, in Rugeley, Staffordshire. Little more than an hour and a half before his death his friend, betting companion, and medical adviser, William Palmer, of Rugeley, had administered to him two pills, which purported to be merely sedative, and to have been sent from the laboratory of another medical practitioner—a very old man—

whom Palmer had called in to see the case. Cook had been ailing for some time. Violent vomiting had followed every attempt that he made to take food, and a few days before the 22nd he had been seized with an attack similar in character to, but less intense than, that which destroyed him. A number of strange circumstances soon came to light. It was known that Cook had won a considerable sum of money shortly before his death at Shrewsbury races. His betting-book was nowhere to be found, and it turned out that Palmer had realised the winnings and applied them in part payment of his own debts, which were instant and overwhelming. Again, although Cook's stepfather, Mr. Stevens, was on the spot, Palmer took upon himself to order a coffin, and eagerly pressed forward the funeral arrangements. Suspicion was aroused. Witnesses were forthcoming who said that it was only when Cook's food was prepared under Palmer's supervision that it made him sick. Men remembered that other persons, too, from whose deaths Palmer would derive pecuniary benefit—his brother, his wife, and at least one of his children—had died as mysteriously as Cook. A coroner's inquest was ordered. Palmer forthwith proceeded to manufacture the most damning evidence against himself. He misplaced and tried to overturn the jars that contained the stomach and intestines for chemical analysis. Although this effort failed, some one succeeded in slitting the skin of the stomach so that the larger portion of the contents escaped. He attempted to bribe the postboy that was to drive the jars to the railway station to upset the coach, and he induced the local postmaster to open the letter that contained the report of the experts, Dr. Taylor and Mr. Rees, and to acquaint him with its terms. He sent presents of game to the coroner. These artifices produced the result that was to be expected, and the sporting surgeon of Rugeley was fully committed for trial for the murder of John Parsons Cook. Rugeley, and, indeed, Staffordshire, had no doubt as to his guilt, and it was obvious that, if he was tried in his own county, the result of the trial would be a foregone conclusion. So the Legislature intervened to protect this blackleg from his neighbours, and an Act of Parliament was passed, which is sometimes described as Palmer's Act (19 Vict. c. 16), and which provides for the removal of a criminal prosecution to the Central Criminal Court when, for some cause personal to the prisoner, a fair trial cannot be had in the appropriate venue. The *cause célèbre* of *Regina* v. *Palmer* was heard at the Old Bailey in the beginning of May, 1856, before three judges — Lord Chief Justice Campbell, Mr. Justice Cresswell, and Mr. Baron Alderson. It lasted for twelve days, and resulted in the jury unanimously finding the prisoner 'guilty as libelled.' The Attorney-General (Sir A. E. Cockburn), Mr. Edwin James, and Mr. Huddleston appeared for the Crown. Mr. Serjeant Shee — *vice* Mr. Serjeant Wilkins, who was prevented by illness from conducting the defence—Mr. Grove, Q.C., whose scientific knowledge was considered valuable, and the unfortunate Kenealey appeared for the prisoner. The points of legal and medical interest connected with this trial are almost innumerable. We shall deal with a few of them and leave our readers to grapple with the rest. (1) *Regina* v. *Palmer* dissipated the delusion that poisoning by strychnia can be effected *with impunity*. When Dr. Taylor and his brother expert reported that they found no strychnia in the stomach of Cook, it was hastily assumed that this deadly alkaloid could not be detected, and a half-witted farmer in the Midlands, named Dove, poisoned his wife with it on the strength of this assumption.* But the trial conclusively established (*a*) that the failure of the experts for the prosecution to detect strychnia was due to the conditions under which their experiments were conducted; (*b*) that strychnia does not defy chemical analysis; and (*c*) that even if *post-mortem appearances* prove deceptive, the *symptoms* of poisoning by strychnia are unique and cannot be confounded by the practised eye with those of general convulsions, epilepsy, or tetanus, whether traumatic or idiopathic. (2) In the course of his powerful speech for the defence, Mr. Serjeant Shee said that he believed 'in his soul' that the prisoner was innocent; and Sir Alexander Cockburn in his reply was, with less excuse, betrayed into hinting that *he* held a contrary opinion. Lord Campbell directed the jury to disregard both of these observations entirely, and to confine their attention to the evidence. The feather thus plucked from the wings of counsel has never been replaced, and it is not now the practice, even in criminal cases, for an advocate to tell the jury his personal opinion as to the merits of the issues before them. (3) *Regina* v. *Palmer*, following *Regina* v. *Macnaghten*, 10 Cl. & Fin. 211-212, is an authority for the proposition that an expert will not be permitted to state that *upon the facts proved at the trial* he is of a certain opinion. But he may be asked what inference he as an expert would draw from certain facts or symptoms, *assuming them to be proved*. (4) In the course of Palmer's trial Mr. Grove was proceeding to cross-examine a medical student who had assisted at the *post-mortem* upon the appearances caused by strychnine poisoning, when one of the judges stopped him, saying, 'When you have here all the medical men in England, you had better not put such questions to an undergraduate of London University.' This is the nearest approach that we are aware of in any medico-legal case to the assertion by a judge of his undoubted right to reject the evidence of any expert who appears from his own statements incompetent to give an opinion upon the matter in question. Upon the histrionic features of this remarkable trial we shall not dwell, Sir James Stephen and, *longo intervallo*, Mr. Harris have made them familiar to all English lawyers. But a bibliographical note may be of some interest and value. The best report of the *whole* trial is the unillustrated reprint from the *Times*. The illustrated *Times* edition is curious and entertaining, but inaccurate. Messrs. Barnett and Buckley's shorthand notes of the *evidence* are admirable. The pamphlet literature on the subject fills pages in the catalogue of the British Museum, and is written in English, French, German, and even Greek!

(*To be continued.*)

* Dove subsequently expiated his faulty logic with his life.

## IMPLIED RESERVATION OF EASEMENTS.

Probably in the non-legal world the legal theory of the creation and extinguishment of easements is 'caviare to the general.' Practically, however, many owners of property are aware, to their sorrow, that others have rights of way over their parks or fields, though they may be wholly ignorant of how or why these rights were created and in what manner they

may be destroyed. The recently decided case of *Taws* v. *Knowles*, 26 L. J. N. C. 118, is an instance of those oft-recurring questions as to the implied reservation of an easement when there has been a unity of ownership of both the dominant and servient tenements. Strictly speaking, there is implied in the very idea of an easement the separate existence of two owners. If a man owns Whiteacre and Blackacre, and chooses to make a way from Whiteacre over Blackacre, that is merely an exercise on his part of proprietary rights, and he does not imply from his act that if in the future he sells Blackacre to A., and Whiteacre to B., there is always to be a right for B., and those claiming under him, to walk over the property sold to A. Where, however, one part of his property is landlocked, and the owner of Whiteacre, unless he has a right of way through Blackacre, cannot get out at all, then there is implied a way of necessity. In *Taws* v. *Knowles* the owner of the two houses let one and lived in the other, and made a walled passage from one over the other. She mortgaged the second house by a deed which included the passage and reserved no right of way. Before the mortgage was paid off the mortgagor died, having devised the houses to two different persons. The devisee of the second house, having satisfied the mortgage debt, took a reconveyance of all the mortgagee's interest and blocked up the passage. In order to try the question of right, the devisee of the first house brought an action of trespass against the devisee of the second, who in return counter-claimed for an injunction. Mr. Gale, we are told in the sixth edition of his treatise on the 'Law of Easements,' p. 123, was of opinion that upon a severance of two tenements connected by some apparent sign of servitude, whether by the grant of the *quasi*-dominant or the *quasi*-servient tenement, an easement was by implication created in favour of the *quasi*-dominant property. As regards the reservation in favour of the grantor of this *quasi*-easement, 'this opinion, which was shared by Mr. Willes, must now be considered to be overruled, the Courts considering that the operation of the doctrine in question, on a sale of the *quasi*-servient tenement, is prevented by the principle that "a man cannot derogate from his own grant."' Applying this principle to the case in point, when the mortgage was made the mortgagor did not expressly reserve (or, more technically, create) any easement over the mortgaged property, and as he could not derogate from his own grant, none was implied in his favour. The mortgagee thus owned the passage free from an easement or *quasi*-easement in favour of the mortgagor, and, when he conveyed his interest to the devisee on payment off, he conveyed the passage in the same condition as he had received it, that is, free from any easement or *quasi*-easement. So the Divisional Court held, and the Court of Appeal have affirmed their decision, subject to any possible right on the plaintiff's part to redeem.

But though as against the grantor these two maxims apply—viz. that 'no one shall derogate from his own grant,' and that 'the grant is construed most strongly against the grantor'—surrounding circumstances, and obvious, though unexpressed, intentions may rebut the presumption in favour of the purchaser. Two recent cases will suffice to illustrate this—namely, *The Birmingham, Dudley, and District Banking Company* v. *Ross*, 57 Law J. Rep. Chanc. 601; L. R. 38 Chanc. Div. 295, and *Russell* v. *Watts*, 55 Law J. Rep. Chanc. 158; L. R. 10 App. Cas. 590. In the former of these two cases the Corporation of Birmingham demised a house in the business quarter of the city to the plaintiff's predecessor in title. The house had certain windows in it that overlooked a plot of land which the corporation subsequently demised to the defendant, who proceeded to erect on it buildings of a considerable height, which obstructed the plaintiffs' windows. Obviously the defendant could stand in no better position than the corporation, so the question resolved itself into this, Was the defendant's building a derogation from the grant to the plaintiffs? 'We must,' said Lord Justice Cotton, 'in determining what obligation results from the position in which the parties have put themselves, have regard to all the existing facts which existed at the time when the conveyance was made, or when the lease was granted, and which were known to both parties. Of course we must be satisfied that they were known to both parties.' The Court of Appeal were of opinion in that case that both parties must have known at the time when the lease was granted that the corporation were going to put out the land for building houses suitable for the locality, so that the plaintiffs had no legal cause of complaint. *Russell* v. *Watts* is rather an oblique illustration than a direct one, as the House of Lords held that the mortgages of the respondents' blocks operated as agreements, mutually binding on the parties thereto and those claiming under them not to deviate from the prescribed plans. The opening *dicta* of Lord Selborne's judgment are well worthy of being committed to memory, as containing a summary of the law on this subject. They are to the following effect: 'We start in this case with the general rule of English law, that a man cannot be prevented from darkening his neighbour's window lights by any act, otherwise lawful, done on his own land, unless light has been enjoyed through those windows for twenty years, and also with another general rule (exemplified in the case of *Wheeldon* v. *Burrows*, 48 Law J. Rep. Chanc. 853; L. R. 12 Chanc. Div. 31), that if a man entitled to a house with windows, however long enjoyed, sells and grants away the adjoining land without any condition, reservation, or other form of contract which can operate restrictively against the grantee, he is not at liberty to derogate from his own grant so as to prevent any use, otherwise lawful, of the land granted, although the windows of his own house may be darkened thereby. It is manifest, however, that neither of those rules can be invoked in defence of any act contrary to the good faith of a particular contract.' In advising, therefore, on the relative rights of vendors and purchasers the man of law has to consider what was the exact state of things in regard to the whole property when part was put up for sale, bearing in mind that the vendor can impliedly reserve no easements against the purchaser, unless the state of the property, and his obvious intentions with regard to it, raise by implication an agreement to that effect.

## Correspondence.

### COLLIE-DOGS.

Sir,—Both 'Templar' and I are indebted to Messrs. Chappell & Griffith for their full report of this case, as no further statute could be found, and the decision as it originally appeared was certainly of a most astonishing nature.

T. F. Uttley.

# Unreported Cases.

## ASSIZE CASE.

BILL OF LADING—GRAIN CARGO—DESPATCH TERMS.

On the North-Eastern Circuit, at Leeds, before Mr. Justice Grantham, the case of *The Steamship Albany Company* v. *Procter* was heard on August 13.—This case, which possessed considerable interest both for shipowners and importers of grain, substantially turned upon what is the meaning of 'despatch terms' in connection with the discharge of cargoes of grain. Messrs. Ralli Brothers, of London, had shipped at Kurrachee 34,650 bags of wheat on board the steamship Albany. The bills of lading contained a clause to the effect that the ship's responsibility was to cease when the cargo had left the ship's tackles at the port of discharge, which in this case was Hull. The defendants, Messrs. Procter & Sons, of Liverpool and Hull, were the assignees of the bills of lading. On arrival at Hull the steamer was discharged on 'despatch terms.' This meant that the cargo, instead of being delivered direct from the ship to consignees, in which case it would be weighed and tallied on the ship's deck during the discharge, was delivered to a quay and then stored in a warehouse of the dock company. The cargo was then delivered from the warehouse to the consignees, the delivery not being completed until a fortnight had elapsed since the steamer had been discharged. The ship was unloaded in a very hurried manner, the discharge being carried on by night and day continuously, as the ship was urgently required elsewhere. It was admitted that the extra expense incurred in the delivery to the consignees was to be borne by the shipowners. When the delivery from the warehouse to the consignees was completed, it was found that there was a shortage of 120 bags from the bills of lading quantity. The value of these was 69*l.* 11*d.* 2*d.*, after deducting the freight that would be due upon them, and this sum was deducted by the consignees from the freight claimed, and the question was as to whether or not the consignees were entitled to make this deduction. It was alleged on behalf of the shipowners that their responsibility ceased when the cargo had left the ship's tackles, and there was nothing to show that the whole cargo had not been placed on the quay. For the consignees it was contended that the ship's risk continued until the delivery from the warehouse to the consignees had been completed, as the discharge of the ship on 'despatch terms' was entirely in the interest of the shipowners. It was further contended on behalf of the consignees that if they allowed an unreasonable time to elapse before they took delivery from the warehouse it was competent for the shipowners to give orders to the dock company to weigh over the balance of the cargo to them. It was probable that the missing wheat had been stolen between the ship's arrival and the final delivery. The learned judge upheld the contention of the defendants, and held that under the circumstances the risk of the shipowners continued until the final delivery of the wheat to the consignees had been completed. He, therefore, held that the defendants were entitled to deduct the 59*l.* 11*s.* 2*d.* from the amount claimed for freight, and accordingly gave judgment for them for this amount on their counterclaim, with costs.—Mr. J. Lawson Walton, Q.C., and Mr. Boyd appeared for the plaintiffs; and the defendants were represented by Mr. Cyril Dodd, Q.C., and Mr. H. T. Kemp.

## POLICE.

AUCTIONEERS AND SURVEYORS—INLAND REVENUE.

At the Mansion House, on August 17, Mr. Alexander Andrade, of 54 Cannon Street, attended before Mr. Alderman Tyler on two summonses at the instance of the Inland Revenue Department, the first alleging that he, not being licensed to carry on the business of an auctioneer, for which an excise license was required by statute, had on his premises certain inscriptions—viz. 'Alexander Andrade, auctioneer, surveyor, and land agent,' implying that he exercised that trade; and the second asserting that he directly or indirectly offered a bribe to Jeremiah Dennehy, an officer of Inland Revenue, with a view to corrupt him in the execution of his duty. To the first charge the defendant pleaded 'Guilty,' and to the second 'Not guilty.'—Jeremiah Dennehy, an officer of Inland Revenue, said on May 12 he went to the offices of the defendant at 54 Cannon Street, and observed an inscription on the brass plate and on other parts of the premises, showing that he purported to carry on business as an auctioneer. He saw Mr. Andrade, and pointed out the inscriptions to him, telling him that he had come from the Inland Revenue Office in Great Winchester Street on the subject. The defendant said he did not purport to sell by auction, for all the placards in his office related to sales by private treaty. Witness drew his attention to a placard relating to a sale by auction of some land in Suffolk. The defendant then took from his pocket some gold and silver, and, holding it out, said, 'Here is a sovereign for yourself if you will say nothing about it.' Witness declined, and said he felt insulted at being offered a bribe, and that there was a penalty incurred by his so doing. The defendant said he did not offer him a bribe.—Witness having been cross-examined, Mr. Fulton, for the defence, submitted that not even an indirect offer to bribe had been made by the defendant. What happened was that during the conversation with the officer the defendant lost his temper, and said, 'There are hundreds of persons acting as auctioneers who have not taken out licenses, and some have not got 10*l.* to take them out with; I suppose they grease your palm, and I daresay if I gave you a sovereign I should hear no more about it.' (The officer, in his evidence, had denied that this was said.) His client indignantly repelled the insinuation of attempted bribery, and it was hard for him to be charged there under a penal section, by which he might be fined 500*l.*, over three months after the alleged incident happened, and when he was unable to give evidence in his own behalf. The omission to remove the inscription of auctioneer was only a technical breach, for, as a matter of fact, he had sold nothing by auction since his license expired last year. —Mr. Alderman Tyler fined the defendant 3*l.* and 4*s.* costs on the first summons, and 25*l.* and 4*s.* costs on the second, or 28*l.* 8*s.* in all.—Mr. Alpe, barrister, appeared for the Inland Revenue Department; Mr. Forrest Fulton for the defence.

## SUPREME COURT OF BRITISH HONDURAS.

POWERS OF LEGISLATIVE COUNCILS.

At a special session of the Supreme Court of the Colony of British Honduras on July 13, Mr. W. J. Anderson, the Chief Justice, heard the case of *Stevens Brothers & Co.* v. *The Collector of Customs of Belize*, which raised a novel and interesting point as to the jurisdiction of the Court over the Legislative Council of a Crown colony. The case was nominally to obtain from the Chief Justice a declaration as to what was the duty leviable on tobacco, but it really was to obtain a decision on the status of the unofficial members of the Council. It was alleged by the plaintiffs that the amount claimed by the collector of

customs on the importation of cut tobacco was not a legitimate tax, but an illegal exaction, because the ordinance in virtue of which it was levied was not a law, having been passed by a body which was not a Legislature. They founded their allegation on the fact that four salaried officers of the Government had been appointed unofficial members, who, the plaintiffs held, were not qualified to fill such offices.—The Chief Justice reserved judgment, and subsequently on the 15th decided in favour of the plaintiffs, with costs. In doing so he said the plaintiffs' contention was that the Legislative Council at the time of the passing of Ordinance 8 of 1891 was not constituted as provided in chapter 2 of the Consolidated Laws, and that the ordinance was not duly passed. The Legislative Council of the colony was constituted by a local enactment 34 Vict. sess. 3, c. 1, which was now known as chapter 2 of their Consolidated Laws. Section 2 gave power to the governor, with the advice and consent of the Legislative Council, to make laws for the peace, order, and good government of the colony, and by section 3 it was enacted that 'it shall and may be lawful for Her Majesty the Queen from time to time, by any instructions or warrants under her sign-manual and signet, to designate such officers and appoint such persons as she may think fit to be respectively official and unofficial members of the said council.' Section 4 enacts that, until otherwise declared by any such instruction or warrant, certain officers therein designated should be the official members, and that in addition thereto there shall be not less than four unofficial members. The Attorney-General, on behalf of the defendant, contended that the words of section 3 were plain and unambiguous, that the word 'officer' was there used in a general sense, and that the term 'person' meant any individual with legal duties and responsibilities; that the expressions 'official' and 'unofficial' members were relative expressions, that the official member was the person designated by the title of his office, and the unofficial member was the individual appointment. There was no doubt whatever in the mind of the Chief Justice that the Legislature, when by section 3 it made it lawful for Her Majesty the Queen to designate such officers and appoint such persons as she might think fit to be respectively official and unofficial members of the council, intended that the unofficial members should be persons other than the officers of the Government. The very use of the words 'unofficial members' sufficiently showed this, for these words could only reasonably mean members who did not hold offices or who were not officers. To construe the section in the way that he was asked to do by the Attorney-General he would have to leave out entirely the word 'unofficial.' It seemed to him to be impossible by any process of right reasoning to say that the words 'and appoint such persons as she may think fit to be unofficial members,' as used in the section, could be extended to mean the appointment of such officers or persons who might not be *ex officio* members of the Council. He was, therefore, of opinion that the Legislative Council, as constituted on March 21, 1891, when Ordinance 8 of 1891 was passed, was not constituted as provided in chapter 2 of the Consolidated Laws. Then arose the question, Had that Court jurisdiction to decide as to the validity of Ordinance 8 of 1891? It was a point which had never arisen before. It could not arise with respect to any statute of the Imperial Parliament, and he was not aware that it had arisen in any other of Her Majesty's colonial possessions. The Attorney-General argued that it was a public ordinance of the colony, and that, as such, the Court was bound under section 9 of chapter 1 to take judicial notice of it, and could not go behind it. The laws of the Imperial Parliament, the Chief Justice held, bore no analogy to those of a colonial Legislature, and they could not look to the English Courts to throw any light on this point; but in America it was different. After quoting from Kent's 'Commentaries on American Law,' p. 448, his Honour continued: There is no doubt that there ought to be, and there must be, some restraining power upon a colonial Legislature, and that that restraining power should vest in the Courts of justice. There has been no objection taken as to the form of the action by which the question has been raised, but simply a general objection that the Supreme Court has no jurisdiction to decide a question as to the constitution of the Legislative Council. If I were to decide that the constitution of the Legislative Council could not be questioned, I would really be holding that the Legislative Council was above the law, and that its acts and proceedings could not be questioned, however illegal or unconstitutional they might be. I cannot give effect to any such proposition. When the Legislative Assembly gave up its representative rights it passed in 1870 a statute—34 Vict. c. 1—by which the new Legislature was constituted. That statute is practically still in force, although for the purpose of consolidation it is known now in our statute-books as chapter 2, and as long as it remains in force and is unrepealed by competent authority the Executive is bound by it, and this Court is the proper tribunal to decide any question that may arise affecting the constitution of the council. Notice of appeal to the Judicial Committee of the Privy Council has been lodged on behalf of the defendant, and as the affairs of the colony will be at a standstill until an authoritative decision is given, it is expected that the case will be dealt with as a matter of urgency immediately after the Long Vacation. —Mr. R. H. Logan, for the plaintiffs; Mr. C. R. Hoffmeister, the Attorney-General of the colony, for the defendant.

## INCORPORATED LAW SOCIETY.

The completed programme of the business to be transacted during the eighteenth annual meeting of the Incorporated Law Society (U. K.), to be held in Plymouth during the coming week, has been issued by the hon. local secretary (Mr. J. Woolcombe, of Plymouth), and it shows that in every respect ample provision has been made for the reception of the visitors both during the transaction of business and for their entertainment subsequently in the way of excursions. On Monday evening, the 24th inst., the Mayor of Plymouth (Mr. J. T. Borer) will receive the president, council and members of the Society, and the ladies accompanying them, at a *conversazione* at the Guildhall. On Tuesday morning the president of the Plymouth Incorporated Law Society (Mr. John Cheely) will receive the members in the Western Law Courts, when the president of the U. K. Incorporated Law Society (Mr. W. Melmoth Walters) will deliver his inaugural address, which will be followed by the reading and discussion of papers. Mr. and Mrs. Shelly will in the evening hold a reception at the Promenade Pier Pavilion. On Wednesday the reading and discussion of papers will be continued and concluded, and the annual banquet of the society will take place in the evening, presided over by Mr. Shelly. The Lord Chief Justice and the Solicitor-General are expected to be amongst the distinguished guests present. An ample programme of excursions has been arranged for the following days, including trips to Dartmoor, the country seats of Lord St. Levan, Lord Mount-Edgcumbe, and Earl Morley. Special arrangements have been made for the convenience and accommodation of visitors in many respects. Telegrams, for instance, addressed 'c/o Oyez, Plymouth,' will be forwarded by the hon. secretary to the temporary address of the member as supplied to him. All the principal clubs and institutions of the town will be placed at the disposal of the visitors during the week, and every effort made to render their stay as pleasant as possible.

## THE APPROACHING REGISTRATIONS: HOW VOTES MAY BE SAVED.

'A Revising Barrister' writes to the *Times* as follows:—

In view of the approaching registrations of Parliamentary and local government electors, permit me, as a revising barrister of considerable experience, to point out to electors now on the lists how easily their votes may be lost and how easily they may be saved.

It is constantly the duty of the revising barristers, on objections taken, and often even without objections, to strike off the names of electors from the lists, undoubtedly qualified, but by reason of neglect or disregard of some statutory requisitions as to registration—as omission to record a change of address, an insufficient description of the qualification or of the qualifying property, or a neglect to mention 'successive' occupation, or the like, all of which could easily be supplied, but which too often are not supplied in time, so that the votes of electors duly qualified are constantly from such causes lost.

The Legislature, well aware of this, has taken care to afford facilities for the supplying of such defects and the correction of such omissions. Besides and beyond the power of amendment which the barrister is to exercise as to 'all mistakes in the list,' or mistakes of the overseers in making out the lists—and which would not suffice in such cases as above mentioned as they are not cases of mistake, but of mere neglect or omission, or misstatement of the voter—beside and beyond this, there is ample power given to the elector to supply any such omissions and correct any such misstatements up to a few days before the commencement of the revision; and yet, strange as it may seem, thousands and tens of thousand of votes are lost at every revision through simple ignorance or neglect of this salutary provision. It may appear incredible, but I am able to state from actual experience that it is hardly ever taken advantage of. The provision in question was made as to county (ownership) voters so long ago as 1865. In an Act of that year, the County Registration Act (28 & 29 Vict. c. 36), s. 10, provision was made for the most common cause of loss of ownership votes—the omission to record a change of address—by this enactment: 'Any person whose name appears on the list of voters, and whose then place of abode is not correctly stated on the list, and who shall have possessed the same qualification, may make a declaration before any justice of the peace, or commissioner, or other person authorised to administer oaths (in a form given), such declaration to be on or before September 5 (only three days before September 8, when the registrations commence), transmitted to the clerk of the peace, and by him sent to the revising barrister.' It would be impossible to imagine a more useful or salutary provision, and there are thousands and thousands of cases in which it might be taken advantage of to save county votes lost or imperilled by a change of address. And yet, though it may seem almost incredible, I hardly ever have such a declaration, and in consequence have often an objection taken that the address on the list is no longer the true address, and to strike out names of county ownership voters. It is to be observed that the Legislature has required that if an ownership voter has changed his address he must not only supply it, but also prove that he still retains the same qualification, which may be by reclaim, but more easily by a declaration, on which the barrister can amend the address. Such cases occur at every revision, and yet, through ignorance or neglect, this salutary provision is hardly ever, according to my experience, taken advantage of.

The same provision is by the last Registration Act of 1885 still more widely extended and applied to occupation voters and borough and local government electors:

'Where any person is entered on a list of voters, whose name or place of abode, or the nature of whose qualification, or the name or situation of whose qualifying property is not correctly stated on such list, or in respect of whom there is any other error or omission in the list, he may make a declaration, &c., to be sent to the clerk of the peace on or before September 5, and by him to be sent to the revising barrister, who is to take it as evidence, and may amend accordingly' ('Rogers on Elections,' last edition by Powell, p. 288). And the Court of Appeal held a few years ago that with such a declaration, but not without it, the barrister may change the description of the qualification (*Ib.* p. 272, citing *Foskett* v. *Kauffman*, 55 Law J. Rep. Q. B. 1; L. R. 16 Q. B. Div. 279).

It must be obvious that if this salutary provision were duly taken advantage of no vote need be lost for any defect or omission in the statements on the register or lists of voters, and as I cannot help thinking that the reason it is so rarely taken advantage of is that it is little known I venture to take the best possible means of making it known by writing to you.

It is probable, indeed, that there is a very widespread ignorance as to the comparatively slight or subordinate causes by which votes may be lost, although there is an undoubted qualification. Perhaps few ownership voters are aware that their vote may be lost if objected to on account of a change in their address, or that it may be lost even without objection if the qualifying property is not so described as to be identified. Numbers of ownership votes are lost every year from these causes, though the qualifications are undoubtedly good. The Court of Appeal held this year that an ownership vote was lost by a misdescription of the legal nature of the qualification (which no layman could be aware of), and that the barrister was wrong in amending it without a statutory declaration, with which it could have been amended, and the vote might have been saved. Again, few occupation voters probably are aware that these votes are imperilled, though their names are on the overseers' list, if the overseers have made some error in description—as, for example, if the voter, having been during the year in two houses, they have only put down one. Yet any such misdescription may be set right up to September 5 by a statutory declaration.

The perils which beset the voters are, it will be seen, to a great extent latent, and only to be detected by lawyers or experts, and for these the only remedy is to consult a good registration agent. But a voter can at least tell by looking at the list of voters—first, whether his name be there at all (if not, he must at once send in a claim and take care that it is correct); next, whether his address be correctly given; and, lastly, whether, as far as he can tell, the qualification is correctly described; and if as to this latter point he is in doubt, he may consult an agent, and if he finds anything wrong he may correct it by a statutory declaration. The electors, however, hardly ever look at the lists, and if at the revision it is found their names are not on the list or are struck out, through some gross error in the description which might easily have been set right, they are very angry about it with everybody but themselves, and cannot be made to see that it is entirely their own fault.

If by the publication of this letter the attention of voters throughout the country is awakened to the subject, many thousands of good votes may be saved at the ensuing revision.

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Quarter Sessions for Swansea.—The Mayor of Swansea has received an official intimation that Swansea had been created a quarter sessions borough, and that Mr. David Lewis, of 3 King's Bench Walk, Temple, and South Wales Circuit, has been appointed first recorder.

## BUSINESS AT ASSIZES.

The following further correspondence on this subject has appeared in the *Times*:—

Mr. Buszard, Q.C., and his Honour Judge Powell, both very competent and experienced in such matters, have called public attention in your columns to the inadequacy and inconvenience of the existing arrangements for the conduct of assize business. These arrangements, which are an interesting but antiquated survival of our ancient legal system, still hold their ground, notwithstanding the assaults of many legal reformers; but they do so assuredly not by reason of any inherent virtue which they possess, but solely from that extraordinary tenacity with which every legal abuse in this country clings to life; still, as Judge Powell puts it, *Gutta cavat lapidem*, only life is unfortunately too short for us who have for many years pounded away at this particular abuse to hope to see the stone disappear.

By the courtesy of the *Times* I have been more than once permitted to state my view as to the remedy for the undoubted abuses attending our judicial system. That remedy is hinted at in desperation by Mr. Buszard, and is put in the foreground as an 'heroic remedy' by Judge Powell, and it is this—the exaltation of the County Courts into provincial Courts of first instance, with unlimited jurisdiction.

This was virtually the famous recommendation arrived at by a large majority of the Judicature Commissioners in 1872, including such great names of past and present judges as Lords Hatherley, Selborne, and Bramwell, Montague Smith and J. S. Willes, and such an eminent practical lawyer as Mr. John Hollams, of London, still happily with us. And it was the rock upon which a minority of the commissioners, who could not consent to give up the great central judicial system with its attendent central bar, split.

The report recommended that the County Courts should become branches of the High Court, with unlimited jurisdiction, and that the judges of the more important centres should be adequately remunerated and consequently men of high standing; and that the judges of proved ability should from time to time be promoted to the Supreme Court, thus linking together the entire judicial system.

The effect of this would be that, with comparatively rare exceptions, litigation, both on the common law and equity side, would be localised; the Courts in London no longer congested as they often are, more particularly on the equity side, with an accumulation of business which is to a great extent provincial; the hurry and scurry, the disappointments, and vexations attending the circuit or assize system would be at an end, and litigation would be far less costly.

May we hope that next session—the Irish Bill, the Education Bill, and the Tithe Bill being happily relegated to the statute-book—time may be found by our legislators to consider this surely not unimportant subject, and that in place of being shelved, as it was in the last session, it will in the next receive that measure of consideration which is its due?

In the meantime permit me once more to 'peg away' and add my mite to the discussion.

C. T. Saunders.

Birmingham: August 11.

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In his letter to-day about substituting district Courts for the assize Courts, held under the present circuit system, Mr. Pitt-Lewis, commenting on the existing state of circuit business, says that he can answer for one circuit himself, but that on all the circuits it is pretty much the same. He then proceeds as follows:—

'The great majority of cases tried have been petty actions, . . . while their character was pretty well proved by the fact that most of them were, on one side or other, and many on both sides, deemed only of sufficient importance to only require the services of a junior single-handed—in fact, tried as they would have been in a County Court.'

I am very sorry indeed to hear that this state of affairs exists on the Western Circuit, but I do not think the statement should be allowed to pass that on all the circuits it is pretty much the same.

I will, at all events, describe the work on the North-Eastern Circuit, more especially at Leeds, during these assizes (where we now are), using Mr. Pitt-Lewis's sentence as my model.

The great majority of cases tried have been important actions, and their character has been proved by the fact that out of between thirty and forty already tried all of them, except, perhaps, in half a dozen instances, have required the services of a Queen's Counsel and a junior, and several of them of two Queen's Counsel and one or more juniors on each side, and hardly one action in the list could properly have been tried in the County Court.

I should add that the above fairly represents the state of business at all the assize towns on the North-Eastern Circuit, except perhaps at York. The judges who come on this circuit know too well the hard work they have to do; and I may add that some of them have told me that the cases tried at Leeds are now on an average more important than the cases tried in London.

I only write to show that, at all events here, Mr. Pitt-Lewis's picture of the work done on circuit does not apply; and I will not comment on his plan of district Courts, which would, no doubt, work well in some of the small assize towns in England.

I remain, Sir, yours obediently,

C. F. Wade, Associate, North-Eastern Circuit.

Leeds, August 11.

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In reply to the letter of my friend Mr. Wade, which appears in the *Times* of this morning, will you allow me to point out that the sources of information quoted in the leader in the *Times* of this morning appear to show that, speaking with reference to the general state of circuit business, I was right in the statement made in my former letter? Indeed, I was even more correct than the figures which are cited by you would at first show, for how many of the comparatively few paltry cases tried on circuit were actions for libel, slander, or personal injuries, in which the sole question tried was one exclusively for the jury, and the assistance of a judge skilled in the construction of commercial documents or in the usages of business was not in the least required, but the necessary instructions and guidance could well have been given to the jury by any County Court judge of average (and the average is a high one) experience and ability?

Lawyers generally will, I am sure, rejoice to learn that in the barren desert of legal work there exists such an oasis as is painted in Mr. Wade's letter as being furnished by the North-Eastern Circuit, and the mouths of many will water at the feast for lawyers which is described as there existing. But, accepting his statements to the full, Mr. Wade deals with only one (and, I fear, almost solitary) circuit, while my statements pictured the general condition of circuit business. Does the exceptional condition of matters on the North-Eastern Circuit furnish any reason for the general continuance throughout England of a system which has for the most part become obsolete, or do more than prove that in the application of the district system places on the North-Eastern Circuit should be centres of important districts,

and always furnished with exceptionally able district judges?

Again, your correspondent Mr. Saunders points out that the district system now advocated is almost identical with that recommended by the Judicature Commissioners of 1872, of which, however, a minority of the commissioners could not approve on the ground (on which, indeed, it was eventually wrecked) that it would have destroyed the existence of a central bar. The library of my Inn of Court (the Middle Temple) being closed for six weeks or two months and its members relegated to Lincoln's Inn library, I cannot conveniently refer to the report itself, and therefore write from memory. But, if I remember correctly, the scheme recommended by this report was open to the twofold objection that, while it would have destroyed the central bar (and thus imperilled the independence of the profession), it also involved the existence of purely local judges, with the concomitant objections. The scheme propounded in my former letter endeavours to avoid both these disadvantages. The portion of it which suggests that the disadvantages of a fixed local judge can be avoided by a system of changing the judge every three years has been canvassed by some of the press on the ground that a similar 'three years' system' has been tried with Wesleyan ministers, and has become the ground of a recent agitation for its abolition. Without expressing any opinion on the merits of the Wesleyan system, I may point out that Wesleyan ministers are, as a rule, but poorly paid, and that the expenses of forced removal every three years fall upon their slender resources as a very severe tax. The increase of 1,000*l.* per annum in their salaries (which would then be 2,500*l.* per annum), and their improved position by being made judges of the High Court, and eligible for promotion thereon, would, I think, reconcile most County Court judges to the undoubted inconvenience of a triennial move. The disadvantage that the adoption of the scheme of district Courts would necessitate the destruction of a central bar is not necessarily incident to it. While an increased number of barristers would, no doubt, find it advantageous to practise locally, the appeal business arising from the district Courts would induce many to remain in London and form a central bar. Then, again, in these days of improved communication, the district Courts would be open to members of the central bar practising in London, being free from the trade unionism of the obsolete circuit system. For, when the County Courts were established nearly fifty years ago public opinion would not allow that practitioners in them should be fettered by the restrictions of the circuit system, and a barrister belonging to any circuit whatever is at perfect liberty now to practise in a County Court upon any other circuit as well as in those on his own. The same 'free trade' would doubtless prevail in the district Courts with, perhaps, the additional advantage that the possession of the rank of Q.C. (which is rapidly coming to mean that its possessor shall be excluded by restrictive rules of professional etiquette from a right to participate in the bulk of the business of the country) would not be considered to render it derogatory to its possessor to sometimes appear in such Courts.

For the information of those interested in the subject I may add that I have prepared, and intend to have privately printed, the draft of a bill embodying my views, which it is proposed to introduce in the next Session of Parliament. It is, of course, out of the question for a private member to hope to carry such a measure, unless he can raise such an agitation in its favour as will secure the support, or, at least, the neutrality (and this alone would, I believe, assure the passage of the measure in the House of Commons), of the Government. Meanwhile, I shall, after the middle of next week, be happy to furnish anyone interested in the subject with a copy of this tentative draft, and be very grateful for any suggestions for its improvement with which I may be favoured.

Your obedient Servant,

G. Pitt-Lewis.

4 Paper Buildings, Temple: August 15.

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Amongst the numerous remedies which have been suggested for the defects of the present circuit system one seems to have been lost sight of which, if tried, might, at all events, serve as a test whether that system is really dying of inanition or only being artificially strangled by the employment of single judges.

By section 16 of the recent County Courts Act the names of judges of County Courts may be inserted in the commissions of assize, &c. If the names of such of those judges acting within the jurisdiction of each circuit as were recommended for the purpose by (say) the Lord Chief Justice or the judge of the High Court travelling that circuit were inserted in the commissions, there would be little difficulty, I believe, in finding in every circuit town a competent man to hold a second Court. The business might easily be divided on the principle adopted in the Central Criminal Court, the heavier cases, both criminal and civil, being tried before the judge of the High Court, the lighter of both classes before the judge of the County Court. Were this experiment tried the single-judge grievance would be at once removed and the civil and criminal business conducted simultaneously and without dragging out the circuits to their present extravagant length.

Among the County Court judges themselves there would, I am sure, be found enough competent men sufficiently public spirited to give up some of their spare time to an occupation which, to most of them, would be a pleasant relief from the alternatives of waiting at railway stations or elsewhere, travelling in slow trains, and listening to dull perjury, in which so much of their lives is now spent.

For myself I venture to hope that the circuits of the superior judges will not be destroyed. I write not without experience. Besides having had that of a counsel in practice under the old system, I have during my nearly twenty years' tenure of my present office devoted as much time as I could spare to local business—*inter alia*, acting as chairman of quarter sessions and serving regularly on the grand juries at the assizes in two counties. Keeping up my old friendships with my contemporaries of the bar, many of whom are now judges or in large practice as counsel, and forming new ones among the juniors—being also much brought into contact with solicitors—I am in a position to hear all opinions. And whilst condemnation of the present state of things is universal amongst the bar, I feel sure that the concentration of business in London is a greater evil. The expenses of the assizes are patent and conspicuous; but why not consider the cost to the wretched country suitor of the weary waiting with his witnesses in London while his case is in a congested list?

Nor is the importance of the circuits as a nursery of the bar to be lost sight of. Those are very short-sighted who think it of no consequence that the justice of a civilised country should be administered by men of the highest ability and independence, whether as advocates or judges. Many of the greatest names which have adorned the English bench and bar have come into notice from humble beginnings on rural circuits. And if this, almost the only arena on which a barrister has now an independent chance of earning distinction, be cut away, the only avenue to success will be that of family connection with, or subservience to, the solicitors of London and some few great manufacturing towns.

Let, then, my proposal be tried. It is an experiment

which will cost nothing except an indemnity against their expenses to the judges employed. If successful, it will solve, simply, a great difficulty; if unsuccessful, it will at least provide valuable materials to those who have the responsibility of determining the direction in which the reform of a system, admitted on all hands to be faulty, should proceed. I am, Sir, your obedient Servant,

RICHARD HARINGTON, Judge of County Courts, Circuit 22.

Whitbourne Court, Worcester: August 16.

## LAW AND PROFESSIONAL NOTES.

By T. F. UTTLEY, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### WHO SHOULD PROSECUTE?

AN unusual incident took place at the recent Liverpool Assizes. A railway signalman was indicted for manslaughter. On the case being called, a discussion took place as to what counsel was to conduct the case for the prosecution. It appeared that an inquest had been held on the deceased, and the jury found the signalman 'Not guilty.' The case was subsequently before the stipendiary magistrate, and the police offered no evidence against the signalman. The Director of Public Prosecutions stepped in, and through the Attorney-General the case was again taken up and sent to the assizes. The Attorney-General was represented by two legal gentlemen, and the public prosecutor for the borough of Salford by another. The latter counsel claimed under a local Act of Parliament that it was his duty to conduct the case, but the Attorney-General's counsel contended that it was his duty, seeing that the police of Salford had retired, that the coroner's jury had acquitted the signalman, and that the Attorney-General had now instructed him. His lordship hereupon remarked, 'You need not threaten me with the Attorney-General. I am here as judge of assize to do my duty. I have my own opinion about the case. If you gentlemen don't settle this between you, I know what course I will adopt. I am not going to decide between two gentlemen of the bar.' The Attorney-General's counsel said his lordship would see that this was a point in which there were rights of each party—he would be quite willing to withdraw if his lordship would give his sanction; but his lordship refused to sanction any withdrawal, and ultimately the counsel for the Public Prosecutor proceeded to state the facts of the case to the jury. His lordship, after hearing the evidence, remarked that the prisoner had been acquitted before the coroner, when he had his mouth open, and now he had his mouth shut he was to be tried again. At the conclusion of the case for the Crown the jury acquitted the prisoner, his lordship pointing out that the Attorney-General must have made some mistake in instituting the proceedings.

### A COTTON-SPINNING CUSTOM.

Recently at the Colne County Court an important case affecting cotton spinners was heard. A cotton spinner and manufacturer was sued by a former spinner in his employ for 1*l.* 19*s.* for wages due in lieu of a fortnight's notice. The spinner said it was customary with operative spinners when they were under the impression that yarn supplied to them was of a finer count than they were being paid for to take some for the purpose of having it wrapped or tested. He did this, and was discharged. The manufacturer contended that he was justified in dismissing the man for stealing yarn. This custom, however, said the judge, was a rank bad one, and one which would paralyse the industry of Lancashire; he thought the yarn should have been weighed at the mill in the presence of all interested in the payment for working it, and where the necessary appliances were kept; however, bad as the custom was, had the manufacturer previously assented to it he would have been held as bound by that; the law would assist the operative if he had any difficulty in being present when the yarn was tested and seeing that he was fairly treated, but it would not assist him in taking things away from the premises of the proprietor and against his will. Judgment was, therefore, given for the manufacturer with costs. Referring to the fact that the case was brought at the instance of an Operative Spinners' Association, his Honour observed that actions brought by weavers' associations in his experience served a good and useful purpose. Had he any difficulty with his workpeople he would be very glad to deal with those who represented the operatives' associations. Referring to this decision, the *Cotton Factory Times* deals very severely with the judgment, viewing it, of course, from an operative's point of view. It contends that the custom in question, which is stated to have been in force for many years, will not paralyse trade, and even employers have never said it would. It is also pointed out that employers in the bulk will not have operatives about the warehouse testing their yarn. Our contemporary then advises its readers that, as the law does not help the operatives and is not likely to help them in the matter, they must consequently help themselves. The proper cure for the business is to insist upon payment by length, but, perhaps, this is too straightforward a system for the employers. The operatives must, therefore, continue to take out cops whenever it suits their purpose to do so, always, of course, taking them back after testing. If employers object to this, let them object; but, if they do more than this, and presume to discharge those who do it, let the operatives take the course they think best. Losing a lawsuit involves a few pounds only. Employers will find that the decision does not 'exhaust the resources of civilisation.'

### 'SIGNED, SEALED, AND DELIVERED.'

Referring to Stock Exchange customs and transfers, it has been proposed to our M.P. members that they should compass the doing away of those foolish little seals which we are all accustomed to affix to transfers, and without which no executed and attested transfer is really valid. What do they convey, it is asked, but the usages of a bygone age, before free education taught everybody to write? The gummed paper seals are symbols of the seals which our forefathers carried on their sword-hilts, and with which they transacted their business by affixing the seals—an equivalent to their signatures—to any document. Indeed, with one end or the other of their swords they used to settle everything in those happy days. In order that the words 'signed, sealed, and delivered' may be carried out exactly we are required to stick bits of red paper on a transfer. Perhaps, it is suggested, the Stock Exchange committee would recognise all transfers as good delivery which have not these dabs of coloured paper upon them. At any rate, if the Stock Exchange committee will not carry out this reform, Parliament is to be asked to do so, with, of course, the usual concomitants of delay and bitter discussion. The agitators for this reform seem to forget that they are reflecting severely on their forefathers, who, when they established the custom in question, must be presumed to have understood their own purpose.

### RIGHTS OF BANK DEPOSITORS.

Rule 105 of the Companies (Winding-up) Act, 1890, runs thus: 'A creditor may prove for a debt, not payable when the winding-up order was made, as if it were payable immediately, subject to a rebate of interest at the rate of 5 per centum per annum, computed from the

winding-up to the time when the debt would have become payable according to the terms on which it was contracted.' Looking at this rule, how would depositors with a bank, whose money is at a fixed rate for withdrawal at one or two years' notice, be ranked as creditors? The rule just given supplies the answer, and it shows also that in the case of a compulsory winding-up there is but a very slight difference in the status of depositors for amounts placed in a company and repayable at different times. A contemporary considers it a wonder that the rule in question is worded in the language of everyday life.

### ARMY OFFICERS AND CABINET MINISTERS AS COMPANY DIRECTORS.

Cabinet ministers should not be company directors if army officers should not. It appears, though, that there is no official prohibition against members of the Government, who are also members of the House of Commons, being directors of public companies. It is, of course, a question for shareholders as to whether they consider that members of the Government can attend to their official duties and at the same time pay proper attention to the interests of the shareholders of the companies of which they are directors. Shareholders can refuse to re-elect such directors. It will be remembered that an order has been issued forbidding officers in the army on full pay from acting as directors of public companies. Of course their half-pay *confrères* are still at liberty to eke out their incomes in this way, for the War Office order does not affect them. Many companies would be saved from wreck and ruin if the articles and memorandum of association of a company made it a *sine qua non* that the directors of a company should be persons accustomed to the business the company transacts, that they should have no interest in any other company as directors, and that they should have a substantial pecuniary interest in the concern. These suggestions, of course, virtually turn all companies into a limited kind of partnership; and is not that what it will ultimately have to come to with so many rotten companies with incompetent directors in whom the shareholders can repose but little faith?

### UNDISCHARGED BANKRUPTS AND PARTNERSHIPS.

A person was adjudged a bankrupt in 1887, and did not obtain his discharge. He subsequently entered into partnership with another man, and they traded as 'Grantor & Co.' The creditors found out the fact of one member of the firm being an undischarged bankrupt and instituted criminal proceedings, the charge being obtaining goods on credit. Counsel for the prisoner set up a novel defence. He argued that the section of the Bankruptcy Act referring to the offence, which stated that when an undischarged bankrupt who has been adjudged a bankrupt obtains credit to the amount of 20*l.* or upwards from any persons without informing them that he is an undischarged bankrupt is guilty of an offence, was clearly intended to put liability only on that person who obtained the credit for himself. In the present case the goods which formed the subject of the charge were obtained not on the account of the bankrupt alone, but for the partnership uses, and the partnership was therefore liable, and not the bankrupt alone. Counsel for the prosecution agreed that this was an entirely new point. Certainly any doubt should not tend against but go to the favour of the accused, but in partnership dealings of this kind there was not only a joint liability but a separate liability of the partners. If the partnership obtained goods, not only could the partners be sued jointly but also severally, and as their civil liability held severally so must their criminal. The recorder of the Manchester City Sessions, before whom the case was argued, considered that the Act seemed to bear the interpretation put upon it by the prisoner's counsel, and his contention was good in law. The Legislature in framing the Act had overlooked the point. He accordingly directed an acquittal of the bankrupt. The matter is to be brought to the notice of the Treasury.

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Sir Henry Hawkins.—The illness of Mr. Justice Hawkins is of a serious nature. Dr. Cowper saw Sir Henry on August 19, and expressed the hope that the crisis had passed, but there is stated to be no apparent change in the patient's condition. Sir Henry is suffering from nervous exhaustion, extreme weakness, sleeplessness, and lack of power to take sufficient nourishment.

Lincoln's Inn Fields.—Some time ago Lord Meath, as chairman of the Metropolitan Public Gardens Association, wrote to the trustees of Lincoln's Inn Fields, earnestly asking them to consider whether they could not see their way to open the grounds for a limited period of the year, if only for a short time each day, to the inhabitants generally of the district, or even to the children only. He pointed out that the experiment of opening such grounds for limited periods had been tried with entire success in the case of the Temple Gardens. With regard to the expense, Lord Meath said: 'Of course, a certain amount of expense is involved, as caretakers must be appointed to be on duty during the time the ground is open. We believe, however, the London County Council would be quite willing to undertake this "partial management," which, under the Open Spaces Act, 1881, ss. 2, 5, the trustees have power to permit, and the council to accept of, if the former do not themselves feel able to bear the cost.' The association suggested that the ground might be open in the afternoons and evenings after business hours, and on Sundays, when offices are closed, and when no objection could be raised on the score of noise. They offered to supply an adequate number of seats. Lord Meath pointed out that the trustees had power, by section 2 of the Open Spaces Act, 1881, to admit the public at any specified time. In replying to this appeal, Mr. Edward Upton, secretary to the trustees of Lincoln's Inn Fields, stated that some years since the trustees were advised by very eminent counsel that they had no power to admit the public generally to the gardens, and that they were unable to find that any power had been given to them by the Acts which had been referred to. He pointed out that neither the Open Spaces Act of 1877 nor that of 1890 could be applicable to these gardens, and that the trustees were not prepared to transfer the ownership to the London County Council under the Act of 1881. As to opening the fields to the inhabitants or the children of the neighbourhood, this would, in the opinion of the trustees, interfere with the enjoyment of the owners and occupiers of neighbouring houses and other respectable persons who are now admitted for a small annual fee. After pointing out that the Temple Gardens are different in character from Lincoln's Inn Fields, and declaring that by throwing the latter open generally to the public their whole character would be changed (by the abolition of the thickets and shrubberies and the introduction of numerous caretakers), the secretary concludes by saying that the trustees had with great reluctance come to the conclusion that it is impossible for them to accede to Lord Meath's request.

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Home Cure for Deafness.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. De Vere & Co., Publishers, 22 Warwick Lane, London, E.C.—Advt.

## CALENDAR OF THE COUNTY COURTS.

FROM AUGUST 24 TO AUGUST 29.

| No. of Circuit | His Honour | Aug. 24 | Aug. 25 | Aug. 26 | Aug. 27 | Aug. 28 | Aug. 29 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | Birkenhead | Runcorn | Northwich | Warrington | Leigh | — |
| 15 | Judge Turner | Middlesbrough | Stockton-on-Tees | — | — | — | — |
| 55 | Judge Machonochie | Poole | Christchurch | Bournemouth | Wimborne | — | — |

## NOTES OF CASES.*

*Chancery Division.*
ROMER, J.
Aug. 8.
} ALCOCK *v.* SMITH.

*Bill of Exchange—Transfer of Property—Overdue Bill Transferred Abroad—Rights of Transferee—Conflict of Laws.*

An English bill, drawn and accepted in London by English firms, and payable to the order of Andreson & Co., was indorsed to the order of one Mayer, who, in his turn, indorsed it in blank in Norway and handed it to Schiender, as agent for the plaintiffs, for valuable consideration. Whilst in Schiender's hands the bill was seized under the Norwegian law by the local authority in respect of a judgment debt obtained in Norway by a creditor of one of the members of the plaintiff firm. Schiender, as the plaintiffs' agent, protested, but the local authority decided that the seizure was valid, and after some months, long after the bill was overdue, the bill was sold at an auction, in accordance with Norwegian law, the effect of that sale being, according to Norwegian law, to confer a valid title on the purchaser, freed from any claim by Schiender or his principals, notwithstanding that the bill was overdue at the date of the sale. The defendant claimed under the sale; the plaintiffs claimed to assert as against them the equities attaching to the bill in the hands of the vendor, in accordance with the principles of English law.

*Haldane, Q.C.*, and *Farwell, Q.C.*, for the plaintiffs.

*Kennedy, Q.C.*, and *Daniel Jones* for the defendants.

ROMER, J., held that a question affecting only the holders of the bill, and not affecting the drawers or acceptors, must be decided according to the law of the country where the transfer took place, and that in this case the Norwegian law prevailed, and the defendants were entitled to the bill.

Solicitors: Stokes, Saunders & Stokes; Murray, Hutchins & Stirling.

SINGULAR ACTION AGAINST AN M.P.—An extraordinary case was heard by Judge Bayley in the Westminster County Court on August 13, in which the plaintiff, a Mr. Travers, of 6 Sidmouth Street, St. Pancras, which is within the parliamentary division of South St. Pancras, sued Sir Julian Goldsmid, M.P., for damages for refusing to present a petition to the House of Commons. Sir Julian Goldsmid was represented by his private secretary.—The plaintiff, in opening his case, said he had searched, but without success, to find a case like the present, which, he submitted, was a novel one. He then referred to Lord Farnborough's book upon House of Commons Practice and Smith's Leading Cases. He had a grievance, and the only way he could bring the matter forward was by petition to the House of Commons, and on June 19 he sent a petition to Sir Julian Goldsmid, which was returned to him by one of the clerks of the House, stating that, as the petition reflected upon the character of a judge, it could not be received. He submitted that Sir Julian Goldsmid should have followed the matter up and not been put off by a clerk like that. A few days after that he sent Sir Julian Goldsmid another petition, which he returned and refused to present. The law did not allow any action against a judge, and the only remedy was that which Parliament could take. The second petition had the last paragraph struck out.—His Honour: It is equally objectionable.—The plaintiff: It is the duty of a member of Parliament to bring the matter forward if a petition fails. Continuing, he said he brought an action against Lord Esher for slander in the course of a case, and that was ordered to be struck out, as no judge could be sued. How could he question the conduct of a judge when the only course open to him was by petitioning Parliament, and that course was denied him on the ground that he was assailing the conduct of the judge?—After some further discussion, judgment was given for the defendant.

AMERICAN LAW CLERKS.—The several thousand law clerks who now toil in the city offices, says a New York journal, are quite a different set of beings from their predecessors. 'The majority of them are well educated. Some have graduated from well-known colleges—from Harvard, Yale, Cornell, and Princetown. Others are graduates of law schools. Never was there a time like the present, when so many college-bred men were glad of the opportunity to become law clerks at a beggarly salary. Every year lawyers of standing in our cities have applications from college graduates, ready and willing to work without pay, if he will only give them desk-room and the use of his books. Consider for a moment the pay of these ambitious young men. The college-bred law clerk usually begins at five dollars per week. He may reasonably expect to earn ten dollars per week by the end of the second year. The graduate of a law school, having had some technical training, is better paid. He gets ten dollars per week for the first year of his service, and perhaps he may begin his second year at fifteen dollars per week. Very few lawyers in New York pay their clerks over fifteen dollars a week, as they can hire all the talent they want at that figure. There are between six thousand and seven thousand lawyers in the city of New York. The struggle for practice and existence becomes more difficult each year. Many are called, but few are chosen. Some men never get beyond being a law clerk. It is no uncommon thing to find skilful lawyers, grey-haired men, serving as clerks year after year at a salary of from 1,200 dollars to 1,500 dollars per annum. Some of them are experts in a particular branch of the law. Again, there are men fit only to be law clerks—men who, for one reason or another, fail to become successful practitioners. The legal knowledge of such men is of more value to others than it is to themselves. Once more, there are highly educated law clerks who make it a business to write briefs. Indeed, it is an open secret that nearly one half of the law books published are written by ill-paid clerks. The lawyer with a reputation gets some clerk to write a treatise to which he lends the weight of his name.—*Montreal Legal News.*

* These cases will reappear in the regular series next November.

The oldest coroner in England, Michael Browne, died recently at the age of ninety. He had held the office of coroner for the borough of Nottingham during a period of fifty-five years. In length of service we believe he is about equal to Coroner Jones, of Montreal. The latter in age is but a few years behind.—*Montreal Legal News.*

Reformatory and Industrial Schools.—A blue-book was issued on August 15, giving the thirty-fourth report, for the year 1890, of the inspector of reformatory and industrial schools. Lieutenant-Colonel Inglis says the total number of schools under inspection is now 225—viz. fifty-five reformatory schools, 141 industrial schools, ten truant schools, and nineteen day industrial schools. Of these, three are reformatory and eight are industrial school ships. This shows an increase of two industrial schools and one day industrial school, and a decrease of one reformatory school. All the truant schools, and all the day industrial schools, with the exception of one in Liverpool and three in Glasgow, are under the management of School Boards. The total number of juveniles under sentence of detention in reformatory and industrial schools at the close of 1890 was 28,589—viz. 23,509 boys and 5,080 girls, this being an increase of 504 boys and eight girls as compared with the previous year. There were also at the end of the year 3,698 children attending day industrial schools. With regard to truant schools, Lieutenant-Colonel Inglis says that these are intended for children who, after due warning, have failed to make a satisfactory number of attendances at the ordinary day schools. They do good in two ways—exercising on the boys committed to them a most wholesome influence, enforcing habits of punctuality, regularity, and obedience, probably for the first time in their lives, and inducing many others to attend school regularly who would play truant if they did not know that truancy would lead to the truant school. He adds, however, that he should like to see a uniform system of management for truant schools. 'At present,' he says, 'there are several systems at work. In some schools a boy has to undergo a short term of solitary confinement on his first visit and a more lengthened one on each re-commitment. In other schools this system has never been adopted, whilst in some, originally worked on this system, the use of the cells has been discontinued. My own experience is that they are quite unnecessary, and that the results where they are used are no better than where they are not. I should like to see them abolished altogether. In some schools no play is allowed, drill being substituted; in others, as in Sheffield, play is allowed daily and half-holiday on Saturdays, subject to good conduct; here, again, as the more lenient system shows quite as good results as the more severe one, I should like to see the former generally adopted.'

A Year's Bankruptcies.—The eighth report of the Board of Trade under section 131 of the Bankruptcy Act, 1883, was issued on August 11. Sir Henry G. Calcraft, permanent secretary to the Board, in the report gives the financial statement prepared by the Treasury for the year ending March 31, 1891. From this it appears that a considerable decrease in revenue is apparent. The total income from various sources is less by 19,301*l.* than for the preceding year, while, on the other hand, the expenditure has been reduced by 2,638*l.* The deficit, however, is fully accounted for by the reduction in the amount of insolvency. The general working of the Bankruptcy Act, 1883, up to the end of last year—for the Bankruptcy Act, 1890, came into operation on January 1 of the present year—is dealt with in the form of an annex to the report by Mr. John Smith, Inspector-General in Bankruptcy. A comparison of the years 1888, 1889, and 1890 shows a satisfactory diminution in the volume of insolvency coming under the Bankruptcy Act and Deeds of Arrangement in England and Wales during the period under review. The total number of cases has fallen from 8,321 in the first-named year to 7,108 in the last, showing a total decrease of 749; while liabilities are less by 609,018*l.*, assets by 133,647*l.*, and the estimated loss to creditors by 544,985*l.* At the same time a somewhat common belief that there is a vast mass of insolvency which is kept quite private is pronounced to be clearly untenable. This marked shrinkage of bankruptcies is the more remarkable in view of the concurrent expansion of trade, and of the fact that statistics of failures in the United States for the year point to an increase in the estimated loss to creditors of nearly four millions sterling. As to the character of insolvency, the large proportion of failures in the building trade is noted, and the operations of the speculative builder are traced from his starting with little or no capital to the final crash. It is also remarked that the insolvency of trades based on commercial credit is diminishing, while that of the non-trading class is stationary or increasing—the bankruptcies of officers in the army, for instance, having increased 32 per cent. An annex by Mr. Walter Murton, solicitor to the Board of Trade, dealing with the legal proceedings conducted by him, concludes the report.

## BIRTHS.

On Aug. 9, at 23 Lexham Gardens, Kensington, W., the wife of R. A. M'Call, Q.C., of a son.

On Aug. 12, at 33 Lancaster Gate, W., the wife of H. Widdrington Byrne, Q.C., of a daughter.

On Aug. 15, at Lyndale, Gayton Road, Harrow-on-the Hill, the wife of William John Tremellen, Solicitor, of a daughter.

On Aug. 17, at St. Clair, Dunheved Road, West Croydon, the wife of Alfred George Dinn, Solicitor, of a son.

On Aug. 17, at Glen Gariff, Chesterfield Road, Ashley Hill, Bristol, the wife of Ernest J. Pillers, Solicitor, of a daughter.

On Aug. 18, at Eastbourne, the wife of Arthur W. Chippindale, of 2 Harcourt Buildings, Temple, of a son.

## MARRIAGES.

On Aug. 11, at St. Peter's Church, Lordship Lane, S.E., by the Rev. H. J. Pulley, M.A., Vicar, Robert Stephen Snape Walker, Solicitor, London, elder son of the late Rev. Robert Walker, Vicar of Wymeswold, Leicestershire, to Lisette, eldest daughter of C. E. Reiffenstein, of St. James's, Lordship Lane, S.E.

On Aug. 11, at St. Thomas's Church, Ferryside, Donald William, youngest son of the Rev. Canon Carr, of Holbrooke Hall, Derby, to Agnes Mary, second daughter of W. Hy. Nevill, J.P., of Ferryside.

On Aug. 12, at All Saints' Parish Church, Wigan, by the Rev. the Hon. G. T. O. Bridgeman, M.A., Rector of Wigan, Francis Ernest Bradley, LL.B., Barrister-at-Law, Northern Circuit, second son of Nathaniel Bradley, Esq., J.P., Hulme, Manchester, to Bessie Mary, second daughter of Alderman James Smith, J.P., of Wigan.

On Aug. 14, at St. James's Church, Sussex Gardens, by the Rev. G. C. Whalley, M.A., John Dixon, of Lincoln's Inn, Esq., Barrister-at-Law, to Adeline Frances Mary, widow of Francis Baldwin Duppa, of Hollingbourne, Kent, Esq., F.R.S., and daughter of the late Joseph Henry Dart, of Lincoln's Inn, Esq., Barrister-at-Law.

On Aug. 18, at the Parish Church, Hampstead, George Griffiths, Esq., J.P., of Glendower, Fitzjohn's Avenue, Hampstead, to Alice Maud Mary, third daughter of the late John Easton, Esq., and granddaughter of the late Charles Easton, Esq., of Coscombe Hall, Gloucestershire.

On Aug. 19, at Westminster Town Hall, Julius Wyatt Druce, Solicitor, of 14 Victoria Street, to Millie, eldest daughter of Charles Lynes, Esq., of 65 Gower Street.

## DEATHS.

On Aug. 13, at Malden, Essex, William Crick, Solicitor, in his 85th year.

On Aug. 14, at Eye, Suffolk, Edgar Bond, Solicitor, aged 73, last surviving son of the late Barnabas Bond, of Pulham Hall, Norfolk.

On Aug. 17, at 23 Ruskin Road, Tottenham, Eliza Nield, daughter of the late William Henry Turner, Solicitor, of Bow, E., age 6

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# The Law Journal.

*SATURDAY, AUGUST* 29, 1891.


## 'OBITER DICTA.'

An Inland Revenue case which we reported last week (*ante*, p. 548) is a noteworthy one. It was the prosecution of a person for carrying on the business of an auctioneer without a license, and also offering a bribe to an Inland Revenue officer with a view to corrupt him in the execution of his duty. Mr. Alderman Tyler fined the defendant 3*l.* on the first summons and 25*l.* on the second. The enactment on which the first summons was based is 8 Vict. c. 15, and the foundation of the second is section 10 of the more recent Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), which consolidated a large number of prior Inland Revenue Acts. By this section, 'if any person directly or indirectly gives or offers to give' to any Inland Revenue officer 'any sum of money or other recompense whatsoever, in order to corrupt and prevail upon him to do or abstain from doing, or to conceal or connive at, any act or thing whereby Her Majesty is or may be defrauded, or to do or omit or permit or suffer to be done or omitted any act contrary to his duty,' he incurs a fine of 500*l.* By section 36 all fines imposed by the Act 'may be proceeded for and recovered in the same manner, and in the case of summary proceedings with the like power of appeal, as any fine or penalty under *any Act relating to the Excise.*' As to the rather perplexing provision which we have italicised, see the unrepealed parts of 7 & 8 Geo. IV. c. 53, 4 & 5 Wm. IV. c. 51, and 4 & 5 Vict. c. 20, but large portions of those Acts are repealed by section 40 of the Act of 1890, and their whole procedure is subject to the Summary Jurisdiction Acts, as may be found by reference to section 53 of the Summary Jurisdiction Act of 1879. The High Court has a concurrent jurisdiction, by action for the penalties, under section 21 of the Act of 1890.

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The Slander of Women Act (see *ante*, p. 544) provides that in any action for words spoken and made actionable thereby, 'a plaintiff shall not recover more costs than damages, unless the judge shall certify that there was reasonable ground for bringing the action.' Will a County Court judge be 'the judge' within these words in the case of an action for slander sent down to a County Court? We think he will, and also that there will be no appeal either from the grant or refusal of the certificate by a County Court judge in such cases, but the question of jurisdiction is rather a doubtful one. A further question may arise whether the grant or refusal of a certificate by a judge of the High Court, where the action is tried in the High Court, will be a judgment or order within the meaning of section 19 of the Judicature Act, 1873, so as to be appealable to the Court of Appeal. It is possible that it might be held to be an 'order' within the meaning of that enactment, but even if this be so, would it be an order 'as to costs only' within the meaning of section 50 of that Act, which provides that 'no order made by the High Court or any judge thereof as to costs only, which by law are left to the discretion of the Court, shall be subject to any appeal except by leave of the Court or judge making such order?' On the whole, we think it would, but neither is this point quite free from doubt.

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At the conclusion of an able address at the annual provincial meeting of the Incorporated Law Society at Plymouth on Tuesday last the president (Mr. W. M. Walters) expressed some surprise that so little in the way of dignity or reward can be looked forward to by the solicitor, observing that he was 'obliged to stand by and see the rewards and prizes of the profession exclusively bestowed upon members of another branch of the profession.' This statement, if meant to be taken literally, is hardly accurate. It is no doubt true of the larger prizes of the profession, such as the judgeships of the High Court and the County Courts and police magistracies, but many of the smaller prizes are held, as is well known, exclusively by solicitors. We believe that it will be found that, in point of number, the legal appointments open to solicitors are more numerous than those exclusively appropriated to the bar, while the further fact must not be lost sight of that they may in most cases be held concurrently. Thus there is nothing

to prevent a solicitor from holding the offices of County Court registrar, clerk to magistrates, and clerk to a board of guardians and the commissioners of taxes, and at the same time carrying on a lucrative private practice. A barrister, however, who is appointed a County Court judge or police magistrate must not only resign his practice, but must absolutely sever his connection with his profession. It is only subject to such considerations as these that the statement of the president upon this point can be regarded as correct.

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One would scarcely have supposed that a solemn judicial decision would be required to determine that coke is not coal, yet in the recent case of *Fletcher* v. *Field*, 60 Law J. Rep. M. C. 102, the question submitted for the consideration of the Court was whether a conviction for unloading coke between the hours of 10 A.M. and 6 P.M. could be sustained under section 15 of the Metropolitan Streets Act, 1867 (30 & 31 Vict. c. 134), which provides that 'no coal shall be loaded or unloaded on or across any footway' within the limits of the Act between those hours. The Court (Mr. Justice Smith and Mr. Justice Grantham) were of opinion that the magistrate was wrong in holding that coke came within the term 'coal' as used in section 15, and quashed the conviction. It is difficult to see how they could have come to any other conclusion. If the section were extended to coke, there seems to be no reason why it should not also be held to include wood and other articles.

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Most persons will be disposed to regret that Mr. Justice Collins could not see his way to pronounce a decree of nullity of marriage in the case of *Crane* (*otherwise Cooper*) v. *Crane*, decided on the eve of the recess. The story resembled in some respects the well-known case of *Scott* v. *Sebright*. There was the same element of cynical fortune-hunting on the part of a worthless man in each case, and in each the lady was of an exceptionally nervous and excitable temperament. In neither was the marriage consummated. In the *Sebright Case* the man threatened to shoot the girl if she refused to go through the ceremony. Crane declared he would shoot himself in the like event. The effect on a weak mind would probably not be greater from the one threat than from the other. The element of surprise was even greater in the later action than in the earlier. Miss Scott had had marriage with Sebright suggested to her as a means of avoiding the disgrace which was imminent in consequence of her acceptance of large bills on his behalf; and she met him by appointment at a given time and place. Miss Cooper's marriage was celebrated at an unusual time and in unusual circumstances. She went with Crane to a service at St. Paul's Cathedral on a Sunday without, apparently, having the least suspicion of the man's design. On the way to the City she partook of some sweets, of which she did not like the taste, and which she believed to have been drugged. The marriage was then celebrated, and the parties immediately separated. They subsequently corresponded on the footing of cousins (which they were), and not of husband and wife. The medical evidence as to Miss Cooper's health, which seems to have been given with a conscientious desire not to exaggerate, did not convince the judge that she was not a free agent. Such cases as the present and the Jackson case suggest, as we remarked in commenting on the latter, the desirability of a change in the law in the direction of facilitating the annulment of marriages which have not been consummated. Surely on so solemn an occasion a greater degree of conscious consent and purpose ought to be required than in ordinary contracts. Considering what human nature and desires are, one can hardly help thinking that non-consummation is of itself some evidence of the absence of deliberate volition; and when, in addition, there are sinister purposes and threats on the part of an unscrupulous man, the law ought surely to help the woman out of her distress, and even when such elements are absent there is much to be said in favour of affording a *locus pœnitentiæ* to parties who wish to be off their bargain.

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It is the habit of the House of Lords to keep the profession for long periods in hungry expectancy for its pronouncements addressed *urbi et orbi*, and then to give them a surfeit of decisions to digest through the Long Vacation. They delivered just before the recess three judgments of great interest and importance. In *Smith* (*pauper*) v. *Charles Baker & Sons* the *coup de grâce* is practically given to the well-known case on employers' liability of *Thomas* v. *Quartermaine*, 57 Law J. Rep. Q. B. 17; L. R. 19 Q. B. Div. 647, and the venerable doctrine, *Volenti non fit injuria*, is shorn of much of the territory once thought to belong to it. Lord Watson, in his admirable judgment, says, referring to an observation of Lord Esher in *Thomas* v. *Quartermaine*: 'That does not lead us to the conclusion that the provisions of the Employers' Liability Act wholly exclude the application of the doctrine *Volenti non fit injuria* to claims falling within the scope of the Act; but it does, in my opinion, show that the Legislature did not intend that the statutory remedy given to the workman should be taken away simply by reason of his continuing in the same employment after he became aware of the defect from which he ultimately suffered.' Again, the Lord Chancellor expressly lays down that the maxim is only applicable where there has been a consent to the particular thing done. So that the employer who thinks he escapes liability on the ground that a workman knows that his employment is a risky one and still accepts it, will have a rude awakening. The second case was that of *Johnson* (*pauper*) v. *Lindsay*, in which the doctrine of common employment, or of *collaborateur* as it is sometimes called, fares little better than the maxim to which we have referred. The two cases constitute a veritable charter for the working man and a terror to lawless or unscrupulous employers. The third decision, *Scott* (*pauper*) v. *Carfin Coal Company*, is on Scotch law, which in this respect we imagine to be the same as our own, and is to the effect that the mother of an illegitimate child cannot recover damages from his employers for his death.

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The good example set by Sir Henry James, Q.C., who recently entertained a number of the Royal Courts staff at his country seat, is, we are glad to hear, being followed by other barristers. The Long Vacation does not always bring recreation and country air to that useful body of men, barristers' clerks, many of whom in

this age of competition are, like their employers, earning but limited incomes. To invite some twenty guests of this class to enjoy a day's outing amid the sylvan scenes of 'leafy Bucks' was 'a happy thought' successfully carried into effect a few days ago by a genial and well-known Q.C., whose 'innocence,' so lately commented on by the Court of Appeal, is probably acquired in his rustic retreat.

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Swansea was the centre of attraction in the Principality last week. The opening of the National Eisteddfod in that town appeals to the sympathies of all Welshmen, and it was a happy coincidence which coupled with that event the granting to Swansea all the honours and privileges of a Quarter Sessions borough. The compliment would not, however, have been complete had not its first recorder been a Welshman. Mr. David Lewis, who, it is superfluous to say, possesses that qualification, will, we have no doubt, fully justify his selection as recorder, and we are glad to learn that 'his appointment is generally approved.'

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In the case of *Hunt* v. *The Great Northern Railway Company*, 60 Law J. Rep. Q. B. 498, the Court of Appeal had to apply the doctrine of privilege to a curious action for libel. The defendant company had dismissed the plaintiff, a goods guard in their employ, for alleged negligence. They afterwards published his name, offence, and the fact of his dismissal in a monthly circular which they were in the habit of publishing for the information of their other servants. The circular was exhibited in the rooms used by the company's staff, but not in any room to which the public had access. The plaintiff having brought an action for libel in respect of the publication, the defendants pleaded that it was privileged by reason of the occasion, and Mr. Justice Stephen, who tried the action, held that it was so and entered judgment for the defendants. The plaintiff having appealed, the Court of Appeal, without calling upon the company's counsel to argue, dismissed the appeal, holding that, as the company had an interest in informing their servants, and the servants a corresponding interest in learning, that certain negligent conduct would be punished by dismissal, the occasion was clearly privileged.

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A Hammersmith solicitor, so it is stated by the *Pall Mall Gazette*, was so unfortunate as to have his orchard robbed by two small boys and large numbers of unripe pears stolen therefrom. Upon the offenders being brought before Mr. Partridge, that worthy magistrate is stated to have sentenced each of them, not to any punishment known to the law of England, but to that of finishing the consumption of the unripe fruits in question, adding the expression of the hope that 'they would make their stomachs ache.' This is not a precedent we should wish to see followed. Section 16 of the Summary Jurisdiction Act, 1879, makes full provision for cases of this kind. It enacts that, 'if, upon the hearing of a charge for an offence punishable on summary conviction, the Court think that, though the charge is proved, the offence was in the particular case of so trifling a nature that it is inexpedient to inflict any punishment or any other than a nominal punishment, the Court, without proceeding to conviction, may dismiss the information.' It is added that the Court may order the person charged to pay damages. Such an order would, no doubt, be generally futile in the case of a boy, and there is, no doubt, much to be said for the abandoned Government bill of the late session by which it was proposed that justices, on the hearing of a charge against a child, might order the parent of the child to pay damages to the party aggrieved by the offence.

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One of the characteristics of this *fin de siècle* generation is an increasing disposition on the part of landowners to allow less favoured mortals to share the pleasures (without the expenses) of parks and gardens. Twenty years ago the public were rarely trusted within a great man's gates, and 'trespassers' were warned of the terrors of the law and 'prosecution' at every corner. Happily experience has proved that with the great mass of our law-abiding population a privilege graciously conceded is rarely abused.

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A new edition of Mr. Alpe's Digest of the Law Relating to Stamp Duties is in active preparation, and will be published by Messrs. Jordan & Sons, of 120 Chancery Lane, London, at the beginning of October next. This edition, which will be entitled 'The Law of Stamp Duties on Deeds and Other Instruments,' is rendered necessary by the consolidation of the Stamp Laws effected by the Stamp Act, 1891, and the Stamp Duties Management Act, 1891.

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## LIMITED COMPANIES AND THE BILLS OF SALE ACTS.

The recent case of *In re The Standard Manufacturing Company* (*Lim.*), 60 Law J. Rep. Chanc. 292, has given rise, we believe, to some misunderstanding, and when closely examined it will be found to contain an almost overt invitation to further litigation. The case decided two distinct points: first, that debentures of a limited company which create a charge on the floating real and personal property of the company need not be registered under the Bills of Sale Act, 1882, being expressly excepted by section 17; secondly, that on the true construction of the Bills of Sale Act, 1878, mortgages or charges of an incorporated company, for the registration of which statutory provision has already been made by the Companies Clauses Act, 1845, or the Companies Act, 1862, are not within the scope of that Act. Some practitioners have jumped to the conclusion that every charge of a company, which must be registered under section 43 of the Companies Act, 1862, is exempted from registration under the Act of 1878, and therefore *à fortiori* from registration under the amending Act of 1882. This last inference, however, is one which the Court of Appeal have taken anxious care to avoid drawing.

Lord Justice Bowen, who delivered the judgment of the Court, discussed the policy of the Bills of Sale Acts for the purpose of construing the Act of 1878. He observed that *until the passing of the Act of* 1882, *the scope of which embraces larger objects*, the express and avowed design of the Legislature had been to strike at the frauds perpetrated upon creditors by secret bills of sale. He then argued that debentures which charged

the property of companies already required registration under section 43 of the Companies Act, 1862; that, therefore, they were not within the mischief of secrecy; that in 1878 such debentures were instruments well known in the commercial world; and that the Legislature could not have intended in the Act of 1878 to interfere with them by merely general words.

This argument relates in terms only to the Act of 1878. Now it is plain that merely general words may be construed in one way, but that the same general words may require to be construed somewhat more widely when they are coupled with an express and very specific exception. And the effect of the exception contained in section 17 of the Act of 1882 seems to be that documents specifically charging chattels belonging to a company are within the operation of that Act, whether they are or are not within the operation of the Act of 1878; and that such documents, being clearly bills of sale, are not exempted from the necessity of registration under the Act of 1882 by reason of the fact that they must also be registered under section 43 of the Companies Act, 1862.

In short, the actual decision of the Court of Appeal does not touch the decision of Mr. Justice Pearson in *In re Cunningham & Co. (Lim.)*, 54 Law J. Rep. Chanc. 448; L. R. 28 Ch. Div. 682: 'It was argued on the part of the respondents that the Bills of Sale Acts in force do not apply to companies . . . That seems to me to be an impossible contention, certainly so far as ordinary bills of sale are concerned. A bill of sale by a company must be as much within the mischief of the Act as a bill of sale by a private individual. But the last section of the Act of 1882 contains these words: "Nothing in this Act shall apply to debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital, stock, or goods, chattels, and effects of such company." Now, if bills of sale executed by companies generally were entirely out of the Act, that clause was absolutely unnecessary and useless, and therefore, as far as that objection goes, the bill of sale is not rendered a good bill of sale simply because it was given by a company.'

Although the double registration of bills of sale by limited companies seems to be unnecessary and, as the Scottish lawyers say, 'nimious,' it is not essentially unreasonable. The manner and incidents of the two registrations are by no means identical. Under the Companies Acts a mortgagor company must keep a register of all charges specifically affecting its property; under the Bills of Sale Act it is the mortgagee who must register for the completion of his security. The consequence of a failure to register in the latter case is that the bill of sale is absolutely void in respect of the personal chattels comprised therein. No such penalty is imposed by the Companies Act. Even where a charge is granted by a company in favour of one of its directors it is not void for want of registration—at all events as regards creditors who are not shown to have inspected the company's register (*Wright* v. *Horton*, 56 Law J. Rep. Chanc. 873; 12 App. Cas. 371). And it would be monstrous if, in the case of a charge granted by a company to a stranger, the failure of the mortgagor to keep a correct register in conformity with the statute were to deprive the mortgagee of his security.

It is a curious circumstance that the words quoted above, 'the scope of which embraces larger objects,' which occurred in the judgment as delivered, are not to be found in the Law Reports, 1891 (1 Ch. Div. p. 645). Their omission may perhaps be explained by reference to the fact that in 1882 it was universally supposed that the Act of 1878 did apply to debentures (see the footnote, glowing with the pride of paternity, in Mr. Palmer's 'Company Precedents,' 4th edit. p. 387). On the other hand, the excision of these words, probably by Lord Justice Bowen himself, may perhaps indicate an unwillingness to commit himself to either view, and tends to leave the subject in confusion till some venturesome or unwary party gives occasion for an authoritative statement of the law. It is, of course, possible that if the learned judges of the Court of Appeal employ all their ingenuity they may succeed in clothing with a garb of plausibility what seemed to Mr. Justice Pearson an impossible contention; but at present the only safe rule in practice, the only strict rule laid down by the Court of Appeal, so far as the Act of 1882 is concerned, is to ask, not whether the charge must be shown on the company's register, but whether it is within the express exception contained in section 17.

## ENGLISH *CAUSES CÉLÈBRES*.—II.

### Lyon *v.* Home (1868, L. R. 6 Eq. 655).

This was perhaps the most amusing case of spiritualism and undue influence that has ever occupied the attention of the English Courts.

The plaintiff, Mrs. Jane Lyon, a wealthy and childless widow of more than seventy years of age, had no relations of her own, was not on intimate terms with those of her husband, and lived by herself in lodgings in the West End of London, at a rent of about 30*s.* or 40*s.* a week. Her husband had died in 1859, and she was under the impression, from something that he had said before his death, that she should not survive him more than seven years. In July, 1866, Mrs. Lyon called on a Mrs. Sims, a photographer in Westbourne Grove, and in the course of conversation mentioned what her husband had said, and expressed her conviction that she would soon meet him in the grave. Mrs. Sims replied that if the plaintiff would become a spiritualist her husband would 'come to her,' and it would not be necessary for her to 'go to him,' and she lent the plaintiff some books upon the subject. One of these was entitled 'Incidents of My Life.' It was written by the defendant, Daniel Dunglass Home, whom Mrs. Sims described as 'The Head Spiritualist,' and who had recently opened an Athenæum in Sloane Street. Mrs. Lyon called at the Athenæum, and, according to her evidence, which materially differed, however, from that of the defendant, she was forthwith introduced through the agency of 'The Head Spiritualist' into the society of her deceased husband. The *modus operandi* was thus described by the plaintiff: 'They sat down at the table in the sitting-room, and raps came to the table almost immediately. The defendant said: "That is a call for the alphabet;" and then repeated the letters of the alphabet from time to time, a rap being given each time that he arrived at the letter intended to be indicated, and so on until a complete word or sentence was spelled out. In this way the supposed spirit on that occasion spelt out: "My own beloved Jane, I am Charles your well-beloved husband; I live to bless you, my own precious darling, I am with you always. I love, love, love you as I always did."' On a second occasion the spirit of the deceased was more

communicative. 'My own darling Jane' (the message ran), 'I love Daniel [meaning Home] as a son; he is to be our son, he is my son, therefore yours. Do you remember, before I passed, I said a change would take place in seven years? That change has taken place. I am happy, happy, happy.' Subsequent messages were even more explicit. 'Daniel' was to be adopted as a son, to be made independent, and to have stock worth 700*l.* a year transferred to him. The wishes of the deceased were implicitly obeyed—the widow and the defendant drove together in a cab to the City to execute the necessary transfers, constant raps being heard in and about the cab all the way, in testimony of the spirit's approval. In compliance with further directions from the land of spirits, the plaintiff made her will in the defendant's favour, gave him a present of 6,000*l.*, and settled upon him, subject to her life interest, a reversion of 30,000*l.*—these gifts being made without consideration and without power of revocation. In the spring of 1867 Home left town on business. Mrs. Lyon's spiritual necessities were too imperious to await his return, and she was put into communication with the dear departed by another medium. But, alas, her beloved Charles was no longer 'happy, happy, happy.' He denounced 'Daniel' as an impostor, and advised proceedings at law. The advice was taken, and Mrs. Lyon brought a suit in Chancery for the recovery of the property so recklessly squandered upon her adopted son. The chief forensic interest of the case was the remarkable cross-examination of the plaintiff by Mr. Henry Matthews, Q.C., the present Home Secretary, who was leading counsel for the defendant: 'I have not,' said Vice-Chancellor Giffard in the commencement of his judgment, 'gone through the affidavits made by the plaintiff herself or her cross-examination, because I think no one could have read those affidavits . . . and heard that cross-examination without coming to the conclusion that reliance cannot be placed on her testimony, and that it would be unjust to found on it a decree against any man, save in so far as what she has sworn to may be corroborated by written documents or unimpeached witnesses or incontrovertible facts.' No forensic ability, however, could 'pull off' the defendant's case; by the decree of the Court the money was ordered to be restored, and 'to the credit of Home, who had it under his absolute control, let it be recorded that such was done.'* The concluding paragraphs of the Vice-Chancellor's judgment, according to Mr. Hume Williams,† proved *social* death to spiritualist exhibitions. They ceased to be fashionable, and were accordingly denounced. 'I know nothing,' said his Honour, 'of what is called "spiritualism," otherwise than from the evidence before me, nor would it be right that I should advert to it except as portrayed by that evidence. It is not for me to conjecture what may or may not be the effect of a peculiar nervous organisation, or how far that effect may be communicated to others, or how far something may appear to some minds as supernatural realities which to ordinary minds and senses are not real. But as regards the manifestations and communications referred to in this cause I have to observe, in the first place, that they were brought about by some means or other after, and in consequence of, the defendant's presence—how there is no proof to show; in the next, that they tended to give the defendant influence over the plaintiff as well as pecuniary benefit; in the next, that the system as presented by the evidence is mischievous nonsense, well calculated on the one hand to delude the vain, the weak, the foolish and the superstitious, and on the other to assist the projects of the needy and of the adventurer; and, lastly, that beyond all doubt there is plain law enough and plain sense enough to forbid and prevent the retention of acquisitions such as these by any medium, whether with or without a strange gift, and that this should be so is of public concern, and, to use the words of Lord Hardwicke, "of the highest public utility."'

(*To be continued.*)

* Hume Williams's 'Unsoundness of Mind,' p. 58.
† *Ibid.* p. 59.

# Reviews.

## GODDARD ON EASEMENTS.

*A Treatise on the Law of Easements.* By John Leybourn Goddard, Barrister-at-Law. Fourth Edition. London: Stevens & Sons. 1891.

In his preface to this edition Mr. Goddard tells a tale of disappointment and blighted hopes, which were not, however, without some good results. He describes once more how his book came to be written, and the story is highly interesting to the present generation of lawyers who have grown up since the events to which he refers took place. His book, as he tells us, 'had its origin in an experiment preliminary to one of the grandest works ever contemplated in this land for the amendment of the law'—viz. the production of a code or digest of the law. That work has unfortunately never been accomplished, and the evils which it was designed to remedy have certainly not diminished, for the reports and statutes continue to be filled up case on case, chapter on chapter, and volume on volume, till it is almost impossible for the most industrious lawyer to keep pace with them. Without such a book as that which is now before us the profession might well despair of carrying on its work. With regard to the present edition it is only necessary to endorse the statement of the author that all the cases reported up to the end of last year have been included.

## BYLES ON BILLS.

*A Treatise on the Law of Bills of Exchange, Promissory Notes, Bank Notes, and Cheques.* By the Right Hon. Sir John Barnard Byles, late one of the Judges of Her Majesty's Court of Common Pleas. Fifteenth Edition. By Maurice Barnard Byles and Archie Kirkman Lloyd, Barristers-at-Law. London: Sweet & Maxwell (Lim.). 1891.

Only six years have elapsed since the publication of the last edition of this well-known text-book. When it appeared in 1885 the Codifying Act of 1882 had been already three years in operation, and the last six years have not been productive of many important cases on the subject. Such as there have been, however, have been effectively treated by the editors of the present edition. They were not, however, able to wait for the long-expected decision of the House of Lords in *Vagliano* v. *The Bank of England*, which was given while the book was passing through the press. The effect of that decision is

given in the preface. The form of the book has not been altered, and the work of revision appears to have been carefully done. 'Byles on Bills' still retains its place as the standard authority on the subject.

# Correspondence.

## CANVASSING AT PARLIAMENTARY ELECTIONS.

Sir,—As the general election will shortly take place, I should like to have the opinion of some of your readers on the above subject.

Having regard to section 17 of the Parliamentary Elections Corrupt and Illegal Practices Act, 1883 (46 & 47 Vict. c. 51), which provides that 'no person shall for the purpose of promoting or procuring the election of a candidate at any election be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except for any purposes or capacities mentioned in the first or second part of schedule 1 to this Act, or except so far as payment is authorised by the first or second parts of schedule 1 to this Act,' can the election agent, sub-agents, clerks and messengers mentioned in schedule 1 by virtue of their appointment and as incident thereto legally canvass for votes on behalf of such candidate as 'a means to "promote and procure" his election, and as a purpose and capacity of their several appointments'?

I presume that a polling agent appointed as such would only act on the polling day and in the polling station, and that the question of canvassing would not therefore affect him.

Sub-Agent.

August 24.

## THE SOLICITORS' REMUNERATION ACT AND ORDER.

A decision has been recently pronounced, which it is desirable to bring under the notice of practitioners, upon the construction of the General Order made in pursuance of the Solicitors' Remuneration Act, 1881. The judgment was delivered by the Irish Master of the Rolls. The question, indeed, involved in the case, *In re Purcell; ex parte Bonass*, was uncovered by previous authority; for in *In re Gallard; ex parte Harris*, 57 Law J. Rep. Q. B. 528; L. R. 21 Q. B. Div. 38, though bearing a partial resemblance, there was no actual decision on the question that would have been in point, while neither was there in *In re Emanuel and Simmonds*, 55 Law J. Rep. Chanc. 710; L. R. 33 Chanc. Div. 40, any binding analogy, though more nearly in point. In the latter case the controversy arose as to the remuneration to be paid for the preparation of a prior agreement for a lease under part 2 of schedule 1 of the General Order under the Solicitors' Remuneration Act, 1881. The solicitor prepared an agreement for a lease and a lease as well, and claimed the scale fee for the lease and a separate fee for the agreement. The taxing-master disallowed the separate charge for the agreement, and Mr. Justice Pearson and the Court of Appeal affirmed his decision. Reliance had been placed in argument upon the fact that agreements for leases were specially mentioned in part 2 of the schedule, but both Courts held that 'agreements for leases' there meant agreements for leases intended to be relied on as regulating the tenancy without any formal lease, and that the preparation of the agreement in the case, being intended to be followed by a lease, was 'business connected with' the lease within the meaning of rule 2 of the General Order, and could not be separately charged for. Lord Justice Cotton said: 'I can quite understand that where a lease is granted there may be an agreement which, although it refers to the lease, is to be considered as a collateral matter, as a matter not amounting merely to a step in the negotiations for a lease, or providing for a step in the negotiations for a lease, but providing for something different. It must depend on the circumstances of each case whether an agreement is collateral or not. In the present case the agreement, in my judgment, is merely part of the negotiation for the lease which was afterwards granted, and, the transaction being complete, one charge must, in my opinion, cover all charges with reference to this agreement, as well as everything else connected with the granting of the lease or the negotiations for the lease. In my opinion, therefore, this appeal must be dismissed.' And Lord Justice Bowen observed: 'It does not follow necessarily as a matter of law or as a matter of business that a document which is called an agreement for a lease may not contain stipulations with regard to subject-matter so separate and so distinct as that those stipulations form no part of the agreement for the lease, but involve transactions outside. Looking at the matter from that point of view, the difficulty suggested by the appellant's counsel as to cases of reversionary leases and surrenders ceases to present a difficulty. It may well be that business done with regard to an agreement for a reversionary lease is a separate business totally distinct from the reversionary lease itself, and may be separate from it for the purpose of discussing the remuneration of the solicitor. The same observation applies to the case of a surrender. But it by no means follows that no collateral stipulations are part of the business which culminates in a lease.' That case, however, relating to a preliminary agreement for a lease, could not be taken to apply to the case of an outstanding incumbrance on the property the subject of sale, but those observations certainly seem to show that, if there had been a surrender or anything else collateral with the lease itself it would have been treated as a separate matter.

Now, in the case of *In re Purcell and Lenehan, ex parte Bonass*, the question directly arose as to whether the costs of obtaining the release of an outstanding incumbrance on property sold are, or are not, covered by the scale-charge allowed to the vendor's solicitor, by the General Order, 'for all charges, including charges for a negotiation by solicitor, connected with a sale of property by private contract, or by auction, including preparation of contract and conditions of sale, deducting title and furnishing necessary searches, and perusing and completing conveyance.' Mr. Henry Bonass, the solicitor for the vendor, had charged the amount of remuneration so allowed for the work done in making title and completing the business on the sale of certain property; but he had charged, moreover, the costs incident to obtaining a release of an outstanding mortgage, and these costs the taxing-master had disallowed, holding that they were covered by the fee charged under the former heading. Now, unquestionably the words of the General Order are very wide, but, said the Master of the Rolls (Porter): 'I am clearly of opinion that they do not cover the costs of obtaining the release of an outstanding incumbrance. It could never have been intended by the framers of the schedule that the scale of remuneration was to be the same whether there were or were not outstanding charges on the property to be sold which had to be released by separate deed. Such charges might be numerous.' Of course a sale might take place subject to an outstanding incumbrance, but that was not here the case; and, added the Master of the Rolls, 'when that is

not done, and when the incumbrance is separately dealt with by a deed of release as here, I regard the release as a distinct matter, and am of opinion that the costs of getting in this incumbrance on the property sold is not included in the scale-charge. That is all I decide. It was for the taxing-master to say whether the work done was necessary, and what was the amount to be allowed for it'—the learned judge not himself deciding anything as to the rate of charge to be allowed for obtaining the release, but merely that the solicitor was not, under such circumstances, confined to the scale-charge.—*Irish Law Times.*

## THE *ALBANY LAW JOURNAL* ON SIR JAMES FITZJAMES STEPHEN.

THE retirement of Sir James Fitzjames Stephen from the English bench is an event deserving more than a passing notice. Probably no English judge of our time, excepting the late Chief Justice Cockburn, has been more highly esteemed in this country than the retiring justice. Whether it was the distinction of his combined literary and judicial career, or his invaluable researches in legal history, or the vigour and independence of his mind, that has won him his circle of friends and admirers on this side of the water, that circle is both large and influential. More than one society of law students in America has borne the name of the author of the history of the criminal law of England, and many, especially of our younger lawyers, have been wont to regard him as the chief ornament of the English bench. We are now told that we have overestimated him; that his general (and this includes his transatlantic) reputation was due largely to his historical and philosophical writings, and that his judicial career was something of a disappointment to his friends and to the English bar. It is conceded that he is a man of extraordinary mental powers and of great endowments; that he is learned, acute, and industrious. But it is said that his powers are those of the student and philosopher rather than of the lawyer or judge; that he is 'a jurist rather than a practical lawyer,' and that he has been a conscientious and capable but not distinguished judge. Very likely this nearer estimate of the man is the truer one. The judge is not a prophet, and need not go abroad to find the honour due to him. He is best known and most fairly estimated by the public he serves, especially by the bar over which he presides. Indeed, no man is surer of swift, accurate, and yet charitable judgment, based upon his fitness for the work he has undertaken, than is the judge on the bench at the hands of this bar and public. Accordingly we resign the retiring justice into the hands of our brethren of the English bar, assured that they will mete out to him neither more nor less than he has deserved at their hands. However this may be, Mr. Justice Stephen's retirement was invested with a very unusual degree of pathos, owing to the circumstances under which it was effected. It appears that his performance of his judicial duties on one or two recent occasions failed to give satisfaction to that hydra-headed and extremely sensitive monster the British public, and that the justice was promptly accused of the crime of senility (he is sixty-two years of age) and failing powers. Now the British public has for its voice that multitudinous oracle the British press (just as our own infallible public opinion utters its inspired voice through the American press), and proceeded at once, without more ado, and by the summary process which is so dear to its heart, to try and convict its eminent victim and depose him from the bench. He seems at first to have had some thought of resisting this arbitrary decree—the legal and judicial habit of mind being strong within him—and consulted his associates on the bench, eminent physicians and leaders of the bar, all of whom, with one accord and with apparent sincerity, assured him that they found no lack in him. But he finally and, we think, wisely yielded to the immutable decree of the omnipotent powers, and accepted his sentence with a very good grace. The impressive ceremonial with which he took his leave of the bench and bar—graced as it was by the presence of the Lord Chief Justice and the judges of England, as well as of all the leaders of the greatest bar in the world—may well in some degree have soothed the wounded feelings of the retiring jurist. His own remarks on the occasion, in responding to the well-chosen, eulogistic words of the Attorney-General, were in the nature of a protest against the injustice of the proceeding, but were marked throughout with good taste, dignity, and feeling. Probably the unusual honour of a baronetcy, the therapeutic value of which we do not profess to understand, was an additional consolation not to be despised. There is a lesson in this incident for our English brethren if they will but see it. There could hardly be a better illustration than this case affords of the value of a retiring limit of age for judges, such as we have adopted in this State. Such a provision is no less advantageous to the judge on the bench than it is to the public for whose benefit it is primarily intended. It operates to protect him against the unfounded suspicion of failing powers as well as against the dread of such suspicion. Such an incident as that of the forced retirement of an eminent judge, while still in the possession of unimpaired faculties, under the pressure of a popular suspicion, adds a new terror to the judicial office. Who will be the next one to be accused—by a disappointed litigant, it may be, or by a partisan or venal press—of having outstayed his usefulness upon the bench? If the date of Mr. Justice Stephen's retirement had been fixed by law, probably the question of his capacity would never have been raised, or at least would not have been pressed. It is the dread of an indefinite continuance of the alleged incapacity which impels the popular mind to the indelicacy or brutality of a direct attack upon the suspected official. It may be said that our law, in fixing the limit of age at seventy years, too often, perhaps, in a majority of cases, cuts off the career of its judges in the fulness of their powers, and deprives the State of their services just when they are of the most value to it, and this is doubtless true. Let us express the hope that it will do so in all cases, and that it may never be necessary to invoke the law to remove a judge who lags superfluous on the bench. It is true that such a law would have cut short Mansfield's brilliant career on the bench by thirteen years, and would have deprived our Constitution of ten years of Marshall's fostering care; it would have shortened Taney's administration of his high office by seventeen years (in which case there would have been no Dred Scott decision), and would drive Lord Chief Justice Coleridge into retirement in this year of grace. It has recently deprived the Court of Appeals of this State of the services of one of its ablest and most distinguished members, and will this year cause the retirement from the bench of the Supreme Court in this department of a judge distinguished alike for profound learning and for the uniform excellence of his judicial opinions. But this is a penalty which we cheerfully pay—the State on the one hand, the judges on the other—for security. The limit is, to be sure, an arbitrary one. It may be that a later date would be better (though we do not think so), and in the gradual lengthening of life and postponement of decay which, we are assured, the new era in which we live is bringing in, it may be assumed that a later limit will ultimately be fixed. But this is, after all, mere matter of detail, the essential thing being to have a definite limit of age, well within the anticipated period of senile decay, at which judges shall, by operation of law, retire from the bench. The benefits of this plan are com-

pletely missed by the Federal law, which makes the retirement of the judges of the Supreme Court of the United States voluntary, merely holding out to them the inducement of a retiring pension. An ambitious judge, sure of his powers, will usually prefer the congenial activity of the bench to the retirement proffered him, and one whose powers have fallen into decay might cling to his seat from inability to comprehend his weakness or from sheer obstinacy. It is true a public sentiment might be generated or a custom established under such a statute as the Act of Congress, which would have the practical effect of retiring judges at the age contemplated by the Act, but this would be a very uncertain and indirect way of getting at a result which our statute accomplishes with certainty and directness. We believe we are safe in asserting that the law has given general satisfaction in this State, and that the bench and bar, as well as the people at large, are almost unanimously in favour of it. We have no hesitation, therefore, in recommending our example to the attention of our English brethren. We have given them other laws, and will not withhold this from them.

## ORDER OF TRANSFER.

Saturday, August 22, 1891.

WHEREAS, from the present state of the business before Mr. Justice Chitty, Mr. Justice Stirling, Mr. Justice Kekewich, and Mr. Justice Romer respectively, it is expedient that a portion of the causes assigned to Mr. Justice Chitty, Mr. Justice Stirling, and Mr. Justice Kekewich should for the purpose only of hearing or of trial be transferred to Mr. Justice Romer; now I, the Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, do hereby order that the several causes and matters set forth in the schedules hereto be accordingly transferred from the said Mr. Justice Chitty, Mr. Justice Stirling, and Mr. Justice Kekewich to Mr. Justice Romer for the purpose only of hearing or of trial and be marked in the cause books accordingly. And this order is to be drawn up by the registrar and set up in the several offices of the Chancery Division of the High Court of Justice.

### FIRST SCHEDULE.

*From* MR. JUSTICE CHITTY.

Lane *v.* Capsey—1889 L. 3,035
Burdett *v.* Eldershaw—1890 B. 1,694
Anstiss *v.* Gatti—1890 A. 1,136
French *v.* Burchell—1891 F. 58
Tucker *v.* Cooper—1889 T. 2,046
Smelt *v.* Broughton—1891 S. 646
In re Lanwer, dec.
Lanwer *v.* Rayden—1890 L. 3,040
Northwich District Local Board *v.* Northwich Salt Co. (Lim.)—1890 N. 1,003
Tester *v.* Hedgcock—1891 T. 225
James *v.* Isaac—1891 J. 359
Hall *v.* Thompson—1890 H. 2,839
Walker *v.* Walker—1890 W. 3,665
Bailey *v.* Greenwood—1891 B. 1,485
Cooke *v.* Collins—1890 C. 2,040
Smith *v.* Botolph & Nicholson's Wharves Co. (Lim.)—1890 C. 4,376
Royal Exchange Assurance Corporation *v.* Tod—1890 R. 908
Duke of Northumberland *v.* North Eastern Railway Co.—1890 N. 1,460
In re Banks, dec.
Blower *v.* Thomas—1890 B. 2,951
Edwards *v.* Edwards—1890 E. 750
Cruso *v.* Allenby—1890 A. 605
Joselyne *v.* Upton—1890 J. 710
Watson *v.* Watson & Son (Lim.)—1891 W. 625
Gadd and another *v.* Haslingden Union Gas Co.—1890 G. 2,020
Parry, Bart. *v.* Jones—1889 P. 2,364
Ogle *v.* Brins Metals Foreign Syndicate (Lim.)—1889 O. 1,492
David *v.* Sabin—1891 D. 346
Binney *v.* Clarke—1891 B. 613
In re M. Clarke, dec.
Harrison *v.* Sharp—1891 C. 847
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In re J. Naylor, dec.
Hodson *v.* Sergeant—1891 N. 443
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Warden *v.* Alliance Bank (Lim.)—1890 W. 1,277
Maddock *v.* Girardot—1891 M. 42
Duncan *v.* Cole—1891 D. 532
Ramuz *v.* Southend Local Board—1891 R. 432
Farbenfabriken Vorm Fried Bayer Co. *v.* Jas. Ross & Co.—1890 F. 659
Wray *v.* Steven—1890 W. 3,952
Hewitt *v.* Crassidge—1891 H. 704
Elletson *v.* Carpenter—1890 E. 1,211

### SECOND SCHEDULE.

*From* MR. JUSTICE STIRLING.

Robinson *v.* Partridge—1890 R. 2,026
Dew *v.* Barley—1890 D. 2,083
Lewis *v.* Marquis of Allesbury—1890 L. 2,542
Steele *v.* Savory—1889 S. 732
In re J. Gurney
Mason *v.* Mercer—1890 G. 1,634
Campion *v.* Campion—1891 C. 442
Weatherall *v.* Burgess—1890 W. 1,496
Cloudsdale *v.* Townson—1890 C. 4,132
Moore *v.* Moore—1890 M. 3,768
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Hampton *v.* Stephens—1890 H. 4,223
Ryan *v.* Mutual Tontine Westminster Chambers Association—1890 R. 2,334
Pullman *v.* Barker—1891 P. 241
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Newen *v.* Mackey—1891 N. 161
Matthews *v.* Rogers—1890 M. 1,701
Richardson *v.* Westacott—1890 R. 2,179
Neville *v.* Lloyd—1890 N. 679
Hawksley *v.* Outram
Same *v.* Same
Outram *v.* Hawksley—1890 H. 3,061; 1890 H. 3,062
Bodger *v.* Raffety—1890 B. 5,636
Rehden *v.* Atkins—1891 R. 102
Everett *v.* Pennington—1891 E. 179
In re Jones
Williams *v.* Jones—1890 W. 2,562
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In re Huxham
Huxham *v.* Huxham—1890 H. 3,960

### THIRD SCHEDULE.

*From* MR. JUSTICE KEKEWICH.

Hill *v.* Hill's Waterfall Estate and Gold, &c. Co. (Lim.)—1889 H. 4,441
Williams *v.* Spargo—1891 W. 149
Elkington & Co. (Lim.) *v.* Hurter—1891 E. 80
Rogers *v.* Paragon Works (Lim.)—1891 R. 215-193
Kearney *v.* Blake—1890 K. 487
Ashworth *v.* Roberts—1888 A. 1,857
Lord Hatherton *v.* South Staffordshire Water Works Co.—1887 H. 3,119
Wellby *v.* Still—1891 W. 39
Siemens *v.* Taylor—1889 S. 4,408
Lyric Theatre (Lim.) *v.* Cordingly—1890 L. 2,822
In re Wigan
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Cellular Clothing Co. (Lim.) *v.* Marsh—1890 C. 2,048
Starr *v.* 282nd Starr Bowkett Building Society—1890 S. 202
Hampton Wick Local Board *v.* Southwark and Vauxhall Water Co.—1891 H. 72
Davis *v.* Mills—1891 D. 206
Lees *v.* West London Cycle Co.—1890 L. 2,862
Williams *v.* Jenkins—1890 W. 2,458
Fenner *v.* Holloway—1891 F. 270
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Corbett *v.* Saffery—1889 C. 759
In re Grover
Acworth *v.* Grover—1890 G. 1,574
Thomas *v.* Morgan—1891 T. 78
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Pares' Leicestershire Banking Co. (Lim.) *v.* Clerical, Medical, and General Life Assurance Society—1891 P. 599
Micklethwait *v.* Vincent—1891 M. 67
Smith *v.* Dickenson—1890 S. 2,739
Gill *v.* Green—1890 G. 1,327

HALSBURY, *C.*

## OBITUARY.

THE death of the Right Hon. HENRY CECIL RAIKES, M.P., Postmaster-General, has elicited from all quarters expressions of regret. Though Mr. Raikes was a member of the bar and a bencher of the Middle Temple, he never actively pursued the profession, and from the first devoted himself to politics. Born in the Deanery at Chester in 1838, the grandson of a clerical chancellor of the diocese and of an archdeacon, Mr. Raikes naturally became a somewhat ecclesiastically minded layman, like his illustrious neighbour, Mr. Gladstone. His voice was heard at Church congresses; he was president for several years of the Council of Diocesan Conferences, and no later than last year he was appointed Chancellor of the Diocese of St. Asaph. It was a strange combination of offices for the same man to be Postmaster-General and chancellor of a Welsh diocese. Mr. Raikes was one of the late Dr.

Kennedy's pupils at Shrewsbury, whence he went to Trinity College, Cambridge. Politics must have interfered with scholarship, for, as the *Times* informs us, he was, in common with the late Lord Justice James, defeated at Derby in 1859, and his name appears near the top of the second class of the Classical Tripos, 1860. After unsuccessful attempts at Chester in 1865 and Devonport in 1866 to get into Parliament, he was returned for Chester in 1868, and retained his seat till 1880. He was beaten at the general election of that year, but re-entered Parliament for Preston in 1882 on Sir John Holker's elevation to the bench. In the same year he deserted Preston for the safe seat of the University of Cambridge. More than half of his political life was spent in office, as he was chairman of committees from 1874 to 1880, and Postmaster-General from 1886 to his death. He was always regarded as an excellent chairman, and his tenure of the office covered the transition from the decorous habits of an earlier Parliamentary generation to the stormy period of scientific obstruction. As Postmaster-General, if he did nothing heroic, he was laborious, anxious to consult the interests of the public and to improve the position and promote the welfare of the large staff under his command. Some notable improvements were introduced under his auspices. Submarine telegraphy was extended and private enterprises bought up by the Government. Telegraphic money orders were established, the price of post-cards lowered, and a large step towards Mr. Henniker Heaton's ideal in the way of a universal penny postage was taken at the beginning of the year in the reductions of postage on letters for India and the Australasian colonies. Mr. Raikes married in 1861 a daughter of Mr. Trevor-Roper, by whom he had a large family. His son, Mr. Henry St. John Digby Raikes, is a barrister and member of the South-Eastern Circuit. There is no doubt that the late Postmaster-General died of overwork, and like his predecessor, the lamented Mr. Fawcett, he was little over fifty when he succumbed.

Mr. William Edward Smith, solicitor, of Ashby-de-la-Zouch, died, after a prolonged illness, at his residence, Hill House, Ashby, on Monday, August 3. He was the son of Mr. Thomas Smith, solicitor, of Carlton-on-Trent, Nottinghamshire, and was born on July 28, 1818. He was educated at Southwell Grammar School. He was articled to a firm of solicitors at Mansfield, and was admitted in Easter Term, 1841. He commenced practice at Ashby with Mr. E. M. Green in 1846. In 1867 he entered into partnership with the late Mr. E. F. Mammatt. Mr. Smith's loss will be keenly felt, not only by his clients, to whom he was a singularly sound, acute, and skilful adviser, but also by the poor, to whom he was also a devoted friend, dispensing his charity unostentatiously, but with no niggard hand, and by the inhabitants of Ashby generally, as he took a very active part in all matters having for their object the welfare of the town. For many years, and up to the date of his death, he was clerk to the magistrates for the Ashby-de-la-Zouch division of Leicestershire, and clerk to the magistrates for the Swadlincote division of Derbyshire. Mr. Smith was one of the oldest trustees connected with the Ashby Grammar School foundation, and for thirty years he was the vicar's warden at the Ashby Parish Church, in the restoration of which he materially assisted, both by his influence and his purse. For many years he was chairman of the burial board, but this position he through failing health resigned in December last. Mr. Smith was the senior partner in the old-established firm of Smith, Mammatt & Hale, of Ashby. At the Ashby Petty Sessions, on the magistrates taking their seats on the bench, the chairman said: 'Before commencing the business of the Court, as chairman of the bench, I wish to say that in consequence of the death of our late respected clerk we desire to adjourn the Court until one o'clock. Mr. Smith, our late clerk, was legal adviser to this bench for upwards of twenty-five years. During that time he earned the respect and esteem not only of the magistrates, but of all with whom he came into contact. It is only due to his memory that the bench should adjourn the Court out of respect for the deceased.'—Mr. W. A. Musson, speaking on behalf of the bar, said a more able and competent legal adviser the magistrates could not possibly have had. Mr. Smith had not only gained the confidence of the magistrates, but also of all the officials and the professional gentlemen practising at this Court during the long period he had held the office of clerk to the magistrates. Mr. Smith had for years and years had the respect and admiration of the profession to which he (Mr. Musson) belonged, and it would be long before his memory was lost from among them.

The death is announced of Mr. John Pritchard, D.L., J.P., formerly M.P. for Bridgnorth, at the great age of ninety-four years. He was born in 1796, was educated for the law, but was not called to the bar of Lincoln's Inn until 1841. He married, in 1845, Jane, daughter of G. O. Gordon. He was a D.L. and J.P. for Shropshire, and sat in the House of Commons for Bridgnorth from 1853 to 1868.

## NOTES OF CASES.*

*Court of Appeal.*
Lindley, L.J.
Fry, L.J.
Lopes, L.J.
July 27.

Regina *v.* The Registrar of Joint-Stock Companies, *ex parte* Johnston.

*Company—Registration—Companies Act*, 1862, *Part VII., s.* 180.

Appeal by the registrar of joint-stock companies from a decision of Cave, J., and Charles, J., granting a rule for a *mandamus* to register a company under Part VII. of the Companies Act, 1862.

The applicant, Johnston, and six other persons carrying on a publishing business in partnership under the firm of W. H. Allen & Co., sold the business to a limited company in consideration of 20,000 fully paid-up shares of 5*l.* each. Subsequently, by a deed dated March 13, 1891, the partners, reciting the sale and that they were desirous of defining the terms of their co-partnership with a view to registration as an unlimited company under Part VII. of the Act of 1862, agreed to become members of the company thereby constituted with the object of carrying on the co-partnership previously existing and get in its assets and satisfy its liabilities. The capital of the company was to be 770*l.*, divided into seventy-seven shares of 10*l.* each. The 20,000 shares in the limited company were to be brought into the company by the partners, and the provisions of Table A of the Companies Act, 1862 (with certain exceptions), were to apply to the company. Application was made to the registrar to register the company as an unlimited company under Part VII. of the Companies Act, 1862. On his refusal, a *mandamus* was applied for, and the rule appealed from was granted by the Divisional Court.

*Sir R. E. Webster, Q.C.* (*Attorney-General*) and *Ingle Joyce* (*Sutton* with them) for the appellant.

*Finlay, Q.C.*, and *Buckley, Q.C.* (*Theobald* with them), for Johnston.

Their Lordships allowed the appeal, being of opinion

* These cases will reappear in the regular series next November.

that the company constituted by the deed was not formed to carry on any business, but for the purpose only of being registered in order to be wound up, and that such a company could not be registered under Part VII.

*Quære per* Fry, L.J., and Lopes, L.J., whether a company formed by the mere consent of the parties is 'otherwise duly constituted by law' within section 180 of the Companies Act, 1862.

Solicitors: The Solicitor to the Board of Trade for the appellant; Linklater & Co. for the respondent Johnston.

---

*Court of Appeal.*
Lindley, L.J.
Fry, L.J.
Lopes, L.J.
June 22, 23.
July 30.

Hick *v.* Rodocanachi and others.

*Ship—Bill of Lading—Duty of Consignees as to Unloading—Strike of Dock Labourers.*

Appeal by some of the defendants from a decision of Mathew, J.

The appellants were sued as consignees under a bill of lading for default in unloading a cargo from the respondent's ship. The bill of lading was silent as to the time within which the unloading was to be accomplished, and the questions raised by the appeal were, (1) whether it was the duty of the consignees to unload within what would be a reasonable time in ordinary circumstances or within a reasonable time considering the actual circumstances; (2) whether the consignees were relieved from liability by reason of clauses in the bill of lading, which empowered the master to land the cargo and retain a lien for money payable by the consignees.

The ship arrived in the port of London on August 14, 1889. On the 16th the consignees commenced unloading and continued doing so till the 20th, when the strike broke out. On the conclusion of the strike the unloading was resumed and completed with due despatch.

Mathew, J., held the consignees liable for the delay.

*Sir R. E. Webster, Q.C.*, and *Bucknill, Q.C.* (*Leck* with them), for the appellants.

*Barnes, Q.C.*, and *Robson* for the respondent.

*Cur. adv. vult.*

Their Lordships held that the power given to the master to land the cargo was an alternative remedy of the shipowner which he was not bound to exercise, that the conditions in which it might be exercised did not arise, and that the appellants were therefore not relieved from liability by the clauses conferring the power. But they held that the obligation cast upon the appellants by the bill of lading was to unload within what was a reasonable time in the actual circumstances, and that they were not liable for the delay occasioned by the strike.

*Appeal allowed.*

Solicitors: Lowless & Co. for the appellants; Downing, Holman & Co. for the respondent.

Home Cure for Deafness.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. De Vere & Co., Publishers, 22 Warwick Lane, London, E.C.—Advt.

## BOOKS RECEIVED FOR REVIEW.

Dilapidations. Fourth Edition. By Banister Fletcher. London: B. T. Batsford. 1891.

History of the Law of Prescription in England (The). By Thomas Arnold Herbert, Barrister-at-Law. London: C. J. Clay & Sons. 1891.

Statutory Rules and Orders issued in the year 1890. Published by Authority. London: Eyre & Spottiswoode; Edinburgh: John Menzies & Co.; Dublin: Hodges, Figgis & Co.

## HONOURS AND APPOINTMENTS.

Mr. Richard Henry Barrett (of the firm of Barrett & Dean), of Slough, has been elected President of the Berks, Bucks, and Oxfordshire Law Society. Mr. Barrett was admitted in 1865.

Mr. Thomas Colborne (of the firm of Colborne, Ward & Colborne), of Newport, Mon., has been elected President of the Monmouthshire Law Society. Mr. Colborne was admitted in 1852.

Mr. Henry John Whitehead (of the firm of Henry John Whitehead & Son), of Cambridge, has been elected President of the Cambridgeshire Law Society. Mr. Whitehead was admitted in 1850.

Mr. Arthur Pierre Rumbelow, of 76 Finsbury Pavement, E.C., and 28 St. Mary's Road, Canonbury, has been appointed a Commissioner for Oaths. Mr. Rumbelow was admitted in 1884.

Mr. Herbert Behan Taylor (of the firm of C. W. & H. B. Taylor), of 31 Crutchedfriars, E.C., has been appointed a Commissioner for Oaths. Mr. Taylor was admitted in 1885.

## BIRTHS.

On Aug. 12, at Linton, Upton Lane, Forest Gate, E., the wife of Chas. C. Sharman, Solicitor, of a son.

On Aug. 15, at Twickenham, the wife of George James Duncan, of the Inner Temple, Barrister-at-Law, of a son.

On Aug. 19, at Offham, near Arundel, the wife of F. Sims Williams, Barrister-at-Law, prematurely, of a daughter, stillborn.

## MARRIAGES.

On July 7, at St. Mary's Church, Johannesburg, Mr. Justice Morice, one of the Judges of the High Court of the South African Republic, son of the late David R. Morice, Advocate, Aberdeen, to Isabel, daughter of the late James Kirkpatrick, of Killaghlee, county Donegal, Ireland.

On Aug. 19, at St. George's Church, Deal, William Montgomery White, of the Outer Temple, Solicitor, son of William White, Receiver of Inland Revenue and Head Distributor of Stamps for Sheffield Collection, to Mary Augusta (Minnie), daughter of Capt. R. Mourilyan, R.N., of Deal.

On Aug. 19, at the Chapel Royal, Savoy, Francis Thomas, eldest son of T. H. Tristram, Q.C., D.C.L., of Parkhurst, Hampton Court, to Francis Emily, second daughter of J. J. Marsh, Esq., of Cressy House, Leeds.

On Aug. 20, at St. Augustine's, Queen's Gate, William Robert Sheldon, of Lincoln's Inn, Barrister-at-Law, to Mary Forlong, youngest daughter of Charles Sanderson, of 12 Roland Gardens, S.W.

On Aug. 25, at St. Augustine's Church, Highbury, N., George Withington, youngest son of the late Robert Norris, Solicitor, Liverpool, to Clara, second daughter of William Oliver, of Highbury New Park.

## DEATHS.

In August, at Riverbank, Rockhampton, Queensland, Charles Sydney Dick Melbourne, Solicitor.

On Aug. 20, at 8 Lyndhurst Road, Peckham, Henry Stoakes, in the 87th year of his age; for 66 years with the firm of Travers, Smith & Braithwaite, Solicitors, 4 Throgmorton Avenue.

On Aug. 20, at Loganbank, Midlothian, the Right Hon. John Inglis, of Glencorse, Lord Justice-General of Scotland, in the 81st year of his age.

On Aug. 24, at 31 Cambridge Street, Liverpool, Joseph Green Bickerton, Solicitor, aged 32 years.

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# The Law Journal.

*SATURDAY, SEPTEMBER* 5, 1891.


## 'OBITER DICTA.'

THE warm sympathy and anxiety displayed by men of all ranks during Mr. Justice Hawkins's serious illness testify to the feeling of respect and affection entertained by the public towards the learned judge. Always a hard worker, Sir H. Hawkins has at last found that his health and strength are no longer able to undergo the severe strain which he imposed on them when on circuit. Whether he is once more able to preside in Court, or prefers to retire into private life, the judge will have the best wishes of the legal profession and of the general public.

THE Corporation of Maidstone have had the courage to pass a bye-law which gives them the power to stop street processions of the Salvation Army or of any other religious body. To enforce it is sure, however, to provoke more or less active opposition, and with the example of Eastbourne before their eyes the peaceful inhabitants of Maidstone might well be excused for declining the contest. The subject is meantime becoming one of such vital importance to all lovers of peace and quiet, especially on a Sunday, that imperial legislation will probably be demanded.

AT Eastbourne, as we ventured to predict, the well-meant efforts to compromise matters have utterly failed. On Sunday last the street disturbances were worse than ever, and law and order were openly defied. The spectacle is not an edifying one.

MR. GODFREY LUSHINGTON, acting in the absence of the Home Secretary, exercised a very wise discretion in ordering the discharge from Maidstone gaol of the three excursionists from London who were recently imprisoned without the option of a fine. These young men were convicted, according to a London paper, 'of trespassing in a corn-field;' but, assuming that they were guilty of wilfully damaging growing crops, it is nothing less than an outrage on the public conscience to mete out for an offence of this nature such a punishment as should be reserved for offenders of quite a different type. Sentences such as this tend to throw discredit on the whole body of unpaid justices, whose duties are, as a rule, most conscientiously and fairly discharged.

IN the case of *Hoare* v. *Niblett*, 60 Law J. Rep. Q.B. 565, the Court applied the well-known rule that a judgment against one of two joint-contractors is a bar to a subsequent action for the same breach against the other to a case of husband and wife. The plaintiff had sued the defendant's husband for breach of an agreement to let a furnished house for a year, and obtained judgment against him for 30*l.* damages. The husband only satisfied the judgment in part, and then became bankrupt. The plaintiff thereupon commenced another action against the defendant upon the same contract and for the same breaches, there being evidence that the agent who let the house contracted on her behalf as well as on her husband's. The Court (Mr. Justice Smith and Mr. Justice Grantham) were of opinion, however, that the County Court judge was right in nonsuiting the plaintiff upon the ground that the husband and wife were in effect joint-contractors, and that the judgment against the husband must therefore be treated as a bar to the action against the wife.

THE Statute Law Committee are entitled to the gratitude of the profession on account of a work which, under their auspices, has just been executed by Alexander Pulling, jun. We refer to an index to the Statutory Rules and Orders which has been compiled by Mr. Pulling under the direction of the committee. That such an index is wanted no practitioner will be found to deny. The authority to make rules and orders has been entrusted by the Legislature to a variety of authorities, and the result has been such a confused mass of statutory regulations as renders it a matter of great difficulty to ascertain what orders are in force under any given Act, and where those orders are to be found. The index to which we have referred is intended to

lessen that difficulty. The work is a monument of industry, and will no doubt meet with the appreciation it deserves.

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The absence of all system in the publication of Rules and Orders which has hitherto prevailed has frequently attracted attention. Some appear in official documents, such as the *London Gazette* or as Parliamentary papers or statutory office publications, while a portion of them are only to be found either in papers printed for the department concerned and circulated by the department among the authorities or persons immediately interested, or in text-books. A natural consequence of this state of things is that in some cases rules of importance do not come to the knowledge of the profession until they have been for some time in force. To meet this difficulty the Lord Chancellor and the Treasury have directed the publication henceforward of all 'Orders' which are of a public and general character in an annual volume uniform with the official annual volume of the statutes.

---

Debenture-holders will be interested in the decision of the Court of Appeal in *The Mercantile Investment and General Trust Company (Lim.)* v. *The International Company of Mexico*. The plaintiff company held debentures issued by the defendant company and sued for unpaid interest. The defendant company had assigned all its assets, business, and liabilities to another company subject to the debentures, the new company covenanting to indemnify the defendant company against all its liabilities. An arrangement in the nature of a novation was subsequently broached whereby the new company offered to give fully paid-up preference shares to the debenture-holders of the defendant company in exchange for their debentures; and at a meeting of debenture-holders, held in accordance with the trust deed, a majority of the debenture-holders passed a resolution approving of the scheme. The defendant company relied on this resolution as binding the dissenting minority, and therefore as forming a good defence to the action. Before Mr. Justice Day it was successful; but the Court of Appeal held that the circumstances did not come within either the language or the object of the provisions of the deed which enabled a majority of the debenture-holders to bind the minority, and that the resolution was therefore *ultra vires*. Lord Justice Lindley, in construing the language of the deed as to the powers of a majority of debenture-holders, said: 'The power to release the mortgaged premises does not include a power to release the defendant company; the power to modify the rights of the debenture-holders against the company does not include a power to extinguish all their rights; the power to compromise their rights presupposes some dispute about them or difficulty in enforcing them, and does not include a power to exchange their debentures for shares in another company where there is no such dispute or difficulty.'

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The same case decided an interesting point as to the sufficiency of the notice convening the meeting of debenture-holders. The deed provided that 'the notice convening the meeting shall be given at least fourteen days before the date at which the meeting is to be held.' Notice was given by newspaper advertisement on September 23 for a meeting on October 8, and there are fourteen clear days between these dates. It was, however, contended that notice by advertisement was not sufficient, and that if it was sufficient 'the notice, though advertised on September 23, ought not to be held to have been given on that day, as it probably could not, or would not, reach the debenture-holders for some time afterwards.' Some support was given to these arguments by the fact that three days before the meeting circulars were sent out to all debenture-holders whose addresses were known. The Court rejected both contentions. They held that notice by advertisement was the ordinary course of business in such cases. They held, also, that the rule that notice is not good until it is received was inapplicable in the circumstances; otherwise, as the debenture-holders might be scattered all over the world, it would be impracticable to fix beforehand when any meeting could be held, and the limit of fourteen days would be rendered nugatory.

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Mr. Howell has given notice that early next session he will call attention to the condition of the statute law, and move that, in the opinion of the House of Commons, it is expedient that further steps should be taken with a view to its codification, and the expunging from the statute-book of all obsolete and unnecessary laws. The work of statute law revision was commenced so far back as 1856 by the passing of an Obsolete Acts Repeal Act of that year (19 & 20 Vict. c. 64), 'to repeal certain statutes which are not in use,' among the statutes thus repealed being one of Henry IV. (7 Hen. IV. c. 7), which provided that 'arrow heads should be well boiled (*sic*), braised, and hard.' This was followed by a series of 'Acts for promoting the revision of the statute law by repealing divers of Acts and parts of Acts which have ceased to be in force or have become unnecessary,' as having been impliedly repealed by subsequent Acts inconsistent with them, eleven such Acts being passed between 1861 and 1875 inclusive, four between 1878 and 1883 inclusive, and as many as five between 1887 and 1890 inclusive. The present statute law committee was formed in 1868, and having produced one edition of the Revised Statutes up to 1878, is now engaged in bringing out a second edition, of which four volumes (the last ending with the year 1880) have already appeared, and of which the expected completion 'within three or four years' was announced in November, 1888, when the first volume appeared. Beyond all doubt this second edition, of which Mr. G. A. R. Fitzgerald is editor, is a great improvement upon the first, but it necessarily contains a very large number of enactments which possess an historical interest only, as the 'Acte concerning restraynt of payment of Annates to the see of Rome' (23 Hen. VIII. c. 20), and an 'Act for the declaring unlawfull and void the late proceedings touching ship money and for the vacating of all records and processes concerning the same' (16 Car. I. c. 14).

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Malins's Act will presumably become obsolete as time goes on, but, though passed thirty-four years ago, a decision has recently been necessary as to whether the personal estate to which the Act applies includes legal *choses in action*. The Act, it may be remembered, allows

a married woman by deed to dispose of every future or reversionary interest, whether vested or contingent . . . in any personal estate whatsoever to which she shall be entitled under any instrument made after December 31, 1857, though it was not to apply to property subject to her marriage settlement or which she was restrained from anticipating. In *Witherby* v. *Rackham*, 60 Law J. Rep. Chanc. 511, a married woman, with the concurrence of her husband, assigned a policy on her life to R. The deed was duly executed by the husband and wife, and separately acknowledged by her under the provisions of Malins's Act. R. mortgaged the policy to the plaintiff, and after R.'s death the plaintiff brought this action against R.'s executrix claiming foreclosure. The property was ordered and agreed to be sold, but the intending purchaser took out the present summons asking to be discharged from his purchase on the ground that a legal *chose in action* was not included in the Act of 1857. As Mr. Justice Chitty pointed out, 'personal estate,' as used officially both in probate and administration forms, and also in Chancery decrees and accounts, includes debts and *choses in action*. It is not unreasonable to suppose that the purchaser was dissatisfied with his bargain, and so, like the proverbial drowning man, caught at this straw to save himself from it. Whatever difficulty there may be strictly and technically in speaking of an estate in personalty, to most legal minds the term 'personal estate' would certainly include moneys payable under a policy of assurance, though, of course, they would not be payable until the person insured was dead. In Stroud's 'Judicial Dictionary,' under the head 'Personal Estate,' this definition is given: '"The personal estate and effects," or its equivalent, the "personal property" of an individual may, perhaps, be broadly defined to be all his property other than that which, if he died intestate, would go to his heir. Either of these phrases includes all a person's goods and chattels, moneys, *choses in action*, leases for years, funded property, and shares, except New River and some canal shares.' It will be observed that Mr. Stroud adds the words 'and effects,' but as against this the Probate Division authorities in the grant of probate speak of the 'administration of the personal estate,' instead of the longer form, formerly in use—namely, 'the administration of all and singular the personal estate and effects' of the deceased. This shows that those authorities regarded the words 'and effects' as mere surplusage. The purchaser's summons was therefore overruled and the summons dismissed.

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THE reconciliation service at St. Paul's and two recent inquests have brought into prominence the stigma still attached to suicide. Until 1823 this was so great that the law directed that the body of a suicide should be buried in a public highway and a stake driven through it. This barbarous custom was abolished in 1823 by 4 Geo. IV. c. 52, under which, however, the burial was still directed to take place between the hours of nine and twelve at night. In 1882 the Interments (Felo de Se) Act (45 & 46 Vict. c. 19) abolished nocturnal burial, but directed that nothing therein contained should authorise the performance of the rites of Christian burial on the interment of a *felo de se*, which, however, was expressly permitted to take place in any of the ways prescribed or authorised by the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 19). By section 13 of that Act, 'any minister of the Church of England, in any case where the office of the burial of the dead according to the rites of the Church of England may not be used, may use at the burial such service, consisting of prayers taken from the Book of Common Prayer and portions of Scripture, as may be prescribed and approved by the ordinary, without being subject to any ecclesiastical or other censure or penalty.' The reference is of course to the Rubric prefixed to the Burial Service, by which that service is not to be used 'in the case of those who die excommunicate, or have laid violent hands on themselves;' but we are not aware of any special service being prescribed by any ordinary for use at the burial, though the ordinary of St. Paul's emphasised the ecclesiastical stigma on suicide by authorising the recent service of reconciliation. As for the evidence of a *felo de se* as distinguished from suicide occasioned by unsoundness of mind, it is said in Blunt's 'Church Law' (2nd edit., p. 183) that 'the verdict of the coroner's jury should have respectful attention, though it is not to be considered as an invariable law for the clergyman.'

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IN two cases which we noted last week the question was raised as to whether particular *employés* were workmen within the meaning of the Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), s. 10, and in neither case the question was decided. In the first case (*Lamb* v. *The Great Northern Railway Company*, Notes of Cases, p. 58) an ex-guard of that railway company claimed payment of sums deducted from his wages as his contribution to the Great Northern Railway Sick and Funeral Allowance Fund, established for the benefit of the company's servants, from the passing of the Truck Act Amendment Act, 1887 (September 10, 1887), to the time when he left their service. That Act provides that 'the provisions of the principal Act (1 & 2 Wm. IV. c. 37) shall extend to, apply to, and include any workman as defined in the Employers and Workmen Act, 1875, s. 10; and the expression "artificer" in the principal Act shall be construed to include every workman to whom the principal Act is extended and applied by this Act, and all provisions and enactments in the principal Act inconsistent herewith are hereby repealed.' The Court held that it was unnecessary to decide whether the ex-guard was a workman within the Act of 1887, as the exception in favour of deductions from wages for supplying medical attendance in the principal Act must anyhow be read into the amending Act. In the second case it was not necessary to decide the question, but Mr. Justice Smith and Mr. Justice Grantham could not agree upon the point. The magistrates convicted a grocer's assistant for leaving his employer without notice, and the assistant appealed on the ground that he was not within section 10 of the Employers and Workmen Act, 1875, an Act passed 'to enlarge the powers of County Courts in respect of disputes between employers and workmen, and to give other Courts a limited civil jurisdiction in respect of such disputes.' Section 10 provides that 'the expression "workman" does not include a domestic or menial servant, but, save as aforesaid, means any person who being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age,' &c. Mr.

Justice Grantham thought that the appellant did do the manual labour and kind of work meant in the section, and therefore the justices were right. Mr. Justice Smith, on the other hand, was of opinion that he did not come within the section, as he was mainly employed to serve customers in a shop, and only now and then assisted in carrying in heavy parcels. As the judges differed, the finding of the magistrates remains in force. Still it is unsatisfactory for the litigants to feel that the Court itself can form no opinion on the subject, and it might be more satisfactory if a third judge could be called in at such a crisis, just as a referee is generally appointed in submissions to arbitration in case the arbitrators differ.

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TRAGEDY and comedy are curiously intermingled in the proceedings of a Police Court. It would be difficult to imagine a more ludicrous complaint than was made by an elderly lady at the Southwark Court one day last week. She appealed to the sitting magistrate for protection against some solicitors who she averred were constantly 'putting the telephone to her ear' to her great discomfort. How this was effected the applicant did not explain, though she added the information that the solicitors held money belonging to her late husband's estate. With the idea apparently of turning his own weapon against an adversary the clerk of the Court telephoned the solicitors not to further plague the old lady, who, it is to be hoped, is satisfied with this result. The telephone, though generally recognised as a necessary adjunct to a solicitor's office, is by no means an unmixed blessing, and is clearly not always appreciated by elderly clients.

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## 'LAW JOURNAL REPORTS' FOR SEPTEMBER.

OUR Reports for the present month, which were published on Monday, contain eighteen cases in the Chancery Division, seven of which were in the Court of Appeal and one in the House of Lords (pp. 537–616); nineteen cases in the Queen's Bench Division (pp. 505–576), including eight cases in the Appeal Court; nine magistrates' cases, one of which was in the Court of Appeal (pp. 105–144). A goodly instalment is also given (pp. 49–144) of the Statutes of the Realm from c. 26, the Russian Dutch Loan Act, to the Stamp Duties Management Act, 1891, and the Stamp Act, 1891 (cc. 38 and 39).

In the Chancery Division the Court of Appeal decided, in *Thorley* v. *Massam; in re Thorley*, that annuities bequeathed to trustees whilst they should carry on a business, and an annuity to a son whilst he should manage the business, were liable to legacy duty. *In re Nevin* was one of the too frequent cases of religious conflict with respect to the education of a child in which the Court of Appeal, affirming Mr. Justice Chitty, disregarded an antenuptial declaration by the parents and considered only the welfare of the child. *In re J. & J. Colman's Trade-marks* defined the conditions under which alterations should be allowed in new marks under the Act of 1883. *Dean* v. *Dean* was a case of devise sustained as an executory devise which would have failed if it had been a contingent remainder. Trustees were held to be competent to execute powers of maintenance and advancement though they took no implied estate. *In re The Portuguese Consolidated Copper Mines Company* was a case in which a director was estopped from denying that he held unpaid shares in respect of which he was qualified to act, as he did act, as a director. *In re Freme* was a curious case of an equitable contingent remainder and of the operation of the Contingent Remainders Act, 1877. In *Jones* v. *The Merionethshire Permanent Benefit Building Society* an agreement intended to stifle a prosecution was held to be void. *In re Amos, Carrier* v. *Price* decided that the word 'purchase' in the Trade Union Act, 1871, s. 7, must be read in the ordinary and not in the technical conveyancing sense. According to *Cooke* v. *Smith* the power of the Court under Order XXXI., rule 26, to order a further deposit as security for costs may be exercised, not only when the order for discovery is made, but at any time thereafter. In the case of *The Queensland Mercantile and Agency Company*, proceedings having been taken in Scotland with respect to certain shares in a company in course of winding up in England, the rights and liabilities of the Scotch shareholders were held to be governed by Scottish law. *In re Crayshaw* decided that an antenuptial agreement to settle moneys made by a husband did not include moneys bequeathed in such a way as to be incapable of assignment. According to *In re The General Service Corporation Stores*, the Companies Winding-up Act, 1890, and the General Order thereunder have not altered the practice with respect to the stay of proceedings against a company against which a winding-up petition has been presented. In *Gedye* v. *The Commissioners of Her Majesty's Works and Public Buildings*, the owner of an unexpired term of years was held not to have acquired a right to a fund in Court representing the value of the reversion, though twelve years had elapsed since the expiration of the term and the owner of the reversion was unknown. By *Thynne* v. *Sarl* an order for delivery of possession of mortgaged property should contain the description of the property, so as to enable the sheriff to identify it. *In re Cunningham and Frayling's Contract* was a curious case of the appointment of new trustees. *Low* v. *Bouverie* decides that a trustee is under no obligation to answer a question as to the trust estate by an intending incumbrancer. *Smith* v. *Cooke* is a decision of the House of Lords reversing the decision of the Court of Appeal, and restoring that of Mr. Justice Kekewich, that a resulting trust will not be implied in an assignment in favour of creditors. *In re Smith's Settled Estates* decides that the costs of abortive sale by a tenant-for-life of settled estates are payable out of capital moneys.

In the Queen's Bench Division, *Cutner* v. *Phillips* defines the jurisdiction of the City of London Court. *Joyner* v. *Weeks* lays down the measure of damages on a lessee's breach of covenant to repair. In *The Metropolitan Railway Company* v. *Fowler* the Court differed as to the liability of a railway company for land-tax in respect of lands taken. In *Thiodon* v. *Tindall and the Committee of Lloyd's* no action lay against Lloyd's for the wrongful classification of a vessel purchased. According to *Unwin* v. *Hanson* the power given by section 65 of the Highway Act, 1835, to the surveyor of highways to 'lop' trees does not authorise him to cut off the tops, but only the lateral branches. *De Souza* v. *Cobden* maintains the liability of a woman elected as county councillor to penalties even when the election has not been questioned for twelve months. In *Westacott* v. *Bevan* a solicitor's charging order was held only to affect the net result of the

action, and not a whole fund in Court. In *Hammond* v. *Schofield* the consent of parties to set aside a judgment was held ineffective to revive extinct rights against a third party. *Baker* v. *The Nottingham and Nottinghamshire Banking Company* defines the rights of bankers to negotiable securities deposited as security for his private account by a broker. *Regina* v. *The Commissioners under the Boiler Explosions Act*, 1882, establishes the concurrent powers of the Board of Trade to institute an inquiry under that Act and under other Acts. *Regina* v. *The Judge of the County Court of Yorkshire* (*Halifax*) decides that the County Court has no jurisdiction to try a patent action. *Chappell* v. *North* decides what amounts to 'steps in the proceedings' in section 4 of the Arbitration Act, 1889. It was held in *Bishop* v. *Taylor & Co.* that a covenant not to assign without the lessor's consent was not a 'usual covenant.' *Tomkinson* v. *The Balkis Consolidated Company* was a case in which a company was estopped from denying plaintiff's title to shares of which he held a certificate. *Hoare* v. *Niblett* illustrates the doctrine in the case of a married woman that a judgment, though unsatisfied, against one of two joint contractors is a bar to a subsequent action against the other. According to *In re Parrot* a creditor's proxy in bankruptcy cannot be attesting witness to the instrument of proxy. *Howlett* v. *The Mayor, &c. of Maidstone* defines the statutory liability of a quarter sessions borough for the maintenance of lunatics under the Local Government Act, 1888, s. 86, subs. 4. In *In re Gamgee* a creditor who was partly trustee and partly beneficial owner of a debt was held entitled to present a bankruptcy petition without joining the *cestui que trust* if the debt of which he is beneficial owner is sufficient for the purpose. *Regina* v. *The Judge of the City of London Court* decides that an action commenced in the High Court cannot be sent to the County Court for trial when the plaintiff has discontinued, and there only remains a counterclaim.

In the Magistrates' Cases, *The Guardians of Brighton* (*appellants*) v. *The Guardians of the Strand Union* (*respondents*) involved the construction of the Divided Parishes and Poor Law Amendment Act, 1876, ss. 34, 36. *The London County Council* (*appellants*) v. *Caudle & Sons* (*respondents*) decides what amounts to a temporary wooden structure under the Metropolis Management Act, 1882, s. 13. *Caminada* (*appellant*) v. *Hulton* (*respondent*) involved the application of the Betting Act, 1874, s. 3, subs. 3, to a newspaper competition. According to *Regina* v. *The Justices of the West Riding of Yorkshire* an order cannot be made by justices *ex parte* for the payment of costs of maintaining a pauper incurred by reason of the suspension of an order of removal. In the Central Criminal Court, in *Regina* v. *Hall*, Mr. Justice Charles quashed an indictment against an overseer for offences against the Parliamentary Registration Act, 1843, on the ground that the Act prescribes the penalty. In *Borend* v. *Lawrence* the judges differed as to whether a grocer's assistant was a 'workman' within the Employers' and Workmen Act, 1875, s. 10. *Regina* v. *Huggins* decides that the justices have an absolute discretion to grant or refuse a summons under the Matrimonial Causes Act, 1878, s. 4. *St. Helens District Tramways Company* (*appellant*) v. *Woods* (*respondent*) was a case of rightful conviction of a tramway company for breach of Board of Trade regulations. *Fecitt* v. *Walsh* was an adulteration case, involving the Sale of Food and Drugs Acts, 1875, s. 9, and 1879, s. 3.

## ENGLISH *CAUSES CÉLÈBRES*.—III.

### BANKS *v.* GOODFELLOW (1870, L. R. 5 Q. B. Div. 549).

*Banks* v. *Goodfellow*, to the exclusion even of *Regina* v. *Macnaghten*, of which we shall have something to say in a subsequent paper, is the *cause célèbre* of the English law of lunacy.

The younger Holmes, in one of his admirable lectures on the common law (p. 108), has pointed out that the capacity and the responsibility of the insane ought not to be determined by any 'external standard' which leaves their 'personal equation' out of account. In the English lunacy law this just and wholesome doctrine was for a long time lost sight of, and the civil capacity and the criminal liability of persons affected with mental disease were ascertained by the application of different and contradictory tests: (1) Any, the least, delusion was fatal to *testamentary* capacity (*Waring* v. *Waring*, 6 Moo. P. C. 341; *Smith* v. *Tebbitt*, 36 Law J. Rep. P. & M. 97; L. R. 1 P. & M. 398). The argument in favour of this curious theory, for whose vitality Lord Brougham and Lord Penzance were responsible, was put in this way: 'To constitute testamentary capacity soundness of mind is indispensably necessary; but the mind, though it has various faculties, is one and indivisible. If it is disordered in any one of these faculties, if it labours under any delusion arising from such disorder, though its other faculties and functions may remain undisturbed, it cannot be said to be sound. . . . Testamentary incapacity is the necessary consequence' (*Banks* v. *Goodfellow*, *ubi sup.* at p. 559). (2) On the other hand, the *criminal* responsibility of the insane was determined first by the 'wild beast' theory, promulgated by Mr. Justice Tracy, according to which only that degree of mental disease which reduced the intelligence of a prisoner to the level of the mental endowments of an infant or a wild beast was regarded as a valid exculpatory plea; then by Lord Mansfield's 'right and wrong in the abstract' theory; and finally by the 'rules in *Macnaghten's Case*,' which made the test of responsibility the prisoner's knowledge not of the general ethical distinction between right and wrong, but of the wrongness and illegality of the act for whose commission he was being tried. (3) Again, the *contractual* capacity of the insane was ascertained by quite different *criteria*, derived first from the civil law, then from feudal policy, and lastly from equity jurisprudence. It is obvious that beneath these conflicting doctrines there lay one and the same fallacy—the assumption that general standards, external to individual characteristics and peculiarities, could with propriety be applied to the shifting and then imperfectly apprehended phenomena of mental disease. *Banks* v. *Goodfellow* gave this fallacy its deathblow. This was an action of ejectment, the result of which depended on the validity of the will of one John Banks, and the material facts were as follows: Banks had been confined in a lunatic asylum as far back as 1841. Discharged after a time from the asylum he remained subject to certain fixed delusions; he had conceived a violent aversion towards a man named Featherstone Alexander, and, notwithstanding the death of the latter, he believed that this man still pursued and molested him; the mere mention of Alexander's name was sufficient to throw him into a state of violent excitement. Banks also frequently believed that he was pursued by devils, whom he thought

to be visibly present. These delusions were shown to have existed between 1841 and the date of the will (1862), and also between that date and the testator's death in 1865. It was admitted that at certain times the testator was incapable of making a valid will. But he was proved to have been rational at the time of giving instructions for, and at the time of signing, the testament in issue, and the manner in which he disposed of his property—viz. bequeathing it to a favourite niece—evinced no traces of insanity. It was strongly urged, however, that, 'though the delusions under which the testator laboured might not have been present to his mind at the time of making the will, yet, if they were extant in his mind so that, if the subject had been touched upon, the delusions would have recurred, he was of unsound mind, and therefore incapable of making a will.' But the Court of Queen's Bench, in a masterly judgment delivered, and obviously prepared, by Chief Justice Cockburn, repelled this contention, and held that, as the testator's delusions were quite foreign to the subject-matter of the will, and neither had nor could have had any influence upon its provisions, they were not fatal to his testamentary capacity. 'It is essential,' . . . said the Chief Justice, . . . 'that a testator shall understand the nature of the act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties, that no insane delusion shall influence his will in disposing of his property, and bring about a disposal of it which, if the mind had been sound, would not have been made.' The decision revolutionised the substantive law of lunacy. Of course it settled once and for all the criterion of testamentary capacity in mental disease. (Cf. *Boughton* v. *Knight*, 1873, 42 Law J. Rep. P. & M. 41; L. R. 3 P. & D. 64.) But it did, and is doing, much more than this. It has come to govern, by way of analogy, the law as to the capacity of the insane to marry (*Durham* v. *Durham*, 1885, L. R. 10 P. Div. 80, overruling *Hancock* v. *Peaty*, 1867, 36 Law J. Rep. P. & M. 57; L. R. 1 P. & D. 335, which corresponds to *Waring* v. *Waring* in this branch of the law); it has made its influence felt in the law of contract, so that we find a man held competent to grant a lease of a farm which he insanely believed to be impregnated with sulphur, and wished to get rid of on that ground, because the delusion sharpened his faculties (*Jenkins* v. *Morris*, 1880, 49 Law J. Rep. Chanc. 392; L. R. 14 Chanc. Div. 674).* It is telling upon 'the rules in *Macnaghten's Case*' themselves. Finally, it directed the attention of the legal world to the facts that capacity and responsibility cannot be determined rightly by the application of rigid general rules, and that the only true test of soundness of mind for legal purposes consists in analysing the *act* and at the same time steadfastly regarding the mental and moral constitution of the *actor*.

(*To be continued.*)

* Cf. *Grove* v. *Johnston*, 1889, 24 L. R. Ir. 363, *per* Mr. Justice O'Brien: 'Mental health, like physical health, is but a form of the ability to perform which the law makes an understood condition of the contract, and the nature and effect of that disability must vary according to the thing to be performed.'

# Reviews.

## THE METROPOLITAN POLICE GUIDE.

*The Metropolitan Police Guide.* By W. F. A. ARCHIBALD, one of the Masters of the Supreme Court, J. H. GREENHALGH and JAMES ROBERTS, Barristers-at-Law. London: H.M.'s Stationery Office.

THE object of this book is to provide for the metropolitan police a compilation of the statutes to which in the course of their duties they have constantly to refer. The book consists of three parts. Part I. consists of the statutes which specially affect the force, including, of course, the Metropolitan Police Acts. Part II. comprises the Acts relating to summary jurisdiction and procedure generally. Part III. gives the principal Acts relating to various matters and offences, which are arranged in alphabetical order. Such a book as this, of course, is simply invaluable to those for whose use it is intended—indeed, it is difficult to imagine how they can have been expected to do without it hitherto—but it will also be a great boon to magistrates and their clerks, and indeed to the profession generally. The Acts in Part I. are printed *verbatim*, with copious notes, while in Parts II. and III. only the material and important sections are given. The notes throughout are very full, and a capital index completes the book, which is published, substantially bound, at 15*s*.

## GOODEVE'S MODERN LAW OF REAL PROPERTY.

*The Modern Law of Real Property.* With an Appendix containing the Vendor and Purchaser Act, 1874, the Conveyancing Acts, 1881, 1882, the Settled Land Acts, 1882 to 1890, and the Married Women's Property Act, 1882. By the late L. A. GOODEVE. Third Edition. Revised and partially rewritten by HOWARD WARBURTON ELPHINSTONE and JAMES W. CLARK, Barristers-at-Law. London: Sweet & Maxwell (Lim.). 1891.

THE present editors of this work have fully justified their selection by the publishers to carry on the work cut short by the premature death of the original author. That work was of unquestionable merit, and its value is certainly increased by the treatment it has received at the hands of Messrs. Elphinstone and Clark. For students a better book cannot be found, inasmuch as while it presents a clear and accurate statement of the present law it does not neglect to direct its readers to the sources from which that law has emanated. Practitioners also will often find in it a reliable guide in many a point of suggested doubt or difficulty.

## WILLIAMS ON BANKRUPTCY.

*The Law and Practice in Bankruptcy.* By the Hon. Sir ROLAND VAUGHAN WILLIAMS, one of the Justices of H.M.'s High Court of Justice. Fifth Edition, by EDWARD WILLIAM HANSELL, Barrister-at-Law. London: Stevens & Sons (Lim.); Sweet & Maxwell (Lim.). 1891.

THIS book will now, if possible, since the appointment of its distinguished author as Bankruptcy judge, take higher rank as an authority than before. It is certainly

the most valuable work upon the subject. The Act of 1890 has been incorporated by introducing its sections immediately after the sections of the principal Act to which they relate, or in lieu of those which they replace, and the Rules and Forms of 1890 are treated in a similar way. All the recent bankruptcy legislation has been incorporated, but we regret to see that the Bills of Sale Acts have now been omitted, the literature of cases under those Acts being deemed by the editor a distinct branch of the law. We cannot help thinking that this is a considerable sacrifice to make to the necessity of keeping down the size of the volume. The work has been thoroughly revised and brought down to date.

# Correspondence.

## CORONERS ACT, 1887.

SIR,—By section 5 (1) of the above Act, in cases of murder or manslaughter the coroner shall bind the witnesses to appear and prosecute or give evidence at the next Court of oyer and terminer or gaol delivery at which the trial is to be.

By section 5 (2) in case of manslaughter the coroner may accept bail by recognisance with sufficient sureties for the appearance of the person charged at the next Court of oyer and terminer or gaol delivery at which the trial is to be.

By section 18 (4) the coroner shall cause recognisances taken before him from a person charged with manslaughter to be taken, so far as circumstances will admit, in one of the forms scheduled to the Act, or in such other forms as may be prescribed, and shall give notice of the recognisance to every person bound thereby.

The form of recognisance scheduled to the Act is made applicable to three cases—viz. (*a*) to appear and give evidence before the coroner, (*b*) to prosecute and give evidence at assizes, and (*c*) to appear for trial.

I should be glad to be informed whether, in practice, coroners use the form of recognisance (*b*) without variation in all cases where witnesses are bound over, and is the form of recognisance (*c*) without variation generally applicable to cases where a person committed for manslaughter is released on bail?

The form of recognisance scheduled to the Act is made to apply only to cases where all are bound over in the same sum, and this would imply that, on bail being granted in case of manslaughter, the person charged and the sureties would each be bound over in the same sum. Forms of recognisance, admitting to bail a person charged with manslaughter, used to be drawn applicable for binding over the person charged in one sum and each of the sureties in another sum, which in practice was generally half the sum the person charged was bound over for. Is it now the practice for coroners to bind the person charged and his sureties each in the same amount?

If a coroner commits a person charged with manslaughter, and the person charged some days afterwards applies for bail, what is the *modus operandi*?

I presume notice of recognisances has only to be given in manslaughter cases—*i.e.* to the person charged and his sureties. Should the notice be in writing?

I understand some stationers keep the forms of recognisance on parchment; but surely it is not necessary to have them on parchment. CORONER.

# Unreported Cases.

## CITY OF LONDON COURT.

### LOSS OF PROPERTY IN RESTAURANTS.

IN the City of London Court, on September 2, before Judge Kerr, the case of *Baggs* v. *Hodgson* was disposed of, which raised an important question affecting the liability of restaurant proprietors for the loss of their customers' property. The defendant was the owner of the Raglan Hotel, Aldersgate Street, E.C., and the plaintiff (according to his solicitor's statement) went there to take his lunch. While there the defendant's wife, who assisted him in the business, asked the plaintiff to let her move his coat from where he had placed it behind the chair to some other place which would be more convenient, and make room for other customers who had come in. The plaintiff demurred to that being done, but the request was repeated, and then he allowed his coat to be moved. The defendant's wife hung the coat up, but afterwards it could not be found. It had been stolen, and the plaintiff therefore asked to be recompensed for the loss he had sustained. The question turned on the relationship existing between the plaintiff and the defendant, and whether they stood in the position of guest and innkeeper.—The defendant's solicitor said the defendant's establishment was a restaurant. On the question of law the defendant could not possibly be held liable for the loss of the plaintiff's overcoat.—His Honour said the plaintiff did not go as guest to an innkeeper. He went for his lunch, and that was all the difference. The law gave the plaintiff no remedy for the loss he had suffered. There must be judgment for the defendant, with costs.

## DURHAM COURT OF CHANCERY.

### LIABILITIES OF TRUSTEES.

A question of some importance as to the liability of the estate of a deceased trustee for losses sustained by his negligence was raised in a case relating to the estate of the late John Cumming, of Manor House, Lanchester, heard by the registrar (Mr. A. O. Smith), of the Palatine Court of Chancery, on Saturday last.—Mr. Lisle said John Cumming died on December 27, 1876, having appointed William Cumming and Joseph Atkinson trustees and executors of his will, to whom he devised his estate upon certain trusts. Though for some reason the will had not been proved, William Cumming took possession of testator's personal estate, consisting of farming stock and household effects, which he sold to Mr. W. S. Wearmouth for 950*l.*, for which he gave Cumming a promissory note. In the following year Wearmouth paid 238*l.* on account, but there was nothing to show how Cumming had disposed of it. Wearmouth repudiated liability on his promissory note, claiming the benefit of the Statute of Limitations, no interest having ever been paid on the note. William Cumming died in July, 1888, having appointed the plaintiffs executors of his will, who issued the usual notice requiring claims against his estate to be sent in to them. In response to this they received from the defendants particulars of certain legacies granted to them by the will of John Cumming, amounting to upwards of 400*l.*, in respect of which they claimed to rank as creditors against the estate of William Cumming, the trustee. The creditors of the latter disputed these claims, and desired the opinion of the Court on the point of liability.—The registrar: Was Wearmouth's promissory note payable on demand?—Mr. Lisle: Yes.—Mr. Mawson, for the defendants, said but for William Cumming's negligence in allowing the promissory note to become statute-barred there would have been sufficient

assets in John Cumming's estate to pay his client's legacies, and he contended that William Cumming's estate was liable to make good the loss which had been occasioned by his negligence.—The registrar held that William Cumming as trustee was not justified in accepting a promissory note for the price of his testator's effects, and in suffering it to become statute-barred was guilty of culpable negligence constituting a *devastavit*. On the facts two questions arose: first, was William Cumming in his lifetime personally liable, and is his estate now liable to make good the loss which had been sustained, having regard to the fact of his not having proved John Cumming's will? And, secondly, assuming he was so liable, was such liability affected by the Statute of Limitations, the breach of trust having occurred in 1882, when the promissory note became statute-barred? It was not necessary that an executor should have proved his testator's will to render him liable for a *devastavit*, the probate being merely the authenticated evidence of his title, and not the foundation of such title, which the executor derived from the will itself. On the death of a testator his personal property forthwith vested in his executor, who might lawfully sell it before taking probate, and any act of administration was sufficient to fix him with liability. The taking possession of and selling testator's effects was in his opinion such an act of administration as to render William Cumming liable both at law and in equity for any losses resulting from his acts. A third question arose whether the Trustee Act of 1888, which somewhat restricted the liability of trustees, and which applied to all actions commenced after January 1, 1890, had any bearing upon the case. Section 8 in effect provided that in any proceedings against a trustee, except in cases of fraud or fraudulent breaches of trust, or to recover trust property in the possession of a trustee, he was to enjoy all the rights conferred by any Statute of Limitations as if he were not a trustee. This, however, was followed by a proviso that the statute was not to run against a beneficiary unless and until his interest was one in possession. Having committed a flagrant breach of trust, he (the registrar) held that William Cumming could not, if living, nor could his representatives, now set up the Statute of Limitations (*Obee* v. *Bishop*, 1 De G. F. & J. 137). But, assuming for argument's sake that the protection conferred by the Act extended to cases of breach of trust, it was clear that the representatives of William Cumming could not avail themselves of its provisions, inasmuch as the interests of the defendants only became interests in possession on the death of the testator's widow in February, 1888. Applying the principles laid down by Lord Cottenham and other eminent judges in cases of that kind, he (the registrar) held that William Cumming's estate was liable to make good to the estate of his testator 950*l.*, with interest at 4*l.* per cent. from the date of Wearmouth's promissory note, but, as the only claims in dispute were those of the defendants, the simplest course would be to direct that they be enforced against the estate of the defaulting trustee.—Mr. W. Lisle (Durham) was solicitor for the plaintiffs, and Mr. Joseph Mawson (Durham) for the defendants.

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THE TEMPLE GARDENS.—Both the Inner and Middle Temple Gardens, which have been thrown open nightly for the benefit of the poor children inhabiting the surrounding districts, are now closed; but the Lincoln's Inn Gardens will remain open every evening from five o'clock until dusk up to the 18th inst. It is satisfactory to state that the children have in no way injured either plants, trees, or flowers during the time the gardens have been open.

## DELIVERY OF GIFTS.

IN the judgment in *Cochrane* v. *Moore*, L. R. 25 Q. B. Div. 57, 'all the authorities are collected and reviewed,' says Mr. Justice Chitty in *In re Alderson; Alderson* v. *Peel*. But that he errs herein might be easily demonstrated if it would serve any practical purpose. Suffice it, however, to reproduce here a pithy critique on *Cochrane* v. *Moore* from a transatlantic source. That case, observes the *Harvard Law Review*, 'is one of much interest. The well-known decision of *Irons* v. *Smallpiece*, 3 B. & Ald. 551, that delivery was necessary to the parol gift of a chattel, though apparently settled law in this country, has not, as is shown by the collection of authorities in Professor Gray's note to *Irons* v. *Smallpiece*, Gray's Cas. Property, 167, been treated with great respect in England; and later decisions had so far shaken it that Lord Justice Lopes felt bound to hold in *Cochrane* v. *Moore* at Nisi Prius that delivery was not necessary to a gift. But the Court of Appeal has upheld *Irons* v. *Smallpiece* in an elaborate judgment. The point was not, indeed, necessary to the decision; various considerations arose on the facts, among others the inquiry whether the subject-matter of the gift, the undivided fourth part of a horse, was susceptible of delivery at all; and as to the actual decision the Court agreed with Lord Justice Lopes and dismissed the appeal. They discussed, however, at great length the question decided in *Irons* v. *Smallpiece*. The following passage from the opinion of Lord Justice Fry, speaking for himself and Lord Justice Bowen, indicates the grounds of the decision: "This review of the authorities [the opinion contains an extended investigation of the early reports and text-writers] leads us to the conclusion that according to the old law no gift or grant of a chattel was effectual to pass it, whether by parol or by deed, and whether with or without consideration, unless accompanied by delivery; that on that law two exceptions have been grafted, one in the case of deeds and the other in that of contracts of sale where the intention of the parties is that the property shall pass before delivery; but that, as regards gifts by parol, the old law was in force when *Irons* v. *Smallpiece* was decided;" and he concludes that that case has not been overruled. Among the citations collected by Professor Gray there are several which appear to have escaped the attention of the Court. Lord Hardwicke's comment in *Ward* v. *Turner*, 2 Ves. Sen. 431, 442, on the passage cited by Lord Justice Fry from Jenkins's "Centuries," 109, Case 9, is interesting; and the observation of Baron Parke in *Oulds* v. *Harrison*, 10 Exch. 572, 575, seems to throw light on the question discussed by the Lord Justice of that eminent judge's attitude towards *Irons* v. *Smallpiece*. The concurring opinion of the Master of the Rolls is noticeable. He draws a distinction—not wholly easy to understand—between "fundamental propositions of law" and the "amount or nature of the evidence which will satisfy a Court of the existence of such a proposition." The former, he says, nothing but an Act of Parliament can alter, while the latter may be changed by judicial decision; and since he concludes that delivery is not a piece of evidence to prove a gift, but "one of the facts which constitutes the proposition that a gift has been made," he feels constrained to hold that delivery must remain a necessary part of an oral gift until the law is altered by Parliament.' It may be added that *Irons* v. *Smallpiece* was commented on in the Irish case of *Power* v. *Cooke*, Ir. Rep. 4 C. L. 247, hidden away in the Irish Reports Digest under the heading of 'Divorce a mensâ et thoro.'

The later case of *In re Alderson; Alderson* v. *Moore* involved the determination of the question, whether delivery first and gift afterwards of a chattel capable of delivery is as effectual as a gift first and delivery after-

wards. It came before Mr. Justice Chitty on a summons taken out by the Rev. F. Alderson and Mary, his wife, asking that a declaration that a portrait of her great-grandfather belonged to her father, the Rev. Christopher Alderson, and formed part of his estate at his death in 1880. On the other hand, it was claimed by Mr. C. M. Wilson as being his property in virtue of a gift which he alleged was made to him by the Rev. Christopher Alderson in 1879. It appeared that in 1848 the portrait in question, upon the death of its then owner, came into the possession of the Rev. George Alderson with other pictures, and that the Rev. George Alderson, having no room for the pictures, one of his sisters took charge of the portrait, and another sister took charge of the other pictures. In 1865, the two sisters of the Rev. George Alderson being dead, the portrait was placed by James Wilson, the husband of one of the sisters, with the other pictures, at the request of the Rev. George Alderson. In 1867 James Wilson died, and the Rev. George Alderson entrusted James Wilson's son, Charles Macro Wilson, with the care of the pictures, and they were accordingly kept in C. M. Wilson's house. In 1879 the Rev. George Alderson died, and by the terms of his will the pictures became the property of the Rev. Christopher Alderson, the father of the applicant, Mary Augusta Alderson. The Rev. Christopher Alderson and C. M. Wilson were appointed executors of the will of the Rev. George Alderson. Now, at that time the picture was in the house of the respondent, probably hanging on the wall of one of his rooms, and the respondent so held it as bailee for the Rev. Christopher Alderson, under whose will, it was claimed, the picture passed to his daughter. But it happened that the testator in the month of October that year, 1879, had gone to Sheffield, where the respondent's house was, and the respondent deposed in his affidavit: 'I then reminded him that by virtue of the will of the said George Alderson the picture in dispute in this matter belonged to him, and asked him about forwarding it to him. The said Christopher Alderson did not give me any instructions as to where I should send it. The only remark which I recollect he made with reference to the said portrait was that he said he had a very good copy of it, and that he did not then want the picture; but I did not understand that he had then given me the picture, or done more than allow it to remain in my custody.' In December following the respondent wrote to the testator a letter which referred to pictures, including the picture now in dispute, belonging to him which were in the respondent's possession, containing this passage: 'I think I told you I have all the pictures from Hornby at More Hall'—being the place where the respondent then resided—'I think as to one or two I must have them somewhat repaired in frames, &c. I conclude you will not object to this.' Then some particular pictures were mentioned, and the letter went on thus: 'You were good enough to say that you did not want the one picture my uncle left you on his death, that of my great-grandfather Alderson, by Wright, of Derby. If you are willing' —then there were some words that could not be made out in the press copy of the letter—'the pictures to let this remain up at More Hall.' The passage which was illegible was, however, of no great importance. The picture particularly referred to was the one in question. To that letter the testator replied: 'I agree with you that the pictures from Hornby, if needing it, ought to be repaired. I gave to you the original picture by Wright of my grandfather; you will therefore retain it, of course, at More Hall.' In due course of post on December 8 the respondent wrote to the testator thus: 'I have received your letter to-day, and write at once to thank you very much for giving me the picture now at More Hall.' Then he described the picture, and went on: 'Until your letter came to-day I did not understand you had given me the picture. When you were over I asked if I should send it to you, and only understood I was allowed for the present to retain possession of it, which I was very glad to do. I shall prize your kind gift very much, and am very glad that my two great-grandfathers who have for some years hung together will so remain.' In delivering his decision on this state of facts, Mr. Justice Chitty referred to *Cochrane* v. *Moore*, where, he observed, 'Lord Justice Fry mentions a case which was decided in the reign of Edward IV. He says: "In Michaelmas term, 21 Edw. IV. pl. 27, fol. 55, it was said by Mr. Justice Brian that in detinue of chattels it was a good plea to say that the plaintiff after the bailment gave them to the defendant and then he could have his law—*quod fuit concessum*." Then his lordship says upon that case: "The case appears to go only to this—that if A. after bailing a chattel to B. then gives it to B., B. might defend himself by his suit in an action of detinue. If good law, it seems to establish that delivery first and gift afterwards is as effectual as a gift first and delivery afterwards." That case does appear to me to be an authority for that proposition. The Lord Justice cautiously avoids affirming the case, but he mentions it as a decision, and does not question the correctness of the decision. He leaves the case just as it is, neither denying nor affirming its authority. That case, then, which I consider as an authority, and which, sitting here, I ought to follow, is sufficient to establish the claim of the respondent to the property.' He then proceeded to refer to *Winter* v. *Winter*, 4 L. T. (N.S.) 639 [see s. c., 9 W. R. 747, and see the Irish case in 7 Ir. Jur. (N.S.) 107], and distinguished the well-known case of *Shower* v. *Pilck*, L. R. 4 Exch. 478. Without deciding whether the transaction that took place in October, 1879, amounted to a gift or not, he continued: 'But assuming that, by reason of some misunderstanding on the part of the respondent, there was not a final acceptance, or any acceptance of the gift which the testator intended to make upon that occasion, I can see no ground for doubting that what subsequently took place is sufficient, so far as words are concerned, to constitute a gift. The argument for the applicant is that there are no words of present gift in the letter. What the Court must see, where words are used which are alleged to be sufficient to constitute a gift, is, that in point of substance they are sufficient for the purpose alleged. It is not necessary to say, if one man hands a book to another, "I intend to make you a present; I give you that book." It is quite sufficient if the book is handed over and placed in the hands of the intended donee, the donor saying: "My dear sir, that book is yours." The testator says in his letter: "I have given you the picture." Assuming that it was not a gift perfected according to the somewhat refined argument I have been listening to, he goes on to say: "You will therefore retain it, of course, at More Hall." What more could be required? I will read it a little differently, thus: "I intended to make the gift of the picture in October; you seem to have misunderstood me, but you are to retain it." It is clear that, except upon the most subtle, and I think upon the most erroneous interpretation of the letter, if the picture had not been previously given, the intention to give, and sufficient words to show that intention to give, are to be found in the letter. The matter does not stay there, because the donee writes back a letter of thanks, and it is as plain as can be that he accepts it as a gift then made. The testator does not write back, because it would be unnecessary for him to continue the correspondence any more. He acquiesces entirely in the view presented to him by the letter of thanks that there has been a complete gift.' And that there had been a complete gift in point of law the learned judge unhesitatingly held accordingly.—*Irish Law Times.*

## LAW AND PROFESSIONAL NOTES.

By T. F. UTTLEY, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### THE LAW OF DISTRESS.

NOT long since a distraint occurred for arrears of rent on the stock of two persons (defendants in this case) trading as dog and bird fanciers in London city, and the bailiff used the usual formula as to distraining everything on the premises. The defendants immediately said that certain dogs on the premises belonged to private owners, that they were left there for the purpose of sale, and that they should remove them whether the bailiff liked or not. Repeatedly warned not to do so, as stock being under distress was in bailiff's custody, and their attention drawn to the note on distress notice and inventory, nevertheless some dogs were taken off. The bailiff, of course, obtained a summons under 11 Geo. II. c. 19, ss. 3, 4, which provides forfeiture to the landlord by the tenant, and any person wilfully and knowingly aiding and assisting in fraudulently conveying away, carrying off or concealing goods, of double the value of the goods carried off or concealed, and a proper provision for the recovery of the double value before justices of the peace. The defendants at the hearing admitted the removal, but contended the dogs could not be distrained upon because left to sell. The magistrates, however, overruled the contention, but dismissed the summons on the ground that, as defendants simultaneously with the making of the distress gave verbal notice that the dogs belonged to other persons, they did not fraudulently remove the goods to avoid distress. With the aid of such a decision as this, asks the *Estates Gazette*, what is now to prevent a tenant and any persons from notifying to a bailiff who is making a distress that such and such goods belong to M. L. & O., and then, if the tenant removes them, he will not be responsible to the law? Clearly, whether a removal takes place before or after a distress is levied, the intent ought to be considered the same.

### INSANITARY HOUSES.

The Housing of the Working Classes Act, 1890, s. 75, provides that in all contracts for letting for habitation by persons of the working classes there shall be implied a condition that the house is at the commencement of the holding in all respects reasonably fit for human habitation. This appears to place the tenant of a 20*l.* house on the same footing as regards sanitary condition as the tenant of an expensive hall; in fact, it may be said he is better protected, for at common law there is no warranty in the case of an unfurnished house that it is at all suitable for a dwelling-house, though, as many cases show, a stricter rule applies in the case of a furnished house. It has been pertinently suggested that the above clause might be well extended to all houses of whatever class, princely mansion as well as humble cottage, and independent of the amount of their rent.

### A PEOPLE'S MAGISTRATE.

A unique privilege is enjoyed by the inhabitants of the liberty of Havering-atte-Bower under an old charter of the liberty. They are entitled to elect a people's magistrate. The liberty bench consists of three magistrates—the high steward, who is appointed by the lord or lady of the manor; the deputy-steward, chosen by the high steward; and a third justice elected by the people. It is sought now, however, to merge the liberty in the county. At present, so far as judicial business is concerned, it constitutes a county in itself.

### CONSTITUTIONAL LAW.

Marked as are the contrasts between the English monarchy and the American Republic, the institutions of the English people on both sides of the Atlantic are in essence, though not in form, the same, and they stand in marked contrast with the institutions of France. In the United States, as in England, custom has the authority of law. The constitutional history of the United States is as obviously as the constitutional history of England the record of attempts to close political contests by means of treaties, such as the North American Constitution, Magna Charta, the Bill of Rights, and the Act of Settlement of 1700. Such is one of the conclusions drawn by Mr. E. Boutmey in his recent work, 'Studies in Constitutional Law: France, England, United States,' and which has been ably translated by Mr. E. M. Dicey, and an introduction given by Professor Dicey. 'The States created the American nation; it was certainly not the American people which created the States,' is one of Mr. Boutmey's apt sayings; but he also contends that the United States, 'as at present existing, are primarily a trading company and only secondarily a nation.' As to England and France, 'in France the nation is a single mass; in England it is an aggregate. In France the superior powers have all been created by the constitution; in England it is they who daily make and complete the constitution by the very action of their life and the natural play of the forces working in them.' The adoption of universal suffrage in America, it appears, was not merely to satisfy a speculative mind on the demands of natural justice; it was carried out chiefly in order to form a real premium on immigration. Mr. Boutmey states that his desire in publishing this work was to criticise and explain the constitutional ideas which govern the action of the English people in the light thrown upon them by a comparison with the ideas which have guided the constitution makers of France.

### THE CROWN AND THE PEOPLE.

The imposition of the coronation oath on the sovereign and the oath of allegiance on the subject imply that the Crown rests upon contract. If the sovereign, whether by birth or other cause, had an inherent right to the throne, then the engagement to rule in a certain way and the promise of obedience would be alike needless. It is true that throughout the history of England the hereditary principle has been often invoked, and has at times exercised a most weighty and even preponderating influence in the succession; yet it is equally true that the last word has always remained with the people, and the popular will has on many occasions asserted its rights by dissolving the compact with the sovereign and by snapping the succession altogether. As far back as the Saxon times the sovereigns were spoken of as 'elected' to the throne, and, as a matter of fact, Edward was made king in preference to the sons of King Edward; whilst Edgar's brother was still more pointedly subjected to the popular will, for he, after being on the throne, was deposed for his bad government. William the Conqueror, it is said, could not obtain 'willing acceptance from the nation until he had sworn,' &c. William Rufus was willing to swear to do certain things 'if the nation would accept him as king.' The chroniclers of Stephen's time declare that his claim to the throne 'would not have been accepted' if he had not consented to the bargain imposed upon him at his coronation. Richard I. seems to have been accepted by right of succession 'after the solemn and due election of both clergy and laity.' King John, at his coronation, was bluntly told by the archbishop that no one ought to succeed another on the throne 'unless chosen with one consent by the nation,' whereupon the king took the oath. Edward II. became king, we are told, not so much by hereditary right as by the unanimous consent of the nobles and magnates, who further enforced the principle of choice by deposing him again later on. When Edward III., his successor and son, was crowned, we are told that 'all the people consented

to the new election,' in much the same way as Richard II. was accepted and was afterwards formally dethroned by Parliament, the Duke of Lancaster being put in his place by the same power. Richard III. himself stated that 'he had become king by the consent of the three estates of the realm.' Even Henry VIII., not given to any unnecessary scruples, got sundry Acts of Parliament passed settling the crown on his different children, and Queen Elizabeth, on coming to the throne, admitted that 'she was elected by the consent of the nation.' The fate of Charles I. was a notable exhibition of the popular will, and the revolutionary character of that event does not make it less, but more so. William III. was placed on the throne by Parliament, and so too was the House of Brunswick. Do these incidents, it is asked, go to show that the English have accepted hereditary principles or not?

### COSTS IN POLICE CASES.

The provisions of section 8 of the Summary Jurisdiction Act, 1879, enact that where a fine inflicted by a Court of summary jurisdiction does not exceed 5*s.* an order shall not be made for payment of costs by the defendant, and all fees payable by the informant or already paid by him shall be remitted unless the Court thinks fit to order otherwise. The Court may, moreover, order the whole or any part of the fine to be applied towards the payment of the informant's costs. The non-imposition of costs is the course that should be ordinarily followed where the fine imposed is not more than 5*s.*, and an express order to the contrary should be made only when the justices have some special reason for so doing. In many Courts, however, the express order for the payment of costs is made as a matter of course, while the remission of the justices' clerk and the constables' foes is regarded as justifiable only in exceptional circumstances. The disproportion thus occasioned between the fine imposed and the costs payable by the defendant is very much to be deprecated, as apt to give rise to a complete misconception of the principles on which justice should be meted out to offenders. . . . The number of persons sent to prison for non-payment of sums of money, the greater part of which is made up of costs, ought not to be so large, for it is only a small proportion of the total that can properly be regarded as the penalty for the offence proved. In estimating the quantity of work done by a justices' clerk as one of the matters to be considered in determining the amount of salary to be paid to him, the amount of fees remitted ought always to be taken into account, no less than the amount of fees received. This imposition of heavy costs has grown out of the pernicious habit of basing the income of magistrates' clerks on the amount collected over a period of one or more years. It has been continued and developed for generations. In many petty sessional divisions it is the regular practice to visit drunkards of the accidental or occasional as distinct from the habitual and tippling class with a fine of 5*s.* and costs, the costs in hardly any case being less than double the amount of the fine. The scales of fees in boroughs are very much more moderate, simply because the magistrates' clerks' salaries are generally definitely fixed. This, then, is a matter that calls for the serious consideration of members of Parliament, county councillors, and county magistrates themselves. Many of whom have felt that, unless these excessive costs are inflicted, it would be unfair to their clerks, these gentlemen being paid on an average of what the Court yields. The burden is the greater and the more grievous, because in country districts defendants have often to travel miles to the Court and generally lose a day's wage. For ordinary drunk one bench have modified their '5*s.* and costs' (total 15*s.*) to '10*s.*, including costs.' It is a reduction of 33 per cent.; but it is not enough, and cannot be satisfactory until it is at least as low in amount as the fine generally inflicted by other stipendiaries in cities and boroughs and by borough magistrates—*e.g.* 5*s.* The following are fair samples of fines and costs inflicted in different parts of the country:—

| | Fines | Costs |
|---|---|---|
| *Boroughs.* | | |
| Boston | 1 0 | 3 6 |
| Northampton (including costs) | 7 0 | — |
| Stalybridge | 1 0 | 5 0 |
| Oldham (first offence, including costs) | 2 6 | — |
| „ (second offence, including costs) | 5 0 | — |
| Grantham (including costs) | 6 6 | — |
| *County Divisions.* | | |
| Ambleside | 5 0 | 9 0 |
| Bolton | 5 0 | 10 0 |
| Alfreton | 5 0 | 15 6 |
| Wigmore (Hereford) | 5 0 | 12 0 |
| Ingleton | 5 0 | 8 0 |

In one instance for a trivial offence a fine of 1*s.* was imposed, but when the man was about to pay the magistrates' clerk claimed the sum of 18*s.* 6*d.* as costs. Again, in school attendance cases, where the fine and costs must not exceed 5*s.*, it cannot be right to insist in every case on having the maximum sum, yet it is so in some places, while in other townships 2*s.* is an ample penalty, in others 1*s.* or 2*s.* 6*d.*

## UNCLAIMED MONEY JOTTINGS, SESSION 1891.

MR. SIDNEY H. PRESTON, of 1 Great College Street, Westminster, writes as follows:—

During the eventful Parliamentary session just closed some important questions have been asked in the House of Commons on the subject of unclaimed funds, and many interesting returns presented with reference thereto for public information. As these returns have but a very limited circulation, I venture to send you a short summary of them.

*Dormant Funds in Chancery.*—The Chancellor of the Exchequer, in his Budget speech, remarked that 'he had to provide another and quite unexpected 100,000*l.* in respect of successful claims on the dormant funds in Chancery. It was supposed that a large sum, amounting to 2,500,000*l.*, owing to suitors would never be claimed, and it was written off. Experience had proved that an increased spirit of research, assisted by those means of increased publicity which the day demands and receives, had enabled many suitors who, it was believed, would never claim, to make their claim.' It is a remarkable fact that the surplus interest of the suitors' moneys has been treated as a bankers' profit, and 1,000,000*l.*, part thereof, applied towards the erection of the Royal Courts of Justice. A return was issued showing the receipts and expenditure of the Paymaster-General in respect of these suitors' funds. The balances in Court on February 28, 1890, amounted to 71,203,035*l.* The total 'unclaimed,' however, is not stated. The number of suitors' accounts is now no less than 41,325, so it can be readily imagined that many sums become unclaimed owing to death, absence abroad, lunacy, &c.

*Unclaimed Dividends.*—In reply to a question as to further publicity of the unclaimed dividends on Government stocks, the Chancellor of the Exchequer did not see his way towards directing the official publication of the lists, although many families are interested without their knowledge in such unclaimed funds. A return presented by the Bank of England shows that on April 3, 1890, the dividends 'due and not demanded' amounted to £21,110*l.*; on July 4, 382,204*l.*; on October 3, 394,224*l.*;

and on January 2 last, 369,094*l.*—of which the greater portion was advanced to the Government till claimants appear.

The unclaimed dividends on colonial stocks amount to upwards of 150,000*l.*, and one beneficial result of the Colonial Conference of 1887 has been the preparation of a bill with reference to these forgotten moneys. A clause providing for the annual publication of the names and addresses of the stockholders and the amount unclaimed in each case would make this a really valuable measure.

*Estates reverting to the Crown.*—The 'Crown's Nominee Account' gives the receipts and expenditure of the Treasury solicitor during the year 1890 in respect of estates which fell to the Crown by reason of the owners thereof dying intestate without known heirs, or illegitimate, &c. The receipts from this source were 55,224*l.* In a schedule to this return a list of the intestates is given, with their addresses and descriptions. Since the passing of the Treasury Solicitor Act, 1876, the receipts have been no less than 1,562,922*l.* 6*s.* 1*d.*

*Army and Navy Prize Money.*—Further returns give statistics as to these funds. In reply to a question in the House of Commons as to whether part of the unclaimed army prize-money could not be appropriated towards the relief of the infirm veterans who served in the Crimean War, Mr. Stanhope could not see his way to adopt the suggestion.

The unclaimed naval prize-money amounts to 257,000*l.*

*Soldiers' Unclaimed Balances.*—By the Regimental Debts (Consolidation) Bill it was proposed to provide for the publication of lists of any surplus moneys due to the representatives of deceased soldiers. Should no claim be made after a period of six years, such funds to be applied towards the benefit of other soldiers' kin; such application, however, not to bar any subsequent claim. The amount of the 'soldiers' effects' fund is now no less than 93,206*l.* This fund represents the amount of the soldiers' unclaimed balances accumulated since 1863. As the only publicity these windfalls for soldiers' kin at present get is through the medium of the *London Gazette*, the amount unclaimed is yearly increasing. Newspaper publicity should surely be substituted for the old-fashioned *London Gazette* notification.

The Presumption of Life Limitation (Scotland) Act exacts that any person who has not been heard of for seven years or upwards may be assumed to be dead, and his heirs entitled to 'uplift and enjoy' his estate. Should, however, the absent person reappear within thirteen years he may demand and receive back his estate.

Other returns might be noticed, but I venture to think that the foregoing facts are sufficient to justify the publication of an annual list of all unclaimed funds as a Parliamentary return. Such a return would certainly be more widely read than most of the documents at present published.

THE NATURALISATION ACT.—During the past month thirty-nine certificates of naturalisation were granted to aliens by the Home Secretary, under the provisions of the Naturalisation Act, 1870. Of these aliens eighteen are described as coming from Russia, twelve from Germany, and one each from Bavaria, France, Greece, Holland, the Netherlands, Prussia, Roumania, Switzerland, and the United States of America.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d.* DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

MR. PARTRIDGE.—It is stated on most reliable authority that Mr. Partridge, who is next to the oldest metropolitan police magistrate, has, owing to failing health, decided to retire. He has been for twenty-eight years a magistrate, the greater part of which has been spent in the metropolis.

THE LAW OFFICERS' FEES.—A return has been issued to-day of the amount paid by the Treasury to the Attorney-General and Solicitor-General of England, and the Scotch and Irish law officers. From this it appears that the Attorney-General, in addition to his salary of 7,000*l.*, received as fees for contentious business in 1887-88, 4,655*l.*; 1888-89, 5,014*l.*; 1889-90, 2,179*l.*; 1890-91, 2,782*l.* The Solicitor-General received, in addition to his salary of 6,000*l.*, fees as follows: 1887-88, 3,779*l.*; 1888-89, 5,056*l.*; 1889-90, 2,300*l.*; 1890-91, 2,044*l.* The Lord-Advocate of Scotland received, in addition to his salary of 3,279*l.* 10*s.*, fees ranging for the year from 47*l.* to 89*l.* for non-contentious business, and from 137*l.* to 547*l.* for contentious business. The Solicitor-General for Scotland, with a salary of 955*l.*, received annually as fees for contentious business sums ranging from 135*l.* to 421*l.*, and for non-contentious business, from 19*l.* to 39*l.* The fees of the Attorney-General for Ireland, whose salary is 5,000*l.*, ranged from 989*l.* to 1,722*l.*; and those of the Solicitor-General for Ireland, whose salary is 2,000*l.*, ranged from 127*l.* to 789*l.*

## BIRTHS.

On Aug. 25, at 13 The Terrace, St. Helier's, Jersey, the wife of Ernest Le Sueur, of the Inner Temple, Barrister-at-Law, of a daughter.

On Aug. 28, at 78 Cambridge Terrace, Hyde Park, the wife of Ernest L. Levett, Q.C., of a daughter.

On Sept. 1, at Elmhurst, Eaton, Norwich, the wife of Charles Storey Gilman, Barrister-at-Law, of a daughter.

## MARRIAGES.

On Aug. 25, at the Church of St. Martin-in-the-Fields, London, Thomas Leathes Johnston, Solicitor, of Walkden, Lancashire, youngest son of Robert Henry Johnston, Esq., of Grantham, to Marian, youngest daughter of the late Rev. Alfred Gott Woolward, Rector of Belton, Grantham.

On Aug. 25, at the Parish Church, Twickenham, Geoffrey Stratford Crawshay, Solicitor, son of the late Edward Crawshay, of Othorpe Hall, Leicester, to Edith Alice, sister of Dr. A. W. Robinson, of Arragon Towers, Twickenham, and second daughter of the late William Arthur Robinson, Solicitor.

On Aug. 26, at the Standesamt, Wiesbaden, George Barnard Milbank Coore, Barrister-at-Law, youngest son of the late Henry Coore, of Scruton Hall, Yorkshire, to Augusta Fanny, youngest daughter of His Excellency General Von Schmeling, late H.P.M.'s First Guards.

On Aug. 27, at St. Bartholomew's Church, Ripponden, Edward Maurice Hill, of the Inner Temple, Barrister-at-Law, eldest son of G. Birkbeck Hill, Esq., D.C.L., of Oxford, to Susan Ellen Berta, fourth daughter of G. B. Hadwen, Esq., of Kabroyde, Halifax, Yorkshire.

On Aug. 27, at Drayton, St. Leonards, Alexander Coghill, of Welham, Shepton Montague, Somerset, and 19 St. Edmund's Terrace, Primrose Hill, Barrister-at-Law, only surviving son of Andrew Wylie, of Prenlaw, Fifeshire, to Adela Maude Mary Bigland, fifth daughter of Sir Henry de Burgh Lawson, Bart., of Gatherley Castle, Richmond, Yorkshire.

On Aug. 31, at Pirton, Herts, John Charles Bourne, son of the late Robert Hodgson Bourne, of Staindrop, in the county of Durham, Solicitor, to Anne Maria Lindsay Watson, daughter of the late John Watson, of Durham, Solicitor.

On Sept. 1, at Christ Church, Ealing, Edgar Vaux Huggett, M.A., Barrister-at-Law, to Alice Mary, third daughter of the late Rev. Henry Eastfield Bayly, Rector of Piddington, Somerset.

On Sept. 1, at St. Andrew's Church, Walsall, William J. Disturnal, B.A., LL.B., of the Inner Temple, Barrister-at-Law, eldest son of Thomas Disturnal, of Walsall, to Charlotte E., second daughter of Thomas Southern, of Bescot, Walsall.

## DEATH.

On Aug. 26, whilst bathing at Bervie, N.B., Alexander Clarke, of Colby House, Walton-on-Thames, and of 14 Serjeants' Inn, Fleet Street, Solicitor, aged 29.

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# The Law Journal.

*SATURDAY, SEPTEMBER* 12, 1891.


## 'OBITER DICTA.'

WE are glad this week to be able to record the convalescence of Mr. Justice Hawkins. The learned judge has been taking carriage exercise for some days, and leaves London on Saturday for the Continent.

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THE Queen's Printers have issued a list of the public Acts of the late session. They are seventy-six in number. The most bulky are the Statute Law Revision Act, the Stamp Act, and the Public Health London Act, the two first costing 1*s.* 1*d.* each, and the latter 1*s.* 2*d.* The most important, in addition to the Stamp Act and the Public Health London Act, are the Custody of Children Act, the Tithe Act, the Savings Banks Act, the Forged Transfers Act, the Elementary Education Act, the Factory and Workshop Act, the County Councils Elections Act, the Penal Servitude Act, the Stamp Duties Management Act, and the Mortmain and Charitable Uses Act, which may be had at prices ranging from 1*d.* to 3*d.* The nine Railway Rates (Provisional Orders) Acts do not make their appearance in the table, although it seems to have been provided by section 24, subsection 10 of the Railway and Traffic Act, 1888 (51 & 52 Vict. c. 25), that 'the Act of Parliament confirming any provisional order made under that section should be a public general Act.' Amongst minor Acts, those of special interest to the legal profession are the Commissioners for Oaths Act (54 & 55 Vict. c. 50), the Slander of Women Act, c. 51, and the Judicature Act, c. 50. The Slander of Women Act we have already noticed (*ante*, pp. 544, 557). The Judicature Act provides that an ex-Lord Chancellor may sit in the Court of Appeal, that any barrister of not less than fifteen years' standing may be appointed President of the Probate, &c., division upon any vacancy in that office, and that assessors may assist the House of Lords in the hearing of Admiralty appeals. The Commissioners for Oaths Act provides that declarations under the Merchant Shipping Acts, the Pawnbrokers Act, 1872, the Customs Act, 1876, or the Patents Act, 1883, may be made before a commissioner for oaths at any place.

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MR. POLAND, Q.C., who was recently interviewed by the representative of an evening contemporary upon the subject of the establishment of a Court of Criminal Appeal, is clearly of opinion that such a step is unnecessary. He pointed out that, in the course of his forty years' experience at the bar, he had not known of six proved cases of wrongful conviction, and he appears to think that, in regard to these very isolated cases, the right which at present exists of petitioning the Home Office is a sufficient safeguard for prisoners. Mr. Poland bears strong testimony to the careful and thorough manner in which such petitions are dealt with by the Home Secretary and his subordinates, and is of opinion that if prisoners were enabled, as was proposed by the Lord Chancellor's bill, to give evidence in their own behalf, the cry for a Court of Criminal Appeal would be much less heard. Coming from such an eminent criminal lawyer, these views, if not conclusive, are at least entitled to very great weight.

---

'A GOVERNOR OF A GAOL,' writing to the *Pall Mall Gazette* in connection with the presence of pressmen at the scaffold, states that the authority by which press representatives are admitted to executions rests with and is vested in the members of the visiting committee of the gaol, and adds that doubtless by courtesy the high sheriff's order would hold good, though 'he knows of no statute to that effect.' The only statute bearing on the subject is the Capital Punishment Amendment Act, 1868 (31 Vict. c. 24), which, in accordance with the report of the royal commission, of which the Duke of Richmond was chairman, substituted private for public executions. By section 3 of the Act 'the sheriff charged with the execution, and the gaoler, chaplain, and surgeon of the prison, and such other officers of the prison as the sheriff requires, *shall* be present at the execution;' and 'any justice of the peace for the county, borough, or other jurisdiction to which the prison belongs, and such relatives of the prisoner or other persons as it seems to the sheriff or the visiting justices of the prison proper to admit within the prison for the purpose, *may* also be present at the execution.' If the *ejusdem generis* rule

applies, the right of the sheriff or justices to admit representatives of the press seems doubtful, as they could not be taken to be of the same class with the relatives of the prisoner, attending as they do entirely in the public interest; and, considering that the public interest is represented by the coroner's jury (upon which, by section 5 of the Act, no officer of the prison may sit), it would seem to be quite sufficient if a *verbatim* report of the proceedings at the inquest only were allowed to be made public. Such sensational accounts of execution horrors as recently appeared in the columns of the *Pall Mall Gazette* are very greatly to be deprecated.

---

THE release of Hargan from Lewes gaol after twelve months' imprisonment recalls one of the most remarkable trials for manslaughter during recent years. The strong local feeling which was excited, and which found vent in physical violence as well as in the newspapers, the contradictory evidence at the various stages of the inquiry and trial, and the heavy sentence of twenty years' penal servitude passed by the judge on the prisoner, all combined to arouse public interest in a remarkable degree. A memorial from over 70,000 persons was sent to the Home Office, and Mr. Matthews certainly carried the feeling of the country with him when he reduced the sentence to the term of twelve months' imprisonment, which expired a few days ago.

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EASTBOURNE is still unhappy. The special constables sworn in for service last Sunday were selected, it would appear, without much discretion, and were themselves retained in what was practically the custody of the police. The Mayor of Eastbourne is not blamed for this new development, but a strongly-worded protest has been sent to him by the tradesmen, mechanics, and others who were sworn in. The fact that exceptional, and, happily, rare circumstances alone justify the employment of special constables, whether in London or the provinces, makes it of the highest importance that only suitable persons should be selected. To keep a number of citizens out of temptation to join in disorderly conduct, or out of harm's way, by swearing them in as special constables is, no doubt, a novel and original plan, but it cannot be recommended for general adoption.

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IT is in the main satisfactory when Courts of Justice interpret documents according to their literal meaning, without qualifications derived from the nature of the transactions of which they are the record. The decision of the House of Lords in *Smith* v. *Cooke* is a useful illustration of this principle. The House declined to read a clause into a deed which was not there simply on the ground that it was a creditor's deed. A deed of assignment was executed by a firm in favour of creditors and recited the inability of the firm to pay its debts. The deed assigned the business to trustees on trust to pay the profits and proceeds rateably among the creditors. There was also a clause enabling the trustees immediately to pay or make arrangements with creditors for less than 30*l.*, but no resulting trust was expressed in favour of the assignors. Mr. Justice Kekewich declined to imply such a trust, but he was reversed by the Court of Appeal. His decision, however, has been restored by their lordships, and the assignment is held to have been absolute. No doubt the primary object of a creditor's deed is to pay the creditors and to reserve the surplus, if any, for the benefit of the debtors. But the usual character of the class of deed to which a particular deed belongs ought not to be allowed to influence its construction. There has been some diversity in the practice of conveyancers, but it is perfectly easy to insert a resulting trust, and indeed one is often inserted. We are inclined to think that the majority of Chancery lawyers would have agreed with the Court of Appeal, but there can be no question of the salutary effect of a rigid and literal adherence to the words in which contracts are expressed.

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*Low* v. *Bouverie*, reported in the current number of the LAW JOURNAL, is a decision which will not bring comfort to mortgagees of trust property who make inquiries as to prior incumbrances on that property. The plaintiff lent money to a *cestui que trust* on the security of a life interest. He was authorised by the borrower to make inquiries of the trustees, of whom the defendant was one. He, therefore, asked specifically whether the life interest was in any way mortgaged. The reply was that a particular charge did exist, of which the nature and amount were specified. A further question was asked whether the trustee held any mortgage or knew of any incumbrance. The answer was that the trustee could not explain himself further, and that he held no mortgage but a certain charge for interest. Plaintiff thereupon advanced the money, which he lost, as it turned out that there were several other incumbrances. The lender then brought his action against the trustee, and Mr. Justice North made him liable for the loss sustained. It is clear that the decision went too far, as the liability could not exceed the surplus value of the life interest over the disclosed incumbrance. But the Court of Appeal reversed the decision, on the ground that it was no part of a trustee's duty to disclose incumbrances on the trust estate, and that there was no case of estoppel, fraud, breach of duty, or warranty. It is, no doubt, undesirable to make a trustee's position more onerous than it already is, but, at the same time, as the trustee must have forgotten and failed to look into his papers, there certainly was some culpable carelessness in his conduct. It is true there was no direct statement that there was no incumbrance, but it is questionable whether, with respect to facts which, if he did not at the moment know, he might have ascertained, a trustee or other person, if he undertakes to communicate knowledge, ought not to be bound to give accurate information. It is clear that *Derry* v. *Peek* largely affected the decision, because Lord Justice Lindley said: 'Until that case was decided, it was generally supposed to be settled in equity that liability was incurred by a person who carelessly, though honestly, made a false representation to another about to deal in a matter of business upon the faith of such representation.'

---

IT is not always an unmixed blessing to have one's land taken compulsorily for a public purpose. If the title is good, no doubt the price is also generally good; but if the title is only a ripening one, the transaction is

apt to disclose blots which time was rapidly hiding. *Gedye* v. *The Commissioners of Her Majesty's Works* (reported in the current number of the LAW JOURNAL REPORTS) is a very hard case of this character. Mr. Gedye bought a house in 1856, and his vendor stated that the title was derived under a long term of years, the commencement of which was unknown, but that in an old deed there was a recital that at Michaelmas, 1771, there were still 107 years to run. The vendor assigned all the estate and interest which he had to Gedye. No rent was ever paid by Gedye nor by his predecessors in title for many years. The commissioners requiring the house for the then projected Royal Courts, Gedye in 1866 sent an abstract of title to the solicitors of the commissioners. The solicitors discovered that the field on which the house and other adjoining houses were built were demised for a term of 300 years from June 24, 1578, at an annual rent of 5*l.* for the whole field. In these circumstances the commissioners declined to pay, and ultimately part of the money representing the value of the leasehold interest was paid to Gedye's assignee, and the remainder, the value of the reversion, was paid into Court to be accumulated for whoever should prove to be entitled. Twelve years after the expiration of the 300 years Gedye's assignee applied for payment of the fund in Court. His claim was rejected by Mr. Justice North, whose decision was affirmed by the Court of Appeal. Lord Justice Lindley observed that the applicant had not brought himself within section 79 of the Lands Clauses Act, which enacts that, when lands are in possession of persons as owners, they shall be deemed to be lawfully entitled until the contrary be proved. Surely if ever a lost grant is to be presumed it should be so in a case like this. In every civilised country adverse possession for a long period confers title. But it now appears that a case is possible in which the longer the possession the worse is the title. A hundred years ago the reversion in this case would have been practically valueless. But a deed is unearthed, like an implement of the Stone Age. There was nothing to show, said the Lord Justice, that some rent had not been paid in respect of the adjoining property. Very likely not; but who can prove a universal negative? The non-payment of rent for a long period ought to confer a title even against a lessor. One would think that if a vendor, even if his title began with a recital that there was some ancient lease to which the property was believed to be subject, could prove undisturbed possession without payment of rent for 100 years, the title would be a tolerably safe one. The present decision, however, shows that the title may in such a case have been steadily deteriorating, and the misplaced zeal of an antiquarian solicitor may dispossess a family of estates which it was imagined had acquired an ancestral character.

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A TRUSTEES' and Executors' Association is in the course of being formed. Its objects are the co-operation of trustees and executors of the United Kingdom with a view to remedy and, if possible, remove such liabilities and responsibilities of trusteeship as appear to press harshly and unjustly upon trustees, and to obtain such amendments of the existing law as may seem desirable. The association will assist, by advice, legal assistance, or money grants, cases of difficulty and hardship arising amongst its members, and a series of monthly meetings will be held by the association at which members will be invited to read papers and discuss matters connected with the objects of the association. 'A provisional committee of eight gentlemen' has been formed, and 'Mr. T. Bowden Green, Finsbury Circus, E.C., has been requested to act temporarily as secretary of the association.' So it has been stated in the *Times*, and we are not surprised that the unexpected failure of the Public Trustee Bill has called forth some action of this kind. That bill appears to have been cast far too much in the official mould no doubt, but some greater relief of trustees than has been provided by the Acts of 1888 and 1889 is very clearly called for. One reform, that of the moderate remuneration in some, though not in all, cases of trustees and executors, we have frequently advocated in these columns, and we hope that the new association will carefully consider it.

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IF any donor of a general power of appointment has any dislike to the execution of the power by a general devise or bequest contained in the donee's will, he can prevent such an execution in two ways. He can require the donee to refer to the power, or he can forbid the appointment to some unlikely person. The former device is clearly settled to be a successful one, and the latter will take its rise from the case of *In re Reynolds, Williams* v. *Mitchell* (Notes of Cases, vol. 26, p. 1128). Certain freeholds were settled upon trust for such person or persons, except her present husband or any friend or relative of his, as M. should by deed or will appoint. M. survived her husband, and made a general devise of her realty to certain persons. Was the property subject to the power included in this devise? The power which the famous section 27 of the Wills Act provides shall be exercised by the general devise is one which the testator can exercise 'in any manner he may think proper.' Obviously this was not such a power, inasmuch as the wife might have thought proper to appoint to a friend or relative of her deceased husband, but she could not do so under the terms of the settlement, and Mr. Justice Kekewich held that the power had not been exercised. The *ratio decidendi* of this case suggests that any exception to the complete generality of the objects of the power would prevent the operation of section 27. If, for instance, the donee could appoint to anyone in the wide world except the Emperor of China, although it is not probable that he should wish to appoint to that distant monarch, still he would not have the absolute control over the power which he would have had if that one exception had not been made, and presumably section 27 would not apply.

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THE Conveyancing and Law of Property Act Amendment Bill, by which Mr. Bolton and Mr. Warmington had proposed to mitigate the hardships to which lessees are occasionally exposed in connection with underletting, successfully passed the House of Commons, but met with a most singular reception in the House of Lords on the day before the prorogation. Lord Kimberley moved the second reading, which being agreed to, the House went at once into committee, and it seemed as if the bill was going to pass. When the third clause was reached, however, which provides that the common stipulation that the license to

assign or underlet is not to be unreasonably withheld, is to be read into all leases, and that no fine is to be exacted for granting the license to assign or underlet, Lord Salisbury intervened, and though he did not deny the existence of grievances in connection with leases, some of which ought to be remedied, declared that the House had no time to consider adequately a bill which would introduce very sweeping changes. The Lord Chancellor having delivered himself of the oracular statement that 'it had appeared to him that *certain provisions* of the bill would be useful and might safely be passed, but that he agreed *to a great extent* with the view of the circumstances expressed by the noble marquis,' Lord Salisbury moved to report progress. The motion was agreed to, the House resumed, and the bill was lost from sheer lack of time—to be reintroduced, of course, and carried in the next session. Meanwhile, those who advise lessees will do well to see that the still uncommon provision that no fine be exacted for a license to assign or underlet be inserted in leases, while those who advise lessors will do well not to object to the provision, unless the lease should be for a longer term than twenty-one years.

## DISCRETIONARY TRUSTS.

IN the third edition of his introduction to 'Conveyancing' (p. 304), Mr. Howard Elphinstone expressed his opinion that 'the free use of determinable life interests and discretionary trusts appears to be one of the most fertile fields for improvement in modern conveyancing.' Whether that improvement has taken place so as to satisfy that learned author it may be difficult to say, but certainly the use of that kind of trust is not infrequent where it is desired to save a man from himself and prevent him from anticipating his future income. In *In re Stanger; Moorsom* v. *Tate*, 60 Law J. Rep. Chanc. 326, the testator left his residue to trustees upon trusts for sale and conversion, and to hold the proceeds upon trust after his widow's death to pay and transfer a twentieth part thereof to W. and H. on trust to pay and apply all or any portion of the income or *corpus* of the same in or towards the support or maintenance or otherwise for the benefit of their brother R. in such manner and proportions in every respect and at such times as they should deem most conducive to his welfare. R. died before the testator's widow, and a summons was taken out on her death to determine (*inter alia*) if the one-twentieth had so vested in R. that it passed to his legal personal representative. Long ago, in *In re Sanderson's Will*, 26 Law J. Rep. Chanc. 804; 3 K. & J. 497, a somewhat similar question arose. There a testator gave all his real and personal estate to trustees upon trust yearly, and every year during his brother's life to pay and apply the whole or any part of the rents, issues, and profits of his real and personal estate and effects for and towards his maintenance, attendance, and comfort, giving him the use and enjoyment of his household goods and furniture, with gifts over. The brother was not altogether in a sound state of mind or capable of directing his own affairs, and a portion of the income was employed for his benefit. After his death the decision of the Court was required as to whom the surplus income belonged. Vice-Chancellor Page-Wood was of opinion that the brother was absolutely entitled to have everything necessary for his maintenance, attendance, and comfort, and that if during his lifetime he had filed a bill to have a sufficient part drawn out of that fund for those purposes, the trustees could not have claimed to exercise their own discretion in the matter, but, nevertheless, his representative could not claim the surplus of income not so applied. The Vice-Chancellor distinguished the class of cases to which the one before him belonged from another class that somewhat resembles it, though 'the precise line of demarcation is occasionally somewhat difficult to ascertain. If a gross sum be given, or if the whole income of the property be given, and a special purpose be assigned for that gift, this Court always regards the gift as absolute, and the purpose merely as the motive of the gift, and therefore holds that the gift takes effect as to the whole sum or the whole income, as the case may be.' Mr. Justice Chitty, in *In re Stanger*, held that the personal representative had no right to the fund. In the same volume of our current reports, p. 341, Mr. Justice Kekewich had another point to decide on the subject of this kind of trust in the case of *In re Bullock; Good* v. *Lickorish*. A testatrix directed certain persons to hold 15,000*l.* upon trust to invest and to pay the income to T. for life, or until he should become a bankrupt or a liquidating debtor, or cease to be entitled to receive such income, or any part thereof, for his own personal use or benefit by any means or for any purpose, and in the event of his becoming a bankrupt or a liquidating debtor or ceasing to be entitled as aforesaid, to pay to him or apply for his benefit during the remainder of his life, either the whole or so much and so much only of the said income as the trustees in their uncontrolled discretion thought fit, and subject as aforesaid the trustees were to hold capital and income as therein provided. After the testatrix's death interest was paid to T. up to July 16, 1890. In August, 1890, the trustees received notice that T. had charged all his interest in favour of certain solicitors. In October a receiving order was made against T., and the official receiver first claimed that T.'s interest should be paid to him, but afterwards withdrew that claim. The particular assignees urged that they were entitled to the income which had accrued before the date of their notice, as the assignment was not complete till then. Mr. Justice Kekewich held that as between assignor and assignees the charge was perfect when it was given, and therefore T.'s interest ceased from that moment. The object of the notice is to protect third parties, who can inquire of the trustees as to what notices the latter have hitherto received, before they take an assignment. It is not to destroy the rights of the assignees further than is necessary to protect third parties. Thus the real point for decision was, could the trustees in any way benefit T. or were the persons entitled in remainder the proper persons to receive the capital and income alone? In most of these discretionary trusts the other objects of the testator's or settlor's bounty are made objects of the discretionary trust as well as the person whose act has caused his direct interest to cease. Mr. Elphinstone, in the work referred to above (p. 303), speaks of the importance of extending 'the class of objects of the discretionary trust somewhat wide, for if, as sometimes happens, owing to misunderstanding the object of the clause, it is restricted to the husband, the intended wife, and his children by her, it may fail.' The learned writer proceeds to explain that, if the wife and children were to die, the husband would be the sole object of the trust, 'and the protection to him would partially fail, for

even supposing that the trustees could, after he had assigned his life interest or had been made a bankrupt and had not received his discharge, safely apply any money for his benefit, still his assignees or the trustees in bankruptcy might be able to recover from him any moneys paid to him by the trustees.' Mr. Justice Kekewich held that, though T. was the sole object of the discretionary trust, the trustees could still apply income for his benefit. 'The assignment in this case,' said his lordship, 'called the discretionary power of the trustees into operation, and it would be a contradiction to hold that the power is inoperative just when it was intended to be exercised. What the trustees, in the exercise of their discretion, do not from time to time think fit to apply for the benefit of' T. 'goes, by the words of the will, to those entitled under the gift over; but they take only this overplus, and cannot claim what the trustees determine to apply.' The trustees could not, however, pay the income straight to T., as that 'would be to make a payment in derogation of the overriding title of the trustee in bankruptcy, and therefore a wrongful payment, which would be no discharge to the trustees of the will, and would render them accountable to the trustee in bankruptcy.'

## ENGLISH *CAUSES CÉLÈBRES*.—IV.

### REGINA *v.* MACNAGHTEN.*

THE criminal law of England contains no chapter more worthy of careful and critical study than that which deals with the 'Rules in *Macnaghten's Case*.'

The criminal responsibility of the insane has been determined by three distinct tests or criteria at different periods in the history of English law: (1) In *Regina* v. *Arnold*, 16 St. Tr. 764, it was actually laid down that in order to be exempted from punishment a man must be totally deprived of his understanding and memory, and as ignorant of what he is doing as an infant, a brute or a wild beast. This is sometimes called 'the wild-beast theory,' and the equivocal honour of having promulgated it belongs to Mr. Justice Tracy. It should be remembered, however, in fairness to this much-abused judge, that contemporary medical opinion practically recognised no other forms of mental disease than idiocy, mania, and dementia, and that contemporary asylum treatment speedily and surely converted hysteria, eccentricity, and other transient or trivial types of mental disorder into violent and incurable madness. (2) In *Regina* v. *Bellingham*, Lord Mansfield formulated a second test, known as 'the abstract *right* and *wrong* theory.' According to this new light, the proper subject for judicial inquiry was whether the prisoner, at the time of committing the act in question, was able to distinguish *generally* between right and wrong. The objections to this theory were decisive. No legal tribunal could determine with accuracy whether a prisoner *did* know the difference between right and wrong *in the abstract*; and even if this point could be satisfactorily settled, the question of his responsibility for the particular act under investigation was as far away as ever from being solved. The judges of the day found themselves face to face with a type of lunatic (unknown to their predecessors) whose general notions of right and wrong were perfectly clear and correct, and who, nevertheless, committed acts forbidden alike by morality and by law under a fixed belief that his conduct was not only pardonable but positively meritorious. It might well be that such persons deserved punishment, but it was certain that the existing law offered no guidance as to the principles on which their punishment should be based.* (3) The third, and (at least nominally) the existing criterion of responsibility in mental disease was adopted in 1843. In that year Daniel Macnaghten was tried before Chief Justice Tindal and a jury on a charge of having murdered Mr. Drummond, whom he shot by mistake for Sir Robert Peel, to whom the unfortunate gentleman was private secretary, and towards whom Macnaghten bore an insane grudge. The prisoner was defended with consummate ability by Mr. A. E. Cockburn, afterwards Attorney-General and Lord Chief Justice of England, and although he knew 'the difference between right and wrong,' and ought certainly to have been hanged according to the law laid down in *Rex* v. *Bellingham*, the jury returned a verdict of 'Not guilty.' Thereupon the House of Lords propounded certain questions to the judges as to the plea of insanity, and the answers of the judges to these questions are called the 'Rules in *Macnaghten's Case*.' In substance they are as follows: (*a*) Every man is presumed to be sane till the contrary is proved. (*b*) To establish a defence of insanity it must be clearly proved that at the time of committing the act in question the accused was labouring under such a defect of reason as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing wrong. (*c*) An insane delusion is a defence to a criminal charge only when the imaginary facts would, if really existent, be a legal justification. The 'Rules in *Macnaghten's Case*' have had an eventful history. Hardly had they been formulated when they were literally riddled by medical criticism. Dr. Maudsley, in a very able, though somewhat truculent, essay on 'Responsibility in Mental Disease,' pointed out the absurdity of expecting a lunatic to reason *sanely* about his delusions. Authentic cases were recorded of persons whose *volitional* powers alone were affected, and who were yet undoubtedly insane. The French theory of moral insanity in all its Protean forms invaded England, and, in spite of judicial denunciation and opposition, steadily gained ground. Even the legal profession failed to defend the answers of the judges. Sir James Stephen, in a brilliant paper on the subject (now unhappily forgotten), treated them as Dr. Newman treated the Thirty-nine Articles. He tested 'their elasticity,' and argued that they might be so construed as to protect even the victims of 'irresistible impulses,' to whom, we may be sure, the grim school of Maule had no thoughts of showing mercy. Other critics, equally bold, contended that the rules were not really 'law,' but were simply *obiter dicta*, and that the only *legal* test of responsibility in mental disease was the charge of Lord Kenyon in *R. v. Hadfield*. American and Continental lawyers set the 'Rules in *Macnaghten's Case*' contemptuously aside. English juries defied them. Many English judges 'manipulated' them, and one, at least, boasted of having done so. The present position of the 'Rules in *Macnaghten's Case*' is somewhat peculiar. They are still nominally law. Some of the judges administer them. But the legal profession is now as keenly alive as the medical to their shortcomings—their absurd view of the nature of

* 1843, 10 Cl. & F. 200; 1 C. & K. 130.

* 'Handbook of English Law' (Hodder & Stoughton), p. 126.

delusions, and their ostrichlike blindness to the existence of insanity of the will; they run counter to the current which *Banks* v. *Goodfellow* set flowing, and they will certainly not be incorporated in their entirety into our coming Code of Criminal Law.

(*To be continued.*)

# Reviews.

## FOA ON LANDLORD AND TENANT.

*The Relationship of Landlord and Tenant.* By Edgar Foa, Barrister-at-Law. London: Stevens & Haynes. 1891.

Mr. Foa has struck out a line of his own, and in point of arrangement has produced a work of some originality. His method of treatment is to divide the subject into two parts, the first dealing with the creation of the relationship of landlord and tenant, and the second with its determination. Each part is again subdivided into two books, treating respectively of the modes and incidents of the creation of the tenancies and of the modes and incidents of their determination. The author does not claim for this classification that it is scientific, but adopts it rather on the ground of convenience, as presenting the whole subject in a symmetrical form. In point of style, the book is clear in expression and not unnecessarily prolix in statement. Every proposition is backed up by authority, and the work, as a whole, is entitled to be regarded as a compendium of the law upon the subject. The index is full and reliable, and in the Table of Cases references are given to all the reports together with the dates of the decisions. The volume is well printed and remarkably handy in size.

# Unreported Cases.

## COUNTY COURT.

### STOLEN GOODS AT AUCTION SALES.

A case of considerable importance to persons attending sales by auction came on for hearing at the Croydon Court on September 8, when Messrs. Bradbury & Co. (Lim.), of High Holborn, sought to recover from a bootmaker named Heathman, carrying on business at Aldershot, a sewing-machine, valued at nine guineas, which had come into the defendant's possession under peculiar circumstances. On September 6, 1889, the plaintiffs sold to one Dunn the machine in question on the hire-purchase system, to be paid for by weekly instalments of 2*s.* 6*d.* After paying 2*l.* 1*s.*, Dunn, on April 7 last, took the machine to Messrs. Aldridge's auction-rooms at South Norwood, where it was sold on the following night to the defendant Heathman. About a month since, Messrs. Bradbury, at the Croydon Petty Sessions, prosecuted Dunn for the theft of the machine, and he was sentenced to a month's imprisonment with hard labour. Heathman now brought the machine into Court, and explained that he had made Messrs. Aldridge co-defendants with him, because he considered they were responsible.—The judge: A very unwise step, for you are throwing good money after bad, having to pay their costs.—Mr. Frank Aldridge having stated that Dunn represented the machine to be his own property, the judge made an order on Heathman for its delivery to the plaintiff.—Defendant: Have I any claim against Messrs. Aldridge?—His Honour: I am not going to advise you. You will deliver the machine at once.—Defendant: It is very hard on me. When you go to a public sale and buy anything under the hammer you naturally think it is all right.—His Honour: I agree it is rather hard luck, but I have to administer the law. You have been very ill-advised in this matter.

## CONSISTORY COURT OF LONDON.

### FACULTY FOR THROWING CHURCHYARD INTO ROADWAY.

At a sitting of this Court held on August 17 in St. Paul's Cathedral, before Dr. Tristram, Q.C., Chancellor of the diocese of London, the case of *St. Botolph, Aldgate*, was heard. Mr. Atlay said that he appeared on behalf of the vicar and churchwardens of St. Botolph, Aldgate, and the Commissioners of Sewers of the City of London. The matter had been before the Court on previous occasions. The Commissioners of Sewers were engaged in widening certain thoroughfares on which the churchyard of St. Botolph abutted, and they applied to the Court to grant a faculty under which certain portions of the churchyard might be thrown into the roadway. That faculty was issued on August 20, 1890. One of the most important points in the application related to the disposal of any human remains which might be found during the work. At the time of the application he was instructed that such remains would not be found in any considerable quantity, and one condition on which a faculty was asked for was that any bones which might be found should be removed, with due care and decency, to the City of London Cemetery at Ilford and there re-interred. The decision of the Court, however, as conveyed in the faculty, was that it would be better to reinter the bones in a vault in the churchyard. The works were proceeded with, and it was found that a very large quantity of human remains were in the ground, according to his information no fewer than thirty-nine coffins and 123 large chests being full of them. It was, therefore, felt that much difficulty would be encountered in the construction of a vault in any part of the churchyard which would be large enough to contain all these remains. It was feared, also, that the sinking of so large a vault would endanger the foundations of the church, and that in the course of the construction other human remains would necessarily be disturbed, and a difficulty would then arise as to their disposal. Accordingly, in February of the present year, a further application was made to the Court, and a faculty was granted by which, instead of ordering the erection of a vault outside the church, it was decreed that the remains should be deposited in the vaults underneath the church. In accordance with the terms of the amended faculty of February, 1891, the coffins had been removed, and had been placed in a vault on the west side of the church underneath the tower, and had then been sealed up, while the rest of the bones had been deposited in the crypt under the north aisle, but the communications with the vault and the rest of the church had not been sealed up. That was the present state of affairs, and this application was founded on apprehensions, which had been confirmed by Dr. Sedgwick Saunders, the medical officer of health for the City, as to the danger which might arise to the health of the worshippers and the neighbourhood generally from any effluvium which might emanate from these remains.—The Chancellor inquired whether the learned counsel was instructed that any effluvium which might escape could not be prevented by the use of concrete or cement, or something of the kind.—Mr. Atlay replied in the affirmative. He was, he said, in the difficulty of being unable to call Dr. Saunders, who had made a report on the subject, and Dr. Hofmann, of the Home Office, whose opinion was en-

titled to great weight, owing to their being away from town. —The Chancellor observed that the proposition laid before him would seem to involve the removal of all the bodies now lying in St. Paul's Cathedral and Westminster Abbey. There was a difference with regard to the boxes of bones underneath the church and the boxes underneath the tower. The coffins under the tower were discovered in vaults, and for those vaults very large sums must have been paid by the relatives of the dead, while, in addition, the faculty which it was necessary to obtain for burial in the church would cost about 90*l*. The practice of the Court where, in case of alteration in a churchyard, it became necessary to remove a vault, was to grant a faculty ordering the construction of new vaults, and the removal of the remains under the direction of the family concerned. The application of the learned counsel was that not only the boxes of bones, but the coffins should be removed to the cemetery. There was no precedent for such an application. The Court had jurisdiction to order the removal of coffins from a consecrated churchyard to another consecrated churchyard on the application of the relations of the dead, but there was no case where the Court had ordered the removal without the application of the relatives. He understood, however, that there was some difficulty with regard to the Sewers' Act.—Mr. Atlay said that that was the case. That Act, in fact, seemed to him almost to contemplate the application he was making, for it seemed to give power to do what was asked subject to the consent of the Bishop of London.—The Chancellor said that the Bishop of London always acted through the Court in every such matter, and his attention was not called to the section of the Act on the previous occasion.—Mr. Atlay said that that was so. He was of opinion that the Court had full power to do what was then asked, and therefore he did not bring it forward. He contended that under that Act the Court had full power to do what he now asked, while the facts of the case rendered it highly desirable that that discretionary power should be exercised. He tendered as evidence in support of his case the report of Dr. Saunders, the medical officer of health of the City of London.—The Chancellor observed that he should like to hear one of the churchwardens, who, he understood, was a medical man, on the subject. He might mention that during the 19 years he had sat in that Court he had repeatedly heard it stated by medical men, and architects and surveyors as well, that if the flooring of a crypt were properly concreted, the concrete would prevent any effluvium from arising from the bodies beneath, and it struck him that the report of Dr. Saunders was at variance with that evidence. He should have liked to see Dr. Saunders, so as to ask him whether he could not devise some means of preventing effluvia arising. It occurred to him when he made the order that such a plan as he had referred to made it practically safe for him to take that course. He thought that the section of the Act of Parliament to which he had been referred gave him the power to order the removal of these bodies to a cemetery, but at the same time he doubted whether he should be within the rights of the Court in ordering the coffins found in the vaults to be so removed. The Court was in great difficulty with regard to that matter on the evidence presented to it, and he should like to hear Dr. Cotman's view on the subject.—Dr. Cotman then deposed that he was one of the churchwardens of St. Botolph, and was quite prepared to consent to the removal of the remains in question to Ilford Cemetery. He was constantly in the vaults while the remains were being removed. He observed no effluvium whatever from them. In fact they were perfectly dry bones. It did not occur to him that the least danger could possibly arise from their being placed in a vault under the church, especially if it were properly concreted or cemented. Such a step as that was not even necessary, for the bones were as clean and dry as any that might be seen in an anatomical museum. He was present also when forty-one coffins were taken out of a vault. He went into the vault before they were removed, and perceived no effluvium. The vault under the porch of the church was now bricked up, and the entrance completely covered with cement, which prevented any effluvium rising. He did not consider that there was any danger to the congregation from the boxes of bones being placed under the north aisle. He thought it desirable, however, that the coffins should be walled in. His evidence was general in its character. He was not a specialist.—The Chancellor intimated that he should like to hear further evidence on the subject. In the meantime it would be desirable to keep the coffins bricked up, and reserve leave to apply for a faculty to remove them. There was less difficulty in dealing with the bones than with the remains taken from the vaults.—Mr. Atlay asked whether the Court would grant a faculty for the removal of the boxes of bones, and adjourn the question of the removal of the other remains until October, so that Dr. Saunders might be heard.—The Chancellor said that he should require much more evidence than that, because he was bound to protect the persons whose friends had been buried there. If he was bound to order the removal of the coffins, then the Home Office would have to call upon the dean and chapter of St. Paul's and Westminster Abbey to remove all the coffins within those walls. He ordered the bones to be placed under the north aisle, with the sanction of the Commissioners of Sewers, and on the evidence that they were innocuous. He believed that he had power to order their removal to Ilford Cemetery, but he did not think it was necessary that he should make that order.—After some further argument, Dr. Coleman admitted that Dr. Hofmann had expressed the opinion that the remains ought to be removed to Ilford, and that concrete would not keep out effluvia. He, however, maintained that there was no effluvium; but Dr. Hofmann said that there must be. He did not think the removal necessary, but would not oppose it. —The Chancellor, in giving his decision, said that in this case the vicar and churchwardens and the vote of the vestry were in favour of the removal of these boxes to a consecrated portion of Ilford Cemetery, and Dr. Hofmann thought it would be advisable, and the Court had power to make the order. The Court was not satisfied with the evidence that it was essential to the health of the persons attending the church that the order should be made, and the proposition of Dr. Hofmann was at variance with the evidence of scientific medical men, architects, and surveyors, which had repeatedly been given during the past nineteen years upon the subject, and upon which the Court had felt it to be its duty to act. But the Court had jurisdiction by faculty to order the removal of bodies from one churchyard to another on the application of the relatives of the dead, and frequently made orders to that effect. In this case it was to be done by consent. The bodies which were buried in the churchyard were placed under the jurisdiction of the Court, and were entitled to its protection. He would communicate with the Bishop of London on the matter, and he thought that the Court would make an order, but the faculty must remain in the registry for fifteen days, and must not be acted upon during that period. That was in accordance with the practice, so as to give any person who might be dissatisfied with the order an opportunity of appearing before the Court. With regard to the coffins found in the vault he gave leave to move for a new trial. He adjourned the consideration of that question, observing that, in the interest of the public and of the families of the dead, he should require further evidence of the proposition which had been brought forward for the first time in any Ecclesiastical Court in the kingdom.

## WRECK INQUIRY COURT.

COLLISION—SAILING VESSEL.

On September 2, 3, and 4, before Mr. R. H. B. Marsham, with Admiral Grant, Captain Ronaldson, and Captain Bragg as assessors, the case of The Godmunding and The Lorma was heard. This was an inquiry ordered by the Board of Trade into the circumstances of a collision which occurred off Dover at about midnight on July 30 last between the Norwegian schooner Lorma and the steamship Godmunding, of London. The sailing vessel immediately foundered, and seven of her crew were drowned.—Mr. M'Connell, in his opening statement, said that this collision occurred near the South Foreland, and unfortunately resulted in the loss of the whole of the crew of the sailing vessel, with the exception of her carpenter. The Godmunding was an iron screw steamship of 1,263 tons, built at Blyth in 1888, registered at the Port of London, and owned by Messrs. John Cory & Sons, of Cardiff. She left Sundswall, in Sweden, on July 24 last with a cargo of 1,600 tons of timber, and a crew of seventeen hands, bound for Bordeaux. The Lorma was a Norwegian schooner owned by Mr. Ole Kittlesen, of Grimstadt. She left Liverpool on July 24 last with a cargo of about 200 tons of salt, and a crew of eight hands all told, bound for Copenhagen. Both vessels proceeded on their respective voyages, and all went well until the evening of July 30, when they were in the Straits of Dover. The only survivor from the Lorma was below at the time of the casualty, and the evidence as to the circumstances of the collision would, therefore, be entirely from the crew of the steamer. The statement of the carpenter of the Lorma was that he went below at about 8.15, and that his ship was then under full sail beating up channel, and that the side-lights were in their places and burning properly. At about 11.45 P.M. he was awakened by hearing the mate hailing a steamer, and the collision occurred almost immediately afterwards. He at once ran on deck, when he found his vessel was sinking, and she went down head foremost. He kept himself afloat by clinging to some wreckage, and was ultimately picked up by a fishing boat. The rest of the crew were all drowned. Stated generally, the account given by the witnesses from the steamer was that they saw the green light of a sailing vessel at a distance of a mile or a mile and a half, and that when the two ships were within four or five lengths of each other the Lorma shut in her green and opened her red light. The helm of the Godmunding was starboarded and her speed slackened, but the collision took place, with the consequences stated.—Johannes Jensen, the carpenter of the Lorma, said that he was awakened shortly before midnight by hearing the mate shouting 'Steamer, ahoy,' and very shortly afterwards he felt the shock of the collision. He at once rushed on deck, but the Lorma foundered almost immediately. He was in the water clinging to a boom for about two hours, and was ultimately picked up by a boat, which landed him at Dover.—By Mr. Kennedy: The whole of the schooner's sails were set, including the royals and fore and aft sails. The side lights were carried seven or eight feet forward of the mizzen rigging on stanchions which projected about two feet and a half outside the rail or bulwarks. There were no compartments in the ship, only one long hold. When he reached the deck after the collision he saw the steamer going away from them, and the bows of the Lorma were then under water. He did not then see anything of the other members of the crew.—By Mr. Pyke: No part of the sails interfered in any way with the side lights being seen from ahead.—Captain Jones, the master of the Godmunding, said that they passed the South Foreland shortly before midnight on July 30. The wind was north-west, and it was a good night for seeing lights. At about five or ten minutes before twelve he went below to the chart room, leaving the chief officer in charge. He returned to the bridge shortly before twelve, when the chief mate called his attention to a green light about a point on the starboard bow and from half to three-quarters of a mile distant. It was the light of a sailing vessel, which proved to be the Lorma. The mate also said that he had starboarded a point before witness returned to the bridge. The two vessels were then in position to pass clear, starboard side to starboard side, but when the Lorma was only three or four ships' lengths distant she suddenly shut in her green and opened her red light. Witness immediately ordered the steamer's helm hard a starboard and put the engines full speed astern, but a collision was then inevitable. The schooner forced herself right under the steamer's bows. He heard no hailing before the collision. He at once ordered the boats to be got out and two boats were lowered into the water within a few minutes.—Edwin Bevan, the chief officer of the Godmunding, who corroborated the evidence of the captain, said that when he first saw the green light of the Lorma it was a mile and a half or two miles distant. The collision was entirely due to the sailing vessel improperly porting.—The Court found that the Godmunding was supplied with boats and life-saving apparatus in compliance with the Life-Saving Appliances Act, 1888. The Godmunding complied with article 3 of the regulations for preventing collisions at sea, as her lights were good and sufficient, but she did not comply with either article 17 or 18, in respect to article 17 by not keeping out of the way of the sailing ship, and with regard to article 18 by not stopping or slackening her speed and reversing her engines before the collision was inevitable. The Lorma did comply with article 6, and the Court could only conjecture from the evidence before it that she did not alter her course, and that if she did it was only at the last moment. The master of the Godmunding having stated that he saw the Lorma when from half to three-quarters of a mile distant, and the look-out man having reported her light fifteen minutes before the collision, it could not be said that a good and proper look-out was not kept on board the steamer. The cause of the collision was the unseamanlike handling of the Godmunding in not taking proper precautions to avoid the Lorma when it was seen that her green light was not altering its bearing. The Court was satisfied that all reasonable efforts were made by those on board the Godmunding to save life. The Godmunding was not navigated with proper and seamanlike care. The Court found the master of the Godmunding in default, and suspended his certificate for six months. Although under the circumstances the Court did not deal with the chief mate's certificate, it considered that he should be censured for not having taken earlier steps to keep out of the way of the Lorma when he was in charge of the steamer.—In answer to Mr. Pritchard, Mr. Marsham said that the Court would recommend the Board of Trade to grant the captain a first mate's certificate during the period of suspension.—Mr. M'Connell appeared for the Solicitor to the Board of Trade (Mr. W. Murton); Mr. W. R. Kennedy, Q.C., and Mr. A. Pritchard for the owners, master, and mate of the Godmunding; and Mr. L. E. Pyke for the owners of the Lorma.

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THE SHARP *v.* WAKEFIELD CASE.—It is understood that Sir Wilfrid Lawson and Mr. James Cropper have obtained subscriptions from temperance friends more than enough to meet the costs incurred by the justices in defending their decision in this celebrated licensing case. A circular has been forwarded to the subscribers congratulating them on the fact that the *Sharp* v. *Wakefield* decision has established once for all the legality of magisterial discretion.

## CAPITAL PUNISHMENT.

THE following correspondence has appeared in the *Times*:—

Sir,—Why Lord Grimthorpe should think it necessary to introduce so many personalities into a discussion on capital punishment I cannot understand. He accuses Mr. Tallack of getting angry, and in this reminds me of Sir Anthony Absolute with his 'None of your passion, sir, none of your violence!' and 'So, you will fly out; why can't you keep cool like me?' All the passion is on Lord Grimthorpe's side, and, to use his elegant phrase, he tries to give 'one for his nob' to all whose names have been mentioned, both living and dead. To sneer at my late father, as eminent a man as himself, quite as well acquainted with the subject, and, I may say, no more given to forcible language than his lordship, is now, unhappily, a safe amusement for him. With the suavity of his manners and the judicial calm of his assertions he is, of course, well qualified to criticise the manners of those who have at any time vigorously opposed his antique opinions. There is no reason that I know of why anyone, unless, indeed, it be Lord Grimthorpe, should not be able to discuss the question without personalities, flippancy, or anger.

The opponents of capital punishment object to it, I take it, on four grounds:—

1. That it does not deter from murder.
2. That through taking human life it diminishes rather than increases the belief as to its sanctity.
3. That the prospect of the death penalty often prevents the (perhaps illogical) juryman from convicting when a conviction would be just.
4. That in some cases the terrible calamity of the execution of an innocent person has taken place.

Surely all these points are capable of dispassionate argument by anyone but Lord Grimthorpe.

Yours, &c., JOHN A. BRIGHT.

One Ash, Rochdale: Sept. 6.

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Sir,—Having had during my past life to prepare five men within three years for execution, I wish to protest against that false sentimentality which would represent them as having been 'hurried into eternity unprepared,' and which, in the words of the late Lord John Russell, quoted by Mr. Tallack in the *Times* of to-day, would plead for the commutation of the murderer's sentence into penal servitude for life 'in order that time and opportunity may be given them to turn repentant to the Throne of Mercy.'

Not counting the time between committal and sentence, often extending over months rather than weeks—time spent in solitude, and with such visits and books as are favourable to calm reflection—murderers after condemnation have more than three times the notice of approaching death that the average ordinary mortals have. During the whole of that time every means of grace is afforded them in the religion they profess, and, so far as preparation for eternity is concerned, they are *felices opportunitate mortis*. The experience of all the prison chaplains I have ever known has corresponded with mine, that such men usually die with as much true penitence as their natures, morally and intellectually disordered, are capable of feeling, and with good hopes surely grounded of having found forgiveness. On the other hand, to prolong their lives, henceforth useless to society, amidst the association of cold-blooded criminals and perfunctory warders, is to damn their souls to gradual petrifaction and to the hardness of the nether millstone, and to put them, humanly speaking, outside the probabilities of repentance whilst on earth.

Yours obediently,

Sidcup: Sept. 4. AN EX-CHAPLAIN OF PRISONS.

Sir,—If Mr. J. A. Bright really meant to help Mr. Tallack, who justly complains of being left in the lurch, he had better have tried to supply some proofs of what he 'takes to be the four grounds' of the Murderers' Protection Society—if there is one surviving. Stating them again at the end of a controversy is doing less than nothing; and the 'gaol chaplain' has completely disposed of one of them.

But just for curiosity I should like to know what authority they profess to have for their favourite bit of cant, 'the sanctity of human life,' except the very one which was intended to protect it for all time by condemning murderers to execution. Everybody knows what murder means, and nobody knows what such phrases mean as 'the sanctity of human life.'

It was Mr. Tallack, and not I, who introduced Mr. J. A. Bright's father; and I am not aware that men acquire either sanctity or authority in controversies by dying. I have not the least objection to his saying that 'John Bright was no more given to forcible language than I am;' and certainly he was no less, nor distributed his forces over a smaller area. Nor do I see that his sagacity or farsightedness were proved by his tardy discovery that he had been for years exerting his forces in supporting the worship of a false idol, though I respect him for confessing it while a good many of his friends stuck to their Dagon, and want to set him on legs once more.

I promised to reply no more to Mr. Tallack, and will keep my promise, especially as he had nothing to say beyond quoting a couple of unmeaning phrases, and he seems, after all, to think I have done well in following my own judgment here instead of that of a set of noodles who expected to be my 'popes' at my expense and not theirs.

Yours obediently,

St. Albans: September 8. GRIMTHORPE.

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## BOOKS RECEIVED FOR REVIEW.

ELEMENTARY Education Act, 1891 (The). Introduction and Notes. By A. Ernest Steinthal, Barrister-at-Law. London: Sweet & Maxwell (Lim.); Manchester: Meredith, Ray & Littler.

Index to the Statutory Rules and Orders in Force on January 1, 1891. Published by Authority. London: Eyre & Spottiswoode. Edinburgh and Glasgow: John Menzies & Co. Dublin: Hodges, Figgis & Co. 1891.

Treatise on the Power and Duty of an Arbitrator, and the Law of Submission and Awards (A). With an Appendix of Forms and of the Statutes relating to Arbitration. By Francis Russell, M.A., and Herbert Russell, B.A., Barristers-at-Law. London: Stevens & Son (Lim.); Sweet & Maxwell (Lim.).

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## HONOURS AND APPOINTMENTS.

MR. CHARLES GREENWOOD, solicitor (firm of Nye, Greenwood & Moreton), vestry clerk of the parish of Christ Church, Southwark, steward of the manor of Old Paris Garden, was on September 3 elected Steward to Edward Edwards Charity (admitted under a scheme of the Charity Commissioners), the post having recently become vacant by the death of Mr. Ferdinand Grat.

Mr. Arthur Wightman (of the firm of Broomhead, Wightman & Moore), of Sheffield, has been elected President of the Sheffield District Incorporated Law Society. Mr. Wightman was admitted in 1865.

Mr. Walter Storey (of the firm of Storey, Bedford & Willans), of Halifax, has been elected President of the Halifax Incorporated Law Society. Mr. Storey was admitted in 1863.

## CALENDAR OF THE COUNTY COURTS.

FROM SEPTEMBER 14 TO SEPTEMBER 19.

| No. of Circuit | His Honour | Sept. 14 | Sept. 15 | Sept. 16 | Sept. 17 | Sept. 18 | Sept. 19 |
|---|---|---|---|---|---|---|---|
| 22 | Judge Harington | — | — | — | Stourbridge | Dudley | — |
| 58 | Judge Edge | East Stonehouse | East Stonehouse | East Stonehouse | East Stonehouse | East Stonehouse | Tavistock |

## OBITUARY.

BY the death of the RIGHT HON. JOHN INGLIS, of Glencorse, Lord Justice-General, which took place on Wednesday morning at Loganbank, his country residence, Scotland has lost her greatest lawyer and most distinguished judge. The physical strength of the right hon. gentleman had been evidently failing for some months, though his mental force was abated in no degree; and at his advanced age he could not have been expected to continue at his post much longer. It was only, however, after the Court rose for the summer vacation in July that his debility assumed a serious form. He may, therefore, be said to have died in harness, as it was his wish to do. John Inglis was born in 1810 at Edinburgh, where his father, the Rev. Dr. Inglis, was minister of Old Greyfriars parish. He received his school education at Edinburgh High School, whence he passed to the University of Glasgow. From Glasgow he went, as a Snell Exhibitioner, to Balliol College, Oxford, and there he graduated B.A. in 1834 and M.A. in 1837. In the meantime he had been called to the Scottish bar in 1835, and there he very soon made his mark. His rise was unusually rapid; and while still a young man, comparatively, he took rank as senior counsel and appeared in most of the important cases in the Court of Session. In the short-lived Derby Administration of 1852 he was first Solicitor-General and afterwards Lord Advocate; but he did not at that time enter Parliament. When the Conservatives returned to power in 1858 Mr. Inglis resumed the post of Lord Advocate, and was returned to the House of Commons as member for the borough of Stamford. In the interval his position as head of the bar had been recognised by his brethren electing him to the honourable office of Dean of the Faculty of Advocates; and it was as Dean that he made his memorable defence of Madeline Smith, who was charged with the murder of L'Angelier—a defence which secured her acquittal on a verdict of 'Not proven.' Another case by which he added to his reputation was that in which Messrs. W. & A. K. Johnston sued a Western firm for alleged plagiarisms from their maps. The strong point made by Mr. Inglis, who was counsel for the Johnstons, was that the defendants had copied the errors in the maps of his clients. 'There are landsharks,' he said, 'and there are watersharks; but the defendants are at once land and water sharks, for they make themselves free to appropriate both elements.' The most important legislative achievement of Lord Advocate Inglis was the passing of the Scottish Universities Act of 1858, which gave these universities a new constitution and started them on a career of unexampled prosperity. The Act, however, deprived the town council of Edinburgh of the patronage of a number of chairs in the university, and this brought on the Lord Advocate a good deal of ill-will from a section of the citizens. His elevation to the bench as Lord Justice Clerk before the end of the same year gave Mr. Inglis further opportunities of serving the universities. As chairman of the executive commission appointed under his own Act, he devoted all his leisure during four years to the task of bringing the new system into working order. It is recorded of him that he presided at every meeting of the commission without exception; and not an ordinance was issued which did not bear the impress of his firm hand and mature judgment. In 1859 he was made a Privy Councillor, and in the same year he received the honorary degree of D.C.L. from the University of Oxford.

RESIGNATION OF A COUNTY COURT JUDGE.—Judge Theophilus Hastings Ingham, who since 1847 has been County Court judge for the district including the whole of Cumberland and Westmoreland and parts of Lancashire, Yorkshire, and Northumberland, has sent in his resignation to the Lord Chancellor. Called to the bar of the Inner Temple in 1834, he practised on the Northern Circuit, especially in Lancashire, until the establishment of County Courts in 1847, when he was appointed one of the sixty judges to whom the various districts were assigned. Of these sixty he is the only survivor, and, having attained the age of eighty-three, he is now determined to retire. Judge Ingham qualified as a magistrate of the West Riding in 1838, and he is also justice of the peace for Cumberland and Westmoreland. In 1842 he took an active part in suppressing the riots at Skipton. He subsequently identified himself closely with agricultural and educational progress in the district of the West Riding in which he lived. As a County Court judge he has remained active at his post until almost the very end of his long term of office, and his judgments have seldom, if ever, been reversed on appeal. His resignation will take effect on the 30th of this month, and he will be entitled to a pension of 1,000*l.* a year.

## MARRIAGES.

On Aug. 26, at St. Augustine's, Ramsgate, Robert Cunningham, eldest son of the late General W. T. Williams, Madras Army, to Mabel, daughter of the late William Clarke, Barrister-at-Law.

On Aug. 27, at St. Mary of the Angels, Bayswater, Alfred Edward, son of the late A. Sacksen, of Königsberg, to Olive, eldest daughter of Henry Bennett, Solicitor, late of Rus in Urbe, county Galway.

On Sept. 2, at St. Andrew's, Much Hadham, Herts, Charles Augustin Prideaux, Barrister of the Western Circuit and of the Middle Temple, only child of Charles Greville Prideaux, Q.C., Recorder of Bristol, to Helen Cardozo, second daughter of the late Philip Vincent, Surgeon, Camborne.

## DEATHS.

On July 25, at the residence of her daughter, Mrs. Woodhouse Marlesford, Campbelltown, N.S.W., Penelope Mary, widow of the late Henry Bingham, Commissioner of Crown Lands, N.S.W., and late surviving daughter of Thomas Checkley, Solicitor, of Mallow, Ireland, in her 93rd year.

On Sept. 1, at 32 Plas Turton Gardens, Cardiff, Algernon Morton Smith, son of the late A. B. Smith, of Melksham, Wilts, Solicitor, aged 31 years.

On Sept. 1, at Folkestone Road, Dover, Charles Speke Forbes-Mosse, Esq., younger son of B. Forbes-Mosse, Esq., Barrister-at-Law, aged 26 years.

On Sept. 1, at 19 Emperor's Gate, South Kensington, Frederick Carpenter, Esq., Barrister-at-Law, in his 44th year.

On Sept. 3, at Iron Acton, Gloucestershire, Henry Carpenter Ray, Esq., Justice of the Peace for the county, aged 68 years.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & CO., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

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# The Law Journal.

*SATURDAY, SEPTEMBER* 19, 1891.


## 'OBITER DICTA.'

THE appointment of Mr. John Rose as a Metropolitan Police Magistrate in succession to the late Mr. Partridge cannot fail to meet with the approval of the profession. Mr. Rose, who was called to the bar in June, 1868, was a member of the Oxford Circuit, where he had a very fair practice. He has always had the reputation of being a sound lawyer, and, as he possesses a good temper and very genial manners, there is every reason to expect that he will prove a great acquisition to the metropolitan bench. Mr. Rose was for some years a reporter on the LAW JOURNAL REPORTS.

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THE sudden death of Judge Powell, Q.C., on Tuesday last, will be a source of great regret to many members of the bar. Upon the appointment of Mr. Huddleston, Q.C., to the bench, Mr. Powell became leader of the Oxford Circuit, a position which he retained for several years. He was very popular at the bar, and considerable surprise was evinced at his acceptance of a County Court judgeship. For some years Judge Powell had been in failing health, and had frequently had to avail himself of the services of deputies. He was a bencher of the Middle Temple, and at one time represented Gloucester in the Liberal interest.

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A FEW weeks ago we published the return of the salaries and fees of the law officers of the Crown for England, Ireland and Scotland. From this it appeared that the official income of the Attorney-General was about 10,000*l.* or 11,000*l.* a year and that of the Solicitor-General about 9,000*l.* a year. It has not infrequently been suggested of late that the law officers of the Crown should give up private practice and devote themselves exclusively to the service of the Government. To that course weighty objections have been taken. It would involve a temporary separation from the other members of the profession, and the position would not tempt the best man to accept the office of Attorney- or Solicitor-General, as he would run great risk of sacrificing his professional income and status for an uncertainty. If a party were in power for two or three years, the law officer's private business would probably have vanished, and he might almost have to begin life again. It has also been proposed that the Attorney-General should be a member of the Cabinet, as he is usually in the colonies. Lawyers, however, do not enjoy the universal popularity in the Legislature which their merits deserve, and most Prime Ministers would think that one lawyer in the Cabinet is enough. Or the office of law adviser might be made non-political. To that there are insuperable objections, and it would be incompatible with our present party system. In the main the existing system probably works best. Anomalous circumstances may now and then arise out of the double capacity of Government official and private counsel, and an individual may be guilty of indiscretion. But such cases have not been frequent, and the public and the profession are too severe critics to allow such instances to pass without animadversion.

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THE question of salaries, however, is of a totally different character. The two English law officers are by far the highest paid of all our public servants. A man gains rather than loses in the matter of private practice by being Attorney- or Solicitor-General. Yet the public goes on contentedly paying 10,000*l.* a year for part, perhaps only half, of a man's time, or less. No man is worth the money. The work of a foreign secretary, especially when, like Lord Salisbury, he is also Prime Minister, is probably a good deal greater, and is certainly of vastly more importance than that of a law officer; his expenses are far greater, but his salary is only about half, whilst that of the President of the Board of Trade, or of the Local Government Board, both Cabinet ministers, is only one-quarter of the Attorney-General's salary. If the official incomes of these two gentlemen were reduced to 3,000*l.* and 4,000*l.* respectively the best man would still be glad to take the post. Such an economy would also make a judgeship relatively a better thing than it is at present. The abolition of the Chief Justiceship of the Common Pleas and the Chief Barony of the Exchequer tended to produce a dead uniformity on the bench. If this change were effected, and an additional 1,000*l.* a year given to each of the Lords Justices, especially if, as we have on former occasions suggested, the latter were made life peers, men

in the largest practice would be more willing to sit on the bench than they are at present. Scotch and Irish law officers habitually accept judgeships; their English brethren rarely accept puisne judgeships. The country loses when men of conspicuous learning and ability are still at the bar, when so many men not their equals wear the judicial ermine.

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The public conscience is far more alive than formerly to cases of cruelty to children, and it is very desirable that magistrates should realise the indignation caused by this unfortunately far too common offence. A strongly-worded protest appears in last Saturday's issue of an influential 'lady's periodical' against what seems to the editor the inadequate sentence recently passed by a magistrate for an unusually refined and fiendish act of cruelty. A father who could dangle his three-year-old child out of a three-story window till it was almost crazy with terror, and a mother who could thrash the child when dragged back into the room, deserved a very much heavier punishment than the one month's imprisonment which was inflicted. Notwithstanding the explanation (familiar to lawyers though not so intelligible to laymen) why offences against property are more severely punished than those against the person, it is clear that certain classes of personal offences, and notably cruelty to children, should have exceptional treatment. Public opinion, supported by the Home Secretary, is probably sufficient to enforce this distinction, but if such is not found to be the case, legislation should provide a remedy without any unnecessary delay.

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A few days before the Long Vacation the Court of Appeal decided two interesting questions in bankruptcy law, and laid down useful guiding principles for cases of a like character. In the case of *In re Browne and Wingrove* the registrar went ingeniously wrong with respect to the proof of a debt payable by instalments bearing interest. Mr. Gustav Ador had advanced 1,000*l.* to the bankrupts, which was to be repaid by instalments extending over ten years, with 6 per cent. interest on the amounts from time to time due. He simply sent in a proof for the 1,000*l.* as a debt then due, without any claim for future interest. The trustee, acting as he thought under rule 21 of the Bankruptcy Rules, by which a proof cannot be allowed for interest subsequent to the order of adjudication, even though it is made payable by the contract, deducted a rebate of 5 per cent. per annum from the 1,000*l.*, and, as the debt was not to be finally extinguished till 1895, the rebate amounted to 210*l.* The trustee accordingly, and subsequently the registrar, refused to allow proof for more than 790*l.* The decision was on the face of it wrong, as no part of the proof was for interest at all, and the rule only applies to future interest. Lord Justice Lindley, in reversing the registrar's decision, gave an interesting historical *résumé* of the various changes in the law with respect to the proof of interest on debts and of liabilities as distinguished from debts, and laid down the principles applicable to such cases. First, he said, the debt should be proved as a present debt, and rule 21 applied to the dividend payable on it; then the liability to pay interest should be valued and dividend allowed without rebate on that value. If by contract the debt bears interest at 5 per cent., the rebate and the interest would neutralise each other, and the result would be the same as if the debt had been admitted to proof without interest. If the interest were more or less than 5 per cent. there would be no such resulting equation, and the figures would have to be worked out. He could not say whether it was intended to alter by the rules the old law by which a debt payable at a future date with interest was to be treated as presently payable without interest; but it could never have been intended first to strike out the interest and then to reduce the principal by application of rule 21.

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In the other case, *In re Rogers, ex parte Holland & Hannen*, Mr. Justice Cave showed a like desire to sweep everything possible into the estate. Holland & Hannen had recovered judgment against the bankrupt for 633*l.* Shortly afterwards, on April 24, 1890, the bankrupt's solicitors informed Holland & Hannen's solicitor that a friend had provided a sum of money to pay the bankrupt's pressing creditors. The solicitor had notice of an act of bankruptcy committed by the debtor shortly before this date. In the result, the bankrupt's friend paid the appellants' solicitor 200*l.* for the debt and 70*l.* costs, on the condition that Holland & Hannen would not take further proceedings against the debtor for sixty days unless bankruptcy proceedings should intervene. Two or three weeks afterwards a petition was filed against the debtor, who was adjudicated bankrupt in October, a few days after his death. The learned judge made an order that Holland & Hannen should repay the trustees the 270*l.*, on the ground that it was the property of the debtor. Lord Justice Lindley, however, pointed out that the trustee was endeavouring in part to affirm and in part to repudiate the transaction. He wanted to claim the money and at the same time to disregard the conditions on which it had been advanced. There was no doubt that the bankrupt's friend could have obtained an injunction restraining the bankrupt or his trustee from applying any part of the money so advanced for any other purpose than that for which it was given—viz. the payment of pressing creditors.

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What may without disrespect be called 'debating society questions' always come to the front in the Long Vacation, and the *Times* has devoted much space to characteristic letters of Lord Grimthorpe, Mr. Tallack, and others on the subject of capital punishment. Opinion in a case like this is largely governed by sentiment, and particular instances do not prove much one way or another. The 'bit of rope' operated as a salutary deterrent on the Australian convict mentioned by 'D.' in the *Times*, but Mr. Tallack's story of the man who was hanged for theft in Ireland, and, after being suspended for six minutes, was cut down and on his way home committed another theft is as strong on the other side, unless, indeed, it be regarded as an exceptional illustration of Hibernian humour. Many, however, would be in favour of giving the judge greater latitude in the matter of sentences, either by a division of murder into first and second degrees, as in continental countries, or in the form of a general discretion. It would be a great relief to Home Secretaries if such a discretion were given, and there certainly are cases of undoubted murder in a technical sense which ought to be visited with something less than capital punishment. There would, too, in such circumstances, be less un-

willingness to convict on the part of juries. Sentiment is inexplicable, and it is not every one who would sympathise with the Home Secretary who a few years ago commuted the capital punishment in the case of a man who, for the sake of the insurance money, which was many times the value of the property, recklessly set fire to his premises and burnt several of his children to death.

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THE case of *Rockett* v. *Clippingdale*, which was recently before the Court of Appeal, turned upon the proper application of the principles laid down by the House of Lords in *Garnett* v. *Bradley*, 48 Law J. Rep. Exch. 186. In an action for damages in respect of a collision between two vessels the defendant denied the alleged damage, but in the alternative paid 50*l.* into Court to cover any damage which might be proved. The action was then referred to an official referee, who found for the plaintiff for 50*l.* beyond the amount paid into Court, but refused to allow him the costs of the action on the ground that by reason of section 9 of the County Courts Admiralty Jurisdiction Act he had no power to do so. That section enacts that a person taking proceedings in a Superior Court which he might have taken in a County Court shall not be entitled to costs unless the judge certifies that it was a proper cause to be tried in a Superior Court, and section 3 gives the County Courts Admiralty jurisdiction where the amount claimed does not exceed 300*l.* A Divisional Court having held that the official referee was wrong in refusing to allow the plaintiff his costs, the Court of Appeal affirmed the decision, upon the ground that section 9 of the Act of 1868, being applicable to all suitors, and not being limited to any particular class of litigants, was, according to the decision in *Garnett* v. *Bradley*, impliedly repealed by Order LV., rule 1, of the Rules of the Supreme Court, 1875, for which Order LXV., rule 1, has since been substituted, and that, therefore, the referee had a discretion as to costs which, under the circumstances of the case, ought to have been exercised in the plaintiff's favour.

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No less than five statutes relating to education have been passed in the late session. The Free Education Bill and the Schools for Science and Art Bill received the royal assent on the day of the prorogation. The Education Acts passed before that date are the Technical Instruction Act (54 & 55 Vict. c. 4), the Army Schools Act (54 & 55 Vict. c. 16), and the Reformatory and Industrial Schools Act (54 & 55 Vict. c. 23). By the Technical Instruction Act local authorities are empowered to provide for technical instruction in schools outside their own districts; by the Army Schools Act army schools are to be deemed public elementary schools within the meaning of any schemes which give to such schools the benefit of educational endowments; and by the Reformatory and Industrial Schools Act children detained in such schools may be apprenticed or allowed to emigrate, notwithstanding that their period of detention has not expired. This period is, in the case of reformatory schools, not less than two years (see Reformatory Schools Act, 1866, s. 14), and in the case of industrial schools such period, not extending beyond the age of sixteen, as to the justices having cognisance of the case seems proper for the teaching and training of the child dealt with (see sections 14–18 of the Industrial Schools Act, 1866). This statute may turn out to be a very beneficial one.

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THE almost unprecedented lateness of the harvest this year must cause considerable delay in the full exercise of sporting rights, and those who have bound themselves to pay handsome rents for the exercise of such rights during short terms will find themselves considerable sufferers. What are the ordinary rights of the landlord, the agricultural tenant, and the shooting tenant respectively? Under no circumstances whatsoever would the shooting tenant be entitled to any reduction of rent on the ground of partial failure of consideration, and under no circumstances whatever would the agricultural tenant be bound to allow his harvest to be interfered with. In many cases the lease of the sporting rights very properly binds either the landlord or the shooting tenant to make full compensation to the agricultural tenant for damage done to standing crops by the shooting tenant, while in some cases a milder stipulation is used to the effect that the shooting tenant will do (as Woodfall puts it, see 14th edit. at p. 976) 'no more damage to the land or the crops thereon growing than what necessarily happens in killing, taking, and following the game,' a stipulation framed in the spirit of the existing law, it having been ruled at Nisi Prius (see *Hilton* v. *Green*, 2 F. & F. 821) that a grant of shooting rights does not allow the grantee to tread down crops in an unreasonable manner. All things considered, it might be reasonable to provide in a lease of sporting rights for an abatement of rent to meet such a late harvest as that of the present year, but, as we have said, without such express provision, the full rent would undoubtedly be payable, even though, as the poet puts it, 'the summer and autumn have been so wet, that in winter the corn would be growing yet.'

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## CAPITAL AND INCOME.

LORD JUSTICE KAY, whilst a judge of first instance, laid down in the case of *In re Foster; Lloyd* v. *Carr*, 60 Law J. Rep. Chanc. 175; L. R. 45 Chanc. Div. 629, what may be a useful rule for those who have to determine the relative rights of a tenant-for-life and remainderman, where the capital and interest have to be apportioned. A testator had given his residuary estate to trustees upon trust for sale, and to hold the proceeds in trust for his widow for life with remainder to certain other persons absolutely, and had thereby given the trustees powers to postpone the sale and to invest on real securities. After his death the trustees invested a sum of 7,535*l.*, part of the residuary estate, upon mortgage of a freehold property with interest at 5 per cent. The trustees some years after entered into possession of the mortgaged property, and paid the rents to the widow. In three particular years the rents exceeded the interest, but, as a rule, fell below it; so that at the widow's death nearly 3,400*l.* was due to her for deficient interest. Soon after her death the property was sold for 7,005*l.*, and it was stated that nothing further could be recovered from the mortgagor. His lordship directed that the loss of tenant-for-life and remaindermen should be apportioned in the following way: 'Treat the capital moneys which have been produced by the sale, and all

the moneys received by the tenant-for-life, as the fund recovered from the mortgagees. Add them together. Then divide the total sum in this way: Estimate how much the tenant-for-life would have received if the mortgage interest had been regularly paid, deducting income-tax; then take the capital sum which the remaindermen would be entitled to on the supposition that the capital of the mortgage debt had been fully paid; then divide the total between the tenant-for-life and the remaindermen in the proportion of these two amounts, which each ought to have received; and in making that division the tenant-for-life should give credit for what she has actually received.' The remaindermen, of course, were entitled to add to the principal interest at 5 per cent. per annum from the widow's death, and the widow's estate had to give credit for what she had actually received. The widow's estate was rather fortunate by this arrangement, as if the money had been invested on some security which only yielded 3 per cent., probably the capital would not have suffered. However, the trustees were allowed to invest on mortgages by the terms of the will, and there is no rule of law or equity which says that trust moneys must be invested at a rate of interest lower than 5 per cent. The tenant-for-life, it would seem, could not charge interest on the 3,400*l.* in arrear. Sometimes it is sought to make the tenant-for-life liable to form a capital fund out of any high interest which he may be receiving, and add that fund to the original capital. For instance, in *In re Sheldon; Nixon* v. *Sheldon*, 58 Law J. Rep. Chanc. 25; L. R. 39 Chanc. Div. 50, a testator having bequeathed his residuary estate in trust as to parts thereof for his sisters for their lives with remainders over, empowered his trustees to continue all or any part of his personalty in the state or investment in which it was at his death, 'however doubtful or hazardous or limited the description or nature of the property or investment might be, or otherwise to call in and compel payment of the same,' and invest in certain investments of which a limited range was given. Part of the testator's property consisted of speculative investments not within the range authorised by the testator, though not of a wasting nature. In an administration action the principal question argued on further consideration was whether the tenants-for-life were entitled to receive in specie the income of those unauthorised securities which were certified to be proper to be retained. The judgment of Mr. Justice North was short and to the point. 'I do not see,' he said, 'how I can direct the retainer of the existing investments, and at the same time hold that the tenants-for-life are not entitled to receive the whole of the income produced by these investments. The securities are not of a wasting character, and I cannot, therefore, see anything to prevent the tenants-for-life from receiving the whole income of the securities which are retained.' The securities of a wasting character there referred to are, of course, leaseholds and terminal annuities, which, unless the contrary is directed by the testator, must be converted. In *Porter* v. *Baddeley*, L. R. 5 Chanc. Div. 542, a testator, having left some of his property to trustees in trust for his widow for life with remainder over, authorised the trustees to allow all the moneys which he possessed to remain in the state of investment in which they should find the same at his decease. Part of the estate consisted of long annuities, expiring in 1885, and Vice-Chancellor Hall decided that the power given to the trustees to retain investments did not authorise them to retain wasting securities unconverted, and so the annuities must be treated as having been converted at the testator's death, and the widow could only receive the income arising from the proceeds of such conversion. The result of these last two cases may be briefly summarised thus: Where a testator empowers his trustees to retain unauthorised investments, not of a wasting nature, the trustees must pay the whole of the income to the tenant-for-life, however high, but if the investments are of a wasting nature, then the tenant-for-life can only have the interest which he would have had if the wasting investments had been converted, unless the testator in effect directs that they are not to be converted.

Our readers should also consult in this connection the recent case of *In re Thomas; Wood* v. *Thomas* (26 Notes of Cases, p. 128), where Mr. Justice Kekewich held that by the terms of the will the tenants-for-life were entitled to the net income of certain American railroad bonds, repayable at a fixed date, but bearing a high rate of interest.

## ENGLISH *CAUSES CÉLÈBRES.*—V.

### SAURIN *v.* STAR.*

IN this case the plaintiff, Miss Susanna Mary Saurin, sued the defendants, Mrs. Star, the Lady Superior, and Mrs. Kennedy, one of the members of a convent at Hull, for having conspired to procure her expulsion from the said convent, for assault and false imprisonment, and for having libelled her to the Roman Catholic Bishop of Beverley. The defendants denied the charges, alleged that the matters in dispute had been referred to the bishop (whose award had been unfavourable to the plaintiff), and put on record the plea of 'leave and license' (see the charge of the Lord Chief Justice, *ubi sup.*, at p. 215). The case was tried before Lord Chief Justice Cockburn and a jury in the Court of Queen's Bench, and lasted for three weeks. The Solicitor-General (Sir John Coleridge), Mr. Digby Seymour, Q.C., and the present Mr. Justice Wills appeared for the plaintiff, while Mr. (now Mr. Justice) Hawkins, the late Lord Justice Mellish, and Mr. (now Sir) Charles Russell represented the defendants. The material facts were as follow: The plaintiff, who was the daughter of an Irish gentleman, entered the convent at Hull in 1858, taking upon herself the vows of chastity, poverty, and obedience. For two years all went well. But in 1860 the defendant Mrs. Star, according to the plaintiff's story, was seized with a sudden desire to know what passed between Miss Saurin and her father confessor, pressed the plaintiff repeatedly for information on this point, and set about procuring her expulsion from the convent when it was withheld. These statements were, of course, denied by the defendants. The conflict of testimony to which the case gave rise was very severe. According to her own account, Miss Saurin was subjected to a system of continuous persecution, was compelled to black stoves, brush boots, and do other household work which belonged to the province of the lay sisters and not of the nuns; was obliged to eat mutton, towards which she was 'known to have a constitutional aversion;' was deprived of writing materials, of clothing, and of bedding, was watched night

* Cf. 'The Annual Register for 1869,' pp. 177-213.

and day, was falsely accused of levity, if not unchastity o behaviour, and, to crown all, was deposed from the rank of sister as the result of an *ex parte* and grossly unfair commission of inquiry before the Bishop of Beverley. By the defendants and their witnesses these charges were either denied or 'explained,' and the plaintiff's character was painted in colours very different from those in which she had herself portrayed it. According to the defendants, Miss Saurin was a very troublesome person to deal with. She 'borrowed boots,' and ate 'at improper hours.' Her letters to her father and mother were 'too tender in their affection.' She 'meddled with the laundry work by washing her own things when another had been appointed to that duty,' 'gathered unripe gooseberries,' 'had a candle to go to bed with and hid the bits left,' would not hurry herself to avoid the 'grievous sin' of being late for mass on Sunday, altered the clock without permission, gave hard crusty bread to a sister suffering from the 'mumps,' wrote letters without leave, told lies, once made a younger sister 'blush' by asking her if she 'intended to marry,' and moistened the dying lips of one of the sisterhood with salt-butter. Some of these enormities Miss Saurin may possibly have committed; but the following points, elicited by Sir John Coleridge in the course of a series of very skilful cross-examinations, told heavily against the defendants and eventually gained her a verdict of 200*l.* damages.* (1) One of the charges on which the plaintiff relied was that the defendant Mrs. Star had taken from her certain parcels of papers and relics. Mrs. Star alleged that she had no other motive for this act than to prevent the plaintiff from writing upon them 'anything that was disparaging' to the sisterhood. Thereupon the Solicitor-General handed to the witness a small card representing our Saviour kneeling at the cross, and underneath the words, 'Pray for your sister Mary Theresa Magdalen,' and asked her if she supposed Miss Saurin would write upon that? The witness answered in the affirmative! (2) The defendant was cross-examined as to the plaintiff's conduct with a priest at Hull. The following passage is so short that we shall transcribe it. 'You say in your statement that you perceived a great forwardness, and that she was in a state of excitement when he was at the convent, and that you had an undefined feeling of uneasiness, &c.; now, what do you mean by all that? Do you mean a charge of improper behaviour against her?—By no means. What do you mean by excitement? That she was not in her ordinary state, so that it made you uneasy?—Yes. Now you saw the statements of the other sisters and the lay sisters?—Yes. Well, in one of them there is this passage: "I have noticed her manner very familiar with one of the priests; I saw her once on her knees beside him entreating him to go with her." Now what did you mean by sending that to the Bishop?—It turns entirely on the rules. Turns on the rules—what rules? The witness referred to a passage in the rules, which was read, as to a becoming gravity of demeanour. "Then all you meant by sending that statement was that she had not preserved in her deportment a gravity becoming a religious. That was all you meant?—Yes. *Don't you think it would have been better to have said so?* —It did not occur to me."'

Sir Alexander Cockburn summed up the case to the jury with his accustomed power. His charge contains only one passage of distinctly legal interest—that in which he dealt with the constitution of the convent and the authority that the Lady Superior was entitled to exercise. 'There are three vows entered into, but we have only to deal with two of them—poverty and obedience. What is the meaning of the vow of poverty? It is the renunciation of all rights of property, of all capacity for acquiring any, so that any which is acquired is for the benefit of the community, and to be administered at the will of the Superior, so that what is done in the honest exercise of that authority cannot be complained of. It is important, again, to observe the scope of that authority. The vow is that of obedience to this unlimited extent, that the voice of the Superior is as the voice of God. A form more emphatic could not be used, nor to my mind one more shocking, though by that, as I have already said, we must not allow ourselves to be influenced. But we have to consider the extent to which this authority can be considered as legitimately going, and whatever is intended under it a sister has sworn on all occasions to submit to. I take it to be clear that it must be reasonably exercised, and must be restrained within reasonable limits. There must be nothing contrary to the laws of God or man; and, further, what is meant by obedience is obedience to the rules or customs, whether written or traditional, established or exercised in the community. For instance, suppose it had occurred to the Superior that the discipline of flagellation would be salutary for the soul of (Miss Saurin), and the sister protested against it as contrary to the rules and customs, and it was forcibly inflicted upon her, I do not doubt that an action would be maintainable for it. . . . So here, if the Superior has committed an assault, I should hold it not within the scope of her authority. But as to other matters within the scope of her authority there would be no legal cause of complaint, unless you thought that they were vexatiously committed.' This charge, and indeed the trial as a whole, will be found to form a fitting prelude to the study of the class of cases of which *Allcard* v. *Skinner* is the latest, and not the least interesting, example.

(*To be continued.*)

* On the counts of libel and conspiracy; there was no evidence worthy of the name to support the charges of assault and false imprisonment.

## LAW AND PROFESSIONAL NOTES.

By T. F. UTTLEY, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### BRICKWORKS CLASSIFIED AS FACTORIES.

ACCORDING to the Factory and Workshop Act, 1878, an accident in a factory has to be reported to the inspector forthwith—that is to say, within forty-eight hours after the occurrence. That applies to a factory. Can a brickworks be considered a factory within the meaning of the Act, and, therefore, liable to inspection? The bench, in a recent case in Yorkshire, thought it could, and accordingly inflicted a penalty on the owner of the works for having omitted to send notice of an accident which had occurred on his premises. It appeared that the brickmaker occupied some premises used for making bricks, and machinery was used in the trade. The magistrates' clerk said he had a doubt as to whether this was a factory within the meaning of the statute, for the words used in the schedule of the Act were 'any place not being a mine in which persons work to get slate, stone, coprolites, or other minerals,' and here only clay was

obtained. If the works came under that Act it must be as a quarry or under the term 'other minerals.' The inspector who prosecuted contended that the place being one in which machinery was used in the manufacture of the bricks, therefore it came within the Act, for it was clearly the intention of the Legislature to class places where steam power and machinery were used as factories. These places, he also pointed out, were constantly inspected. He defined a factory as being a place in which steam power was used for the purpose of carrying on any particular trade, and where bricks were made on the premises with the aid of steam power those premises came within the meaning of the Act. This was the view taken by the bench, and unless the decision is upset, brickworks must be classed as factories, and liable to inspection.

### MAINTENANCE OF HUSBAND BY WIFE.

It will be remembered that by the Married Women's Property Act, 1882, a wife having separate property may be summoned for the maintenance of her husband, and the justices may, where the husband becomes chargeable to the parish, make and enforce an order against the wife for his maintenance. The husband, however, need not be relieved in the workhouse. It will be sufficient to prove that he is chargeable. Not long since a summons was heard, preferred by a board of guardians against a woman trading as a grocer and beer-seller, for not contributing to the support of her husband. Some seven years ago he had made over to her all his property, but five years later he was convicted of assault, and the wife was granted a separation order. Subsequently the husband went to the workhouse, and became chargeable to the guardians. When the present summons was heard the question was whether the wife could be held to have had a separate estate apart from her husband; and it was considered that the woman had not come into property since the separation order making her liable. She had, however, separate estate before the making of the order, and was now accordingly ordered to pay so much per week towards the maintenance of her husband so long as he remained in the union. In this connection it may be pointed out that an order can be enforced against the wife only, and not, it would seem, against the trustees of her separate property.

### THE LEGAL PROFESSION IN THE COLONIES.

Lawyers in the colonies do not find matters so easy as is reasonable, considering that there are local laws. In Canada the professions of barrister and solicitor are generally combined, and legal firms usually consist of a partnership in which one of the members devotes himself to advocacy. In Ontario a barrister belonging to an English inn has no further examination to pass, but a solicitor must serve under contract for a year with a local solicitor. In Quebec all lawyers are called advocates, and no one can practise without having passed the local examination; and further, as the law is mostly French, its practice necessitates a knowledge of the French language. In Manitoba an examination has to be passed in local law, though there is a clause in the local Act which seems to repeal this necessity as to the local knowledge in the case of barristers. In the North-West Territories a British qualification is held to be sufficient, but in British Columbia a local examination and residence are essential, except in the case of such as hold the degree of D.C.L. or LL.B. In Prince Edward Island a lawyer must have at least a year's residence in the colony, and submit to examination in local law if the authorities think fit. In New Brunswick the solicitor must have served a local solicitor for a year. In Nova Scotia a barrister can practise with a British qualification only, but a solicitor must pass an examination after serving a clerkship of four years. In New South Wales a barrister of a British Inn is admitted without examination on a motion made in Court in that behalf, and a solicitor from the old country can practise without examination after a residence of three months. In Victoria the conditions are the same, and application must be made to the Court in the same way. The call fee for barristers is fifty guineas, for solicitors the admission fee is forty guineas. In South Australia the fee in both cases is ten guineas, and a three months' residence is all that is necessary. In Queensland the fee is also ten guineas, and there is no distinction between barristers and solicitors, the only peculiar condition being that the applicant must have two householders as a reference and advertise his application in the newspapers. In Western Australia a lawyer must reside for at least six months in the colony, and then give four months' notice of his intention to apply for permission to practise. The fee is 10*l*. In Tasmania all that is necessary is for the candidate to pay twenty guineas. In New Zealand the candidate must pass an examination in law, including the law of New Zealand in so far as it differs from the law of England; but should he be fortunate enough to be an LL.B., his examination will consist only of matters concerning the local law. In the South African colonies no examinations are needful; in fact, nothing is required with a British qualification but fees.

### CROSSES IN CHURCHYARDS.

A certain vicar died and was buried, his friends desired to place a cross over his grave, but the new vicar demurred, considering a cross in the churchyard would promote idolatry. The parishioners thereupon took the case before the Consistory Court at Wells, and the Chancellor declared that there was not the slightest ground for apprehending any offence being caused to the conscience of any reasonable or educated man. It was pointed out that Englishmen do not worship crosses wherever they see them, and that crosses in churchyards and cemeteries are quite legal. They are not confined to one particular creed or sect either, as Nonconformists, as well as other religious persuasions, erect them over the graves of relatives. The symbol of the cross has of recent years, if one may say so reverently, become so popular, that when the practice of cremation increases it will, doubtless, be the custom to surmount or paint on the urn the cross, and there would be no idolatry in doing so.

### JACKDAW LAW.

A paragraph has been running the round of the dailies under the above title. A lady had lost a jackdaw, and, seeking to recover it from a man who said he had bought it, she now desired the assistance of a bench of magistrates. It was pointed out to her that a jackdaw is an English wild bird, and if it flies out of the possession of the person who has been keeping it, and is caught by someone else, the person so catching it cannot be charged with unlawful detention, for there is no criminal act by such retention. It was suggested to the applicant that she could proceed in the County Court as regards the bird.

### RESTRAINT OF MARRIAGE.

The Hamburg Law Courts have a nice question to decide. An old gentleman left 20,000 crowns each to his manservant and cook on condition that if either married the whole sum should go to the one who remained single. The servants married each other, and secured the whole 40,000 crowns. A relative, who disapproves of this cuteness, now seeks to overthrow the will and obtain the return of the money on the ground that by the servants marrying they have defeated the intention of the will. One would imagine that the servants ought to be allowed to keep the money for their ingenuity.

## CONVICT PRISONS.

THE report of the directors of convict prisons in England for the year 1890-91 has just been issued. From this it appears that the number of male convicts received into the convict prisons under fresh sentences during the year ended March 31, 1891, was 605, besides eighty with licenses revoked or recommitted to serve out the period remitted from their former sentences. The number of female convicts received into the convict prisons under fresh sentences during the year ended March 31, 1891, was seventy-three, besides twenty-two with licenses revoked or recommitted to serve out the period remitted from their former sentences. The number of sentences of penal servitude passed by ordinary Courts in England and Wales in 1890—namely, 729—was lower than in any previous year. The following table illustrates in a striking manner the great and progressive decrease in the number of sentences for serious crime:—

| Yearly average number of persons sentenced on indictment to penal servitude in England and Wales | | Estimated average population of England and Wales |
|---|---|---|
| During 5 years ended December 31, 1859 . . | 2,589 | 19,257,000 |
| During 5 years ended December 31, 1864 . . | 2,800 | 20,370,000 |
| During 5 years ended December 31, 1869 . . | 1,978 | 21,681,000 |
| During 5 years ended December 31, 1874 . . | 1,622 | 23,088,000 |
| During 5 years ended December 31, 1879 . . | 1,633 | 24,700,000 |
| During 5 years ended December 31, 1884 . . | 1,427 | 26,399,000 |
| During 5 years ended December 31, 1889 . . | 945 | 28,252,000 |
| During the year ended December 31, 1890 . . | 729 | 29,407,649 |

The decrease in the convict prison population, which has resulted from the smaller number sentenced and the shorter sentences, is shown by the following figures, which, for the reason given in former reports, rather understate (particularly in the earlier years) the effective decrease for purposes of comparison:—

*Total Number in Custody under Sentence of Penal Servitude in Great Britain, Gibraltar, and Western Australia.*

| | | | |
|---|---|---|---|
| 1869 (on December 31) .. | 11,660 | 1881 (on March 31) .. | 10,676 |
| 1870 " .. | 11,890 | 1882 " .. | 10,587 |
| 1871 " .. | 11,712 | 1883 " .. | 10,529 |
| 1872 " .. | 11,488 | 1884 " .. | 9,938 |
| 1873 " .. | 11,061 | 1885 " .. | 9,154 |
| 1874 " .. | 10,867 | 1886 " .. | 8,379 |
| 1875 " .. | 10,765 | 1887 " .. | 7,836 |
| 1876 " .. | 10,725 | 1888 " .. | 7,257 |
| 1877 " .. | 10,763 | 1889 " .. | 6,572 |
| 1878 " .. | 10,671 | 1890 " .. | 6,129 |
| 1879 (on March 31) .. | 10,884 | 1891 " .. | 5,522 |
| 1880 " .. | 10,839 | Number in July, 1891 .. | 5,334 |

The labour of the convicts has been used in the construction and maintenance of prison buildings, in the manufacture and repair of clothing, bedding, utensils, &c., required for the use of officers and prisoners, in the preparation of the food of prisoners, in washing their clothing, and in various services connected with the internal economy of the prisons, including the enforcement of a high degree of cleanliness. In addition, convict labour has been largely devoted to the performance of works, to the construction of buildings, and to the manufacture of a multiplicity of articles for the Admiralty, the War Department, the Post Office, and other public departments. The medical inspector states that the mortality in the prisons was very low. Only thirty-six deaths occurred among prisoners from natural causes, being 7·4 per 1,000 of the daily average population—a rate lower than any heretofore recorded, the next lowest in the last thirty-five years having been 8·0 per 1,000. The medical inspector concludes with the observation that 'no death occurred during the year from any defect in the sanitary arrangements of the prisons.'

It is stated that, as a result of the diminution of crime, no fewer than eight convict prisons have since 1882 been assigned to other public purposes, and that the number of persons in Western Australia the cost of whose maintenance is borne by the Imperial Government is gradually decreasing. The directors also quote an account of the prison farm at Dartmoor.

## CAPITAL PUNISHMENT.

THE following further correspondence has appeared in the *Times*:—

Sir,—Those who advocate the abolition of capital punishment boldly assert that it does not deter from murder. How can they possibly know this? Their only attempt at proof is by an arithmetical computation, with even less foundation than Mr. Gladstone's 'electoral facts.' But there is direct and positive proof that it has this deterrent effect. A convict in Western Australia wrote home surreptitiously to his old 'pal' in England, informing him of some of the conditions under which he was living, and, among other things, that by the law of the colony a convict who committed a murderous assault on a warder might be hung. The letter chanced to fall into the hands of the authorities. His words were as follows: 'They tops a cove out here for slogging a bloke'—*i.e.* 'they hang a convict out here for assaulting a warder.' 'That bit of rope, dear Jack, is a great check on a man's temper.'

A sentence of penal servitude for life cannot have the same deterrent effect, for there is always the chance that it may not be carried out. Mr. Gladstone let out the Fenians who were sentenced in 1867 for life after a few years. There is now a party in the House of Commons and in the country who are trying to procure the release of John Daly and other atrocious dynamiters sentenced only five or six years ago for life, and nobody can doubt that if the Phœnix Park murderers had been sentenced to penal servitude instead of being hung they too would have a good chance of being released by or before this time. Can anybody doubt that under these conditions a sentence of penal servitude would be far less deterrent to these desperadoes than that of capital execution?

Your obedient Servant,
D.

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Sir,—My object in writing to the *Times* was not to argue the question of capital punishment, but to urge that it was a subject to be discussed without passion or personalities such as Lord Grimthorpe imports into it. I do not think that his reply will put his good taste in any better light. I was not so foolish as to claim that a man 'can acquire sanity or authority by dying,' but I do think that it is usual for gentlemen to refrain from insulting epithets and insinuations against men who have only recently left us. My father's reputation, however, will probably survive the attacks of Lord Grimthorpe. I have no intention to discuss the question of capital punishment with him, nor, indeed, any other question—his style of controversy is not inviting. To call all his opponents a 'set of noodles' and all that they advance 'cant' is not enough to settle the question, but quite enough to keep sensible people from discussing it with him.

Yours, &c.,
JOHN A. BRIGHT.

One Ash, Rochdale: Sept. 10.

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Sir,—Some years before his death the late John Bright happened to be travelling in company with a man who had held a high official position in Van Diemen's Land,

now Tasmania. The conversation turned on the convict system, and Mr. Bright showed great interest in the success in life of men who had been transported and subsequently liberated. At last he asked the colonial official whether he could tell him anything about a particular man, whom he mentioned by name. In answer to inquiries, he said that man, a medical practitioner, had been condemned to death in England for murder, but through his (John Bright's) efforts the death sentence had been commuted to transportation for life. He was greatly opposed to capital punishment, and he would be glad to learn that his intercession in that case had resulted satisfactorily. The colonial official, after further questions as to name, date, &c., was obliged to inform Mr. Bright that his *protégé*, whom he had saved from the gallows in England, had committed two murders by poison in Van Diemen's Land, and had then been hanged.

AN EX-COLONIAL MINISTER.

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Sir,—Once when I had used the word 'hung' in the connection in which Sir J. Stephen uses it in his letter to-day, a friend corrected me, alleging the *dictum* of a judge. 'Beef,' sir, 'is hung, men are hanged.' A judge's authority ought to be supreme in the matter. S. T. P.

Sept. 10.

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Sir,—If Mr. J. A. Bright tells the truth in saying that he had no intention to discuss capital punishment with me, why did he begin and state his 'four grounds' in a way which he evidently thought conclusive, or at least impressive? He says he only meant to defend his father's reputation. But he admitted the only thing I had asserted about it—viz. that he was 'no more addicted to forcible language than I am,' which obviously meant also 'no less.' As for his oratorical reputation (and I know of no other), nobody thinks more highly of it than I always did, even when I most disagreed with him. But I do not think we have far to look, on both political or theological sides, to learn that wisdom and the power of doing good may vary inversely as the power of either speaking or writing the very best English and commanding a party.

If this very small luminary with a brilliant name could see what he is about, he would have seen that I have not 'called all,' or any, 'of my opponents' in this matter 'noodles,' but only those who have been proved to be so on every occasion when they have attacked me on quite another subject, and generally false ones besides. I take 'cant' to mean the constant repetition of a phrase either without any real meaning or none that can be defended by argument. The anti-hangmen are first-rate proficients in that, as has been proved abundantly.

Yours obediently,

Sept. 11. GRIMTHORPE.

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Sir,—I believe I may add a practical man's opinion on this point. Some years ago, when Sheriff of London and Middlesex, before Lord Cross took the control of the prisons out of the hands of the magistrates, I had some experience of the 'condemned cell.' On one occasion, visiting a prisoner under sentence of death, in respect of whom some considerable efforts had been made to get a reprieve, I entered the cell accompanied by Mr. Jonas, the governor, who had been in charge of Newgate Prison for very many years, and who may be said to have had an almost unequalled experience of the effects of hanging.

On the governor telling the prisoner that he could state anything that he desired to me as sheriff, the prisoner immediately began to compare his own case with that of a recent convict, and urged that his act was exactly on the lines of the crime of this man, and that he had been reprieved—evidently expecting a similar result in his own case. On quitting the cell, Jonas made use of this remarkable observation: 'It is always the case; when we get one reprieve we have three murders follow!' I believe there is nothing which acts more upon the human mind than the certainty of punishment, or, as the Australian convict describes it, 'The bit of rope is a great check on a man's temper!'

There is, however, another side of this question, and that is the difficulty of dealing with a human being who has imbrued his hands in blood. In the public interests he is better out of the way. Shut in a prison, brooding upon his past deed, he becomes in all probability insane, or excites sympathy, is released, and becomes an encouragement to other evil-doers.

I am, Sir, your obedient Servant,

J. WHITTAKER ELLIS.

29 Fleet Street, E.C.: Sept. 11.

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Sir,—Mr. Tallack's theology and logic are equally queer. Moses is now introduced in the new character of a direct authority for murder, though he first figured on Mr. Tallack's boards as the author, for temporary and local purposes only, of the injunction to execute murderers a thousand years before him. He did not 'participate in a murder,' but performed it alone, believing it to be an act of justice to defend 'one of his brethren.' Whether that would have been a good plea in the Egyptian King's Bench I don't know; but Somebody did know, who made him the leader of His people and 'an eminent saint.'

Mr. Tallack's next specimen of a murderer is St. Paul. He did participate in one certainly, but broke no law of his country evidently, and was accepted by the same Authority as having 'done it ignorantly.' And so Mr. Tallack's logic is that, because these two men 'became eminent saints,' therefore any woman who poisons her husband, or any burglar who shoots an opponent, ought to be let off. If it is not that, it is nothing. Even Ahab gave a more rational answer than he does in quoting Moses, St. Paul, and Cain's cases—'Am I God to kill and to make alive?'

He has now made five attempts to 'quote theological arguments both ways.' Whose arguments except his own? He means to be understood as saying that he has quoted five pieces of Scripture. He has not quoted one that is in the smallest degree to the purpose.

Perhaps the story of the Irishman, 105 years ago, who was hung and restored, and committed another theft on going home, is to the purpose, or would have been if it had been murder that he was hung for, for it shows how beneficial to the world his restoration to society was. He has his Newgate chaplain too, but, as usual, a long dead one; and, what is of more consequence, of the time when women were hung for stealing a shilling's worth of stuff off a shop counter.

He ends with a relapse into the stereotyped rubbish about circumstantial evidence and a stupid jury. I suspect the Australian chaplain's experience of the value of the penitence of reprieved murderers is, after all, more valuable than that of the ex-chaplain the other day, who had no means of tracing or testing the genuineness of the repentance of those who were hung, though his answer was a good one to Lord Russell's sentimental piece of nonsense. I do not see that the convict's remark about the 'bit of rope' is the worse for having been 'trotted out before,' as it did not break down like all Mr. Tallack's. He will have done more good than he expected when he started this discussion, and blew up its embers again now when they were going out. Yours obediently,

Sept. 16. GRIMTHORPE.

## THE REGISTRATION OF VOTERS.

An Overseer writes to the *Times* the following letter:—

It is not generally known that Parliament has from time to time cast upon overseers the duty of performing impossibilities, and especially is this so as regards the registration of voters.

In populous places, if overseers do their duty never so well, and in this I include all their servants, they cannot publish lists of voters as the law requires; hence these lists, when published, are necessarily imperfect. Why should this be so?

For instance, the statute of 30 & 31 Vict. c. 102, enacted that the qualifying year should include July 31, and the statute 6 Vict. c. 18, enacts that the complete register of those so qualified—*i.e.* all voters—shall be published and ready for sale to all comers on the next day. Could any legislation be more absurd than this? Of course the thing was never done, but imagine the wisdom of such an enactment in the year 1867! It is true that a list of voters was, and is now, published on August 1 in each year, but such lists do not now, and never did, contain the names only of those qualified upon that or any other day, for the palpable reason that the information required, in order that such lists might be published on that day, must necessarily have been obtained at the houses of the people, and from the public records, many weeks previously, and so these lists are always imperfect, because when published they contain the names of persons who have died, removed, or become otherwise disqualified since the information was obtained, although during the qualifying year.

Then a later statute, 41 & 42 Vict. c. 26, altered the qualifying day from July 31 to July 15, leaving the publishing day as before. This, no doubt, in many places afforded some slight relief to overseers, but it did not accomplish much, seeing that seven out of the sixteen days of apparent gain were taken away, because the qualifying day of payment of rates and taxes remained as before—viz. July 20—while registrars of deaths were allowed until July 22 for the sending to the overseers their returns of deaths.

The initial work of registering voters is an inquiry from door to door, amounting, in fact, to the taking of an occupation census, and if at one stroke a photograph could be taken on the qualifying day of the names and addresses of all occupiers, together with the description and situation of the qualifying premises as they then exist, correct lists could not be published, seeing that their compilation involves further inquiry as to: (1) the qualifying period of occupation; (2) qualifying value; (3) distance of residence; (4) payment of rates and taxes; (5) parochial relief; and (6) nationality, all of which must be ascertained by reference to public books and documents in the hands of at least four public bodies. When all this has been done, if it is ever done, which I much doubt, the lists have to be made up in four divisions at least, and again subdivided into wards and polling districts, from two to twenty as the case may be, according to the size of the parish, before they can be sent to the printer; the printing alone occupying the whole of the time allowed by law for all the process.

Then all the procedure is based upon the assumption that occupiers are always to be found upon their premises during business hours, and that they are under an obligation to supply the overseers with the information they require in order to enable them to perform their duty. Parliament, however, has forgotten to provide for these matters, or, indeed, any machinery by which persons removing from one parish to another parish can be traced, and, if qualified, registered in respect of successive occupations.

As if further to insure the publication of incorrect lists of voters, Parliament, by the Registration Act of 1885, 48 Vict. c. 15, enacted that in the months of April and May overseers were to make certain inquiries as to dwelling-houses and their occupiers, and to compile the register from the information so obtained. How either the voter or the overseer in April or May could say that A. B. would be alive and qualified three months hence does not transpire, but the fact shows that, even at so late a date, Parliament was not very anxious that correct registers of voters should be published.

In this parish changes of occupation occur at an average of ten per day, and therefore it may be readily understood how, during a period of three months from the time of making the statutory inquiry up to the expiration of the qualifying year, a register of voters so made becomes incorrect, although made in accordance with law, and so overseers are continually face to face with an impossible task.

These facts show that Parliament has not only not done all that might reasonably be expected of it to emancipate the voter from the toils of political influences, but, on the contrary, has persistently continued to do much which is the exact reverse, notwithstanding the condemnation of a select committee, comprising such names as Northcote, Lefevre, Rathbone, Morley, Bourke, and Harcourt. That committee in 1869 said that the work cast upon overseers 'is one which is obviously impossible of execution,' and that it leads to results 'objectionable in principle and mischievous in practice.' The report goes on to say:—

'The correction of the errors in the overseers' lists is undertaken by rival registration associations, an expensive machinery is set to work to strike off assumed opponents, and to place upon the register persons who are assumed to be adherents frequently on the very ground that their vote is obtained at the expense of those who sustain the claim. The action of such associations is necessarily prejudicial to the independence of a constituency, and not only affords the means, but supplies a grave temptation, to illegitimate practices and corrupt inducements, whilst, at the same time, the imperfect operation of the responsible registration authority justifies their existence and forms an excuse for their operations. It is notoriously difficult to discriminate between money legitimately expended in registration and money which, under the name of registration, is practically employed to corrupt a constituency.'

If this was the deliberate judgment of a committee in 1869, how much must the facts of to-day intensify it? 'A Revising Barrister' will have gained further information from my second letter written before his criticism appeared; his second letter, however, amply justifies the paragraph with which I prefaced my observations—viz. that I proposed to give some information relating to 'things not generally known or imperfectly understood,' and I was not unaware that in challenging the conclusion at which you had arrived in the matter I was taking a bold step, a conclusion evidently arrived at through imperfect information, and applicable only to a village or small community, in reference to the operation of certain statutes which cause more unnecessary friction, heartburning, and waste of time and money than any other set of laws under which we are locally governed.

When I read 'A Revising Barrister's' second letter I rubbed my eyes, read it again, and finally came to the conclusion that we must be occupants of different hemispheres. To his statement that the Act of 1878 'only applied to boroughs,' I would reply that his way of putting the case thus might stand if the 'only' did not comprise the major part of the whole. What are the facts? The registers of voters to which this word 'only' applies are the registers upon which are elected probably two-thirds of the total of English members of Parliament, four-fifths of the total of municipal councillors, and

seven-eighths of the School Boards. County registers, no doubt, are important, but I venture to assert that those of boroughs are not less so.

He further states that the lists are 'all of them arranged alphabetically for the purpose of facilitating reference.' This is somewhat amazing in face of the statutory provisions to the contrary. By the Acts of 1878 and 1888 the lists may or shall 'be arranged in the same order in which the qualified premises appear in the rate-book'—that is certainly not 'alphabetically.' I have seen hundreds of rate-boots and have not seen half-a-dozen so arranged, and there is no provision for such an arrangement in either the statutes or the orders of the Poor Law Board. Here the county lists are arranged alphabetically and the borough lists are arranged in street order, but, whichever the plan adopted, it is of no moment in this controversy, for the reason that the multiplicity of lists is unaffected thereby and remain to the confusion of the voter and every one else, myself included.

Then he says 'The general scheme of registration remains just as it was,' &c. This is rather a comprehensive way of putting the case, and is, moreover, misleading; whatever it may mean I would reply that under the 'general scheme' as existing before the Act of 1878, the unit of list was the parish, and the unit of publication was the parish; now the unit of list is the polling district, whilst the unit of publication remains as heretofore, hence much of the chaos now existing.

The vestry clerk and his duties have no bearing upon the question and are simply red herrings.

Finally, your correspondent says: 'I do not see what more the Legislature could have done.' I will not contest the proposition; the answer is, however, to be found in the number of bills for some years back before Parliament in the matter, bills backed in the aggregate by forty or fifty members. Last session at least half a dozen such bills were upon the order book, showing that 'the Legislature could have done,' and probably will do, something more to remedy the defects in the present lists. To seriously reiterate 'that any name may be found in a few moments or at the utmost in half a minute' provokes nothing worse than a smile, in which no one, if he read it, would more heartily join than the learned gentleman who has heretofore been so worried at his revision of these chaotic productions.

The registration of voters which is made so much of may be accomplished in a simple and efficient way without the aid of politicians or of revising barristers; to be effective it should be a continuous act from January 1 to December 31; the officials charged with the duty, whoever they may be (I do not seek such an appointment), might confer and, if necessary, join in stating cases for a superior Court whenever any doubt arises as to the law; but 99 per cent. of these doubts may be removed beforehand by a judicious code of rules for their guidance, whilst the expenses now incurred might with little difficulty be reduced by 100,000*l.* a year.

## THE 'TIED-HOUSE' SYSTEM.

MR. J. DANVERS POWER writes to the *Times* as follows:—

The various questions raised in connection with the sale of that commodity which it is accurate or the reverse to call 'intoxicating' liquor, according to the conduct of the consumer, cannot be all satisfactorily dealt with in one letter or one correspondence. But, with your permission, I will venture an opinion on the tied-house section of the general controversy.

When I was secretary of the Country Brewers' Society I had many opportunities of hearing all sides of this question, and while I can easily see how, by magisterial or legislative attempts to hinder the tied-house system, such monopoly as the brewers possess in some places may be increased, I never could see how it is to be diminished as long as any semblance of freedom of contract is preserved for the not unimportant part of the commercial body which manufactures, imports, and distributes alcoholic drink. No one will dispute that anything which tends towards monopoly possesses some disadvantages. When we try to preserve a system which savours of monopoly, hoping at the same time to suffer no inconvenience whatever, we are expecting what is impossible. As well might a country adopt a protective tariff and grumble if prices are raised.

As free trade in alcoholic liquor is out of the question, the proper inquiry to make is as to whether the admitted disadvantages of the partial monopoly are abnormal. I think I can show that in reality they are, with a few slight exceptions, almost non-existent. It may be that in some small villages the local brewer has an actual monopoly, and there may be brewers who find it to their advantage in such cases to abuse their privileges and supply inferior beer. But if this is granted it does not take the opponents of tied houses very far. Simple contracts to supply goods, even to a tied customer, imply that the goods are to be merchantable. There are also the Sale of Food and Drugs Acts which are well able to cope with adulteration, did it really exist to the frightful extent which so many people—without the shred of an actual case in support of their assertions—persistently declare is the fact. My experience has certainly been that whenever actions arising out of the quality of beer supplied to a tied tenant have been brought the brewers have won, and that there is an entire absence of prosecutions for the adulteration of beer under the Sale of Food and Drugs Acts. If anyone is inclined to dispute this perhaps he will give a few specific instances. I am quite ready with facts in support of my statements.

What I have said applies to village monopolies and to only the limited number of villages with one publichouse apiece. In such places, were it necessary to do so, the magistrates in practice have the power to license a second house tied to a second brewer. This is what is actually done in large villages. In towns the number of publichouses is, of course, increased, so that as a matter of fact there are few places with 5,000 inhabitants which are not served by three or four local brewers, keenly competing with each other as to the quality of their beer, and by the Burton brewers as well. If the tied-house system could be abolished it is not difficult to forecast what would happen. The owners of the publichouses—namely, the local brewers—would, as simple landlords, at once add to the rents the amount of the additional tied-house profits on the beer which they, as brewers, had previously supplied to the houses in question. They would then, as ordinary brewers, offer their beer to the freed tenants at what are called cutting prices. What does this mean? Simply that the nearest brewer would be able to deliver his beer at the lowest price. The monopoly might then indeed press hardly on the public in some places. I do not say that there would not be anywhere found enterprising publicans, but there would not be more of them than there are free houses at the present time. The general tendency would be in the opposite direction to that desired; for there is no reason to suppose that a free publican is less greedy of gain than an ordinary brewer, or less likely to take advantage of his monopoly when he has one.

As regards the relative advantages of the tied-house and the free-house systems in respect of good conduct, the best test to apply is to inquire into the freeholder's security against depreciation in the value of his property owing to forfeiture of the license after misconduct by the occupier. If I, not being a brewer, own a licensed house

worth 200*l.* a year as a publichouse, but only 100*l.* a year if its license were lost, would I, as a freeholder anxious to preserve its higher value and to guard against the loss of the license, rather lease it to a firm of brewers or to a publican? The brewers would certainly offer the best security. They would not only be liable to pay the full rent in any case, but they would, being capitalists, be able to pay even if the license were taken away and they, in consequence, lost 100*l.* a year for the remainder of their term by the transaction. In addition to this security I should know that they would certainly underlet my house to a tied publican, who would lose the value of his fixtures if the license were forfeited. Thus I should have a double security. But if I let the house to a free publican I know that, although he may have entered into obligations under a lease, he still, as a matter of fact, has generally only his fixtures to lose; and if he is a man who breaks the law and endangers the license the Bankruptcy Court has probably few terrors for him, even if it were worth my while to take him there. Of course, where publicans actually own their houses the circumstances are different; but it is quite a mistake to suppose that a free tenant is the same thing as a freeholder. Nobody is so wild as to propose that all publicans should be ordered to purchase the houses they occupy. If bad influences on the part of brewers over publicans really exist they are most likely to be manifested when a free publican owes a brewer money, and thus gets into his power. In such a case an unscrupulous brewer might possibly be tempted to urge illegal methods of increasing the sale of beer, because he would know that the forfeiture of the license would not entail upon him any greater loss than the failure of a doubtful customer.

MUNICIPAL CONTRACTS.—The report of a special committee appointed to inquire into alleged sweating in carrying out corporation contracts, and to consider and report as to a proposed fair-wage clause in future contracts, was discussed at the meeting of the Liverpool City Council on September 16. The committee recommended that each person or firm applying to be placed on the list of corporation contractors be requested to sign an undertaking to pay the rate of wages and observe the hours of labour recognised and agreed upon between the trade-unions and employers respectively in the locality in which the work for carrying out the contract is to be performed, or such a rate of wages and hours as are equivalent or approximate thereto, so that they will not transfer, assign, or underlet, directly or indirectly, the contract or any part, share, or interest therein, without the written consent of the corporation, under the hand of the town clerk, and that they agree to a condition being inserted in the contract to carry out this undertaking. When Mr. Houlding, the chairman of the committee, moved the adoption of this recommendation, an amendment was moved to leave out the words 'or such a rate of wages and hours as are equivalent or approximate thereto.' The amendment was rejected by twenty-five votes to three, and the recommendation was adopted. Contractors who fail to comply with the covenant may be struck off the list of corporate contractors. The watch committee are to consider the desirability of arranging 'the acceptance of contracts for such periods as will enable Liverpool tradesmen to compete on equal terms with those of other towns.'

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d.* DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## OBITUARY.

WE record with much regret the death of Mr. WILLIAM PARTRIDGE, the well-known metropolitan police magistrate, which occurred on the 10th inst. Mr. Partridge was born on January 2, 1818, and educated at Winchester College, whence he proceeded to Christ Church, Oxford, where he graduated in 1840. He was called to the bar at the Middle Temple in 1843, and first went the Home Circuit, subsequently joining the Oxford Circuit. In 1860 he was appointed a stipendiary magistrate for the Wolverhampton district; but in 1863 he was transferred to the metropolis, and acted at the Thames, Southwark, Westminster, Lambeth, and Marylebone Police Courts. He sat at Marylebone for the last time on Saturday, August 29. Mr. Partridge also for some time sat on the Brighton borough bench, and was a deputy lieutenant for the county of Hereford and a magistrate for that county, as well as for the counties of Monmouth, Gloucester, Sussex, and Stafford.

THE LONG VACATION JUDGES.—Mr. Justice Collins did not sit after September 17. Mr. Justice Jeune will commence his public duties in that capacity on Tuesday next, when he will attend at Queen's Bench Judges' Chambers. His lordship will sit in open Court for the first time as vacation judge on Wednesday next, September 23.

JUDICIAL VACANCIES.—There are at present three County Court judgeships vacant, caused by the resignation of his Honour Judge Ingham and the deaths of Judges Melville and Powell. By the death of the latter gentleman and the appointment of Mr. Rose as a metropolitan police magistrate there are also two recorderships vacant on the Oxford Circuit—those of Wolverhampton and Hanley respectively. The County Court judgeships are in the gift of the Lord Chancellor, while the appointment to the recorderships rests with the Home Secretary.

DIVORCE AND MATRIMONIAL CAUSES IN ST. HELENA.—The action of the Colonial Office in consenting to the establishment in the small colony of St. Helena of a Court for divorce and matrimonial causes would seem to indicate a change of policy on the part of the home authorities on this question. At present the number of Crown colonies with a divorce law is extremely small, but now that, after many years' persistent effort, St. Helena has overcome the opposition of the Colonial Office, other colonies may think it a fit time to claim equal facilities. As far back as 1858 the then governor, Sir E. H. Drummond Hay, passed a divorce bill, which was, however, disallowed in England on the ground that it was better to submit to known wrongs rather than to run the risk of inflicting terrible evils on society by introducing a remedy which, if ignorantly or recklessly applied, would inevitably do incalculable harm. Since that time the local bar has disappeared, and the governor of St. Helena also acts as Chief Justice, at the same time combining in his own person the functions of commander-in-chief of Her Majesty's forces in the island. The non-existence of a local bar and the fact that an executive officer is also the judicial officer in the island have not, however, prevented the Colonial Office from making the experiment of allowing the inhabitants of St. Helena a Divorce Court. Accompanying the proclamation are the new rules and regulations and a list of fees to be paid in the new Court. These are of the most moderate character, the highest being 4*s.* for 'swearing a jury of eight,' and 5*s.* for taxing costs. To file a petition and enter a cause in the action book costs only 2*s.*, and a rule *nisi* can be had for 3*s.*, the fee for a rule absolute being the same.

## CALENDAR OF THE COUNTY COURTS.

FROM SEPTEMBER 21 TO SEPTEMBER 26.

| No. of Circuit | His Honour | Sept. 21 | Sept. 22 | Sept. 23 | Sept. 24 | Sept. 25 | Sept. 26 |
|---|---|---|---|---|---|---|---|
| 22 | Judge Harington | — | Daventry | Alcester | Pershore | Solihull | — |
| 47 | Judge (?) | — | Lambeth | Woolwich | Lambeth | Greenwich | — |
| 58 | Judge Edge | Churston | Okehampton | — | — | — | — |

MESSRS. CASSELL & COMPANY will publish on the 24th inst. the first part of a new fine art work, entitled 'Historic Houses of the United Kingdom,' containing a descriptive and historical account of the principal ancestral homes of Great Britain and Ireland. The work will be abundantly illustrated with high-class engravings from original drawings and trustworthy photographs, and with ground-floor plans of the buildings. It will be uniform with 'Cathedrals, Abbeys, and Churches of England and Wales,' which has attained such widespread popularity.

THE number of *Cassell's Saturday Journal*, to be published on the 23rd inst., will form the commencement of a new volume, and will contain the opening chapters of two new serial stories, entitled respectively 'Tracked to Doom' (a Detective Tale), by Dick Donovan, and an 'Excellent Knave,' by J. Fitzgerald Molloy. Among the leading contents of this number will be a personal sketch of Mr. J. R. Robinson, of the *Daily News* (forming the first of a series of articles on 'Editors of To-day'); 'Parisian Cafés and their Frequenters;' 'The Tell-Tale Hand,' a complete story by Richard Dowling; 'All for All,' a new feature containing a variety of entertaining notes; humorous illustrations by Frederick Barnard and J. F. Sullivan, &c.

CORPORATION FINANCE.—A tabulated statement of the receipts and payments of the City's cash during the last ten years—namely, from 1881 to 1890—has been recently circulated as a Corporation Blue-book. The receipts of this source of income during this period was 7,666,910*l.*, of which 3,466,202*l.* were ordinary and 4,200,707*l.* extraordinary receipts. The expenditure during the same period was 7,651,375*l.*, or ordinary 3,298,590*l.* and extraordinary 4,352,784*l.* Among the ordinary expenses were charitable donations, 170,353*l.*; the Freemen's Orphan School, 54,331*l.*; technical education, 14,702*l.*; music, 36,059*l.*; City Library and Museum, 52,949*l.*; Fine Art Gallery, 4,680*l.* The extraordinary expenditure consists mainly of repayments of loans and interest on markets.

THE LATE BARON HUDDLESTON.—At the Liverpool City Council on September 16, the mayor asked permission for Alderman John Hughes to move a resolution in regard to the following letter which he had received from Lady Diana Huddleston: 'August 30, 1891. The Grange, Ascot Heath, Berkshire. My dear Mr. Hughes,—Liverpool having been on the first circuit I ever went with my late husband after he was created a judge, and, knowing his admiration for your great city, I should much like to present the Law Courts of Liverpool with a framed engraving of the Baron, to be placed in the senior judge's private room. Will you kindly tell me to whom I should apply to know if this would be an acceptable gift? The engraving, I may mention, is similar to the one hung in the Council Chambers of the Royal Courts of Justice, London. Trusting that you are well, believe me, very sincerely, DIANA HUDDLESTON.' Alderman Hughes moved a resolution thanking Lady Diana Huddleston for her kind and courteous offer, and stated that the council would have much pleasure in accepting the engraving and placing it in the senior judge's private room at St. George's Hall. The resolution was unanimously adopted.

A REPRESENTATIVE collection of stories of all ages and all countries is about to be published by Messrs. Cassell & Company under the title of 'The World of Romance.' The serial will be edited by 'Q,' author of 'Dead Man's Rock,' 'The Splendid Spur,' &c., and will be fully illustrated with new and original engravings. Part 1 will be published with the October magazines at the end of this month.

THE NEW POLICE MAGISTRATE.—The Queen has approved the appointment of Mr. John Rose as a metropolitan police magistrate in the place of Mr. Partridge, deceased. Mr. Rose, who was called to the bar in 1868, is a member of the Oxford Circuit, a revising barrister, recorder of Hanley, and a bencher of Gray's Inn. Mr. Rose took the oaths and was sworn in as a magistrate on September 16, before Mr. Justice Collins at Queen's Bench Judges' Chambers. He will sit at Marylebone Police Court for the remainder of the week, as the regular magistrates are away on vacation.

### BIRTHS.

On Sept. 7, at Kirkheaton, Yorkshire, the wife of W. B. Pilkington Solicitor, of a son.

On Sept. 10, at 6 Oxford and Cambridge Mansions, the wife of E. A. Armstrong, Barrister-at-Law, of a daughter.

On Sept. 15, at Upper Tooting, the wife of Philip Scott Stokes, Barrister-at-Law, of a daughter.

### MARRIAGES.

On Sept. 5, at Curdridge, Botley, Hants, Ernest William Way, eldest son of the late W. A. Way, Solicitor, of Portsmouth and Botley, to Margaret Fanny, daughter of E. H. Clark, of Botley.

On Sept. 7, at St. James's Church, Great Grimsby, William Henry Forbes Montanaro, Lieut. Royal Navy, youngest surviving son of Alfred Montanaro, Esq., of Bank House, Bargate, Great Grimsby, and grandson of the late Hon. G. Montanaro, to Dulcie Frances, only daughter of Aubrey George Butterfield, Postmaster-General of the Bermudas, and granddaughter of the late Chief Justice T. Butterfield.

On Sept. 8, at St. George's Church, Worthing, William Michael Spence, M.A., of Lincoln's Inn, Barrister-at-Law and Fellow of Pembroke College, Cambridge, to Ida C. M. Spence, second daughter of the late Rev. Robert Spence, M.A., of Dundee.

On Sept. 8, at the Parish Church, Bakewell, Derbyshire, Lieutenant Frank Henry Peyton, R.N., youngest son of the late Commander Lumley Woodyear Peyton, R.N., of Penzance, to Janet Wynyard, youngest daughter of John E. Barker, Q.C., of Brooklands, Bakewell.

On Sept. 15, at the Parish Church, Shepton Mallet, William Henry Gane, Solicitor, Boston, to Florence Amy, youngest daughter of Robert Kelley, of the Coombe, Bowlish, Somerset.

### DEATHS.

On Sept. 8, at 141 King Street, Great Yarmouth, Daniel Philip Meadows, Solicitor, aged 35 years.

On Sept. 8, at Perth, Eliza Johnston Robina Dowie, widow of Robert Dowie, Solicitor, Glasgow, and daughter of the late Robert Urquhart, of Moss, Lanarkshire.

On Sept. 10, Charles Edward Hawkins, of Lincoln's Inn, Barrister-at-Law, third son of the late John Hawkins, Esq., of Hitchin, Herts, aged 65 years.

On Sept. 10, at 103 Edith Road, West Kensington, Charles Edward Hawkins, Barrister-at-Law, in his 67th year.

On Sept. 15 (suddenly), John Joseph Powell, Q.C., Judge of the Lambeth and Greenwich County Courts, Recorder of Wolverhampton, and formerly M.P. for Gloucester, aged 75 years.

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# The Law Journal.

*SATURDAY, SEPTEMBER* 26, 1891.


## 'OBITER DICTA.'

THE translation of Mr. Montagu Williams, Q.C., from Worship Street to Marylebone Police Court furnished an opportunity for the expression of the high respect entertained by solicitors and officers of the former Court for the worthy magistrate. With a hearty contempt for humbug, and a bluff disregard of conventional maxims and official routine, Mr. Montagu Williams has proved himself not only a dispenser of justice, but of charity also. He has profound sympathy for the masses with whom a metropolitan magistrate is brought into such close contact, and in his response to Mr. Bedford's remarks, Mr. Williams said 'he had always felt that the sufferings of the poor were borne with the greatest patience, and that the struggle was often heroic.' That his health may be benefited by somewhat lighter work is the wish of his many friends both rich and poor.

IN filling up the three vacant County Court judgeships the Lord Chancellor may be trusted to recollect and recognise the increase and ever-increasing importance of the duties of these 'inferior' judges. In many rural districts 'His Honour' is practically the sole arbiter of 'civil' justice, as the justices assembled in petty sessions are omnipotent in 'summary' criminal offences. In large towns, on the other hand, convenience and a desire for economy bring into the County Court cases of great interest to commercial men. In either case it is of the highest importance that the judge should be not only a thoroughly competent lawyer, but possessed of that patience and knowledge of the world which are equally necessary in dealing with important issues and petty disputes. 'Failures at the bar' are not always successful judges, and the public expect and are willing to pay for competent and vigorous men.

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'A PEW,' said Mr. Justice Buller more than a century ago in *Stocks* v. *Booth*, 1 T. R. 428, 'may be annexed to a house by a faculty as well as by prescription, for the latter supposes a faculty.' In the case of *Phillips* v. *Halliday*, L. R. 1891, App. Cas. 228, Mr. Halliday proved acts of ownership in relation to a pew which, taken by themselves, were amply sufficient for the presumption of a faculty; but, on the other hand, the vicar and churchwardens showed that as long ago as 1680 there was evidence that the alleged right arose out of what purported to be a sale by the churchwardens of a portion of the site of the church to Mr. Halliday's predecessor in title—a curious transaction, which it was admitted could have no validity; and it was now contended, on behalf of the present vicar and churchwardens, that the alleged right being thus in its origin acquired in a manner not legal, the Court would not make the presumption of a faculty for the purpose of establishing it. The House of Lords, however, affirming the Court of Appeal, held that the subsequent ownership being perfectly consistent with the presumption of a later faculty, it ought to be presumed. The doctrine, as Lord Herschell puts it, ought to 'apply just as well to the acts necessary to confirm a title originally invalid, as to the acts necessary to create a valid title in the first instance.'

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THE decision of Mr. Justice Kekewich on the point of practice in *Cooke* v. *Smith*, to which we previously drew attention (LAW JOURNAL, p. 65), has now been affirmed by the Court of Appeal (60 Law J. Rep. Chanc. 573). The case decides that the power of the Court under Order XXXI., rule 26, to order a further deposit as security for costs of discovery may be exercised not only when the order for discovery is made, but at any time afterwards on a proper case being shown. The contrary construction, which would limit the power to the time when the order for discovery itself is made, would, as Lord Justice Kay says, 'be a most narrow and inconvenient construction of the rule.'

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IN *Ward* v. *Gamgee* (Notes of Cases, p. 138) a motion was made before Mr. Justice Stirling that affidavits might be taken off the file on the ground that they were not taken before a commissioner or a person duly appointed to administer oaths, and were a fraud on the Court and the defendant. The affidavits in question

appear to have been sworn before a gentleman who, being at the time an attorney, had been duly appointed a commissioner by the Court of Exchequer, but who was afterwards struck off the roll of solicitors in 1883. His appointment as commissioner was made under 22 Vict. c. 16. The jurisdiction is now vested in the Lord Chancellor by the recent Commissioners for Oaths Act, 1889. The appointment not having been revoked by the Lord Chancellor, Mr. Justice Stirling was of opinion that this commissioner could act under his commission though no longer a practising solicitor or, indeed, a solicitor at all.

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THE Reformatory and Industrial Schools Act, 1891 (54 & 55 Vict. c. 23), 'to assist the managers of reformatory and industrial schools in advantageously launching into useful careers the children under their charge,' is a humane and useful one. By the present law a child convicted of crime, &c., may be sent to an industrial school (see Industrial Schools Act, 1866 (29 & 30 Vict. c. 118), s. 18) for such time as to the convicting justices seems proper for the teaching and training of the child, but not in any case extending beyond the time when the child will attain the age of sixteen years, and to a reformatory school (see Reformatory Schools Act, 1866 (29 & 30 Vict. c. 117), s. 14) for a period of not less than two and not more than five years. The new Act provides that, if a child conducts himself well in either class of school, 'the managers of the school may, with his own consent, apprentice him to or dispose of him in any trade, calling, or service, or by emigration, notwithstanding that his period of detention has not expired,' and further enacts that 'such apprenticing or disposition shall be as valid as if the managers were his parents.' In case of emigration, and in any case, unless the child has been detained for twelve months, the consent of a Secretary of State is to be required for any exercise of the powers of the Act.

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THE recent case of *Regina* v. *The Judge of the City of London Court*, 60 Law J. Rep. Q. B. 575, disclosed what would seem to be an unfortunate omission in section 65 of the County Courts Act, 1888 (51 & 52 Vict. c. 43). It was there held that an action commenced in the High Court cannot be sent down for trial in a County Court under that section where the plaintiff has discontinued, and only a counter-claim remains to be tried. Section 65 provides that where in any action of contract brought in the High Court the claim does not exceed 100*l.*, or where such claim, though it originally exceeded 100*l.*, is reduced by payment, an admitted set-off or otherwise to a sum not exceeding 100*l.*, it shall be lawful for either party to the action at any time, 'if the whole or part of the demand of the plaintiff be contested,' to apply to a judge to order the action to be tried in a County Court. Upon the language of the section as it stands the Court could hardly have arrived at any other conclusion, for, as Mr. Justice Smith pointed out, the above condition does not exist where the plaintiff's claim has been abandoned. Bearing in mind, however, that one of the principal objects of the Act is to discourage litigation in respect of small amounts in the High Court, it seems difficult to suppose that it was intended by section 65 to create any distinction in this respect between a contested claim and a contested counter-claim.

IN the case of *Bishop* v. *Taylor & Co.*, 60 Law J. Rep. Q. B. 556, the Court had to determine the question whether a covenant in a lease that the lessee should not assign or part with possession of the premises without the consent of the lessor, such consent not to be unreasonably withheld, was a 'usual covenant.' Sir G. Jessel, M.R., in the case of *Hampshire* v. *Wickens*, 47 Law J. Rep. Chanc. 243, had laid it down that a covenant by a lessee that he would not without the lessor's consent 'assign, underlet, or part with the possession of the said premises, but such consent not to be withheld to a respectable and responsible tenant,' was not a usual covenant, and the Court (Mr. Justice Smith and Mr. Justice Grantham) were clearly of opinion, upon the authority of that case, that the covenant in question was not a usual one, and that, as it had not been disclosed to the purchaser prior to his signing the agreement, he was entitled to refuse to complete the purchase upon the ground that it had been inserted in the lease.

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THE case of *Stables* v. *Eley*, 1 C. & P. 614, which has long been the object of adverse criticism, has at last been emphatically disapproved of by the Court of Appeal in *Smith* v. *Bailey*, L. R. 1891, 2 Q. B. Div. 403. The latter case was an action against the owner of a traction-engine, which had been let by him for three months, for damages caused by the negligent management of it upon a highway. *Stables* v. *Eley* was cited by counsel as authority for the proposition that if a man allows a carriage to go out with his name upon it he holds himself out as liable for injury occasioned by the negligence of any person driving it. Both Pollock ('Partnership,' 5th edit. p. 53) and Lindley ('Partnership,' 5th edit. p. 47) have pointed out that in principle the doctrine of holding-out applies only where a person has altered his position on the faith of a representation, and therefore does not apply in cases of tort. This view was taken by the Court of Appeal, but they thought it unnecessary to express an opinion whether, under the circumstances in *Stables* v. *Eley*, there would be any *primâ facie* evidence of liability against the owner. This has more than once been suggested as the true effect and substance of the decision; see, for instance, 'Lindley on Partnership,' pp. 47, 214. Lord Justice Bowen, however, incidentally said that the provision of section 7 of the Locomotives Act, 1865, which requires the name and address of the owner to be affixed to an engine, was probably intended to assist any member of the public in finding out the person responsible. This is often a difficult point in practice; and in this view the rule of *primâ facie* liability in such circumstances appears to be a most salutary one, tending in some measure to protect the public against a persistent and unreasonable refusal on the part of the owner to supply the plaintiff or his solicitor with information necessary for the preparation of his case.

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THE Recorder of London shows no signs of failing strength in the discharge of his duties as judge of a Criminal Court. In such 'sensational' trials as that of Newton, the prisoner charged with the abduction of a young girl living in the Strand, there is always danger of a weak judge being more or less affected by the strong tide of public sentiment which ebbs and flows

according to the latest disclosures of details in the press. The case was interesting because of the romantic affection displayed by the girl for a man more than double her age; but there were no legal difficulties, and if there had been a chance of escape for the prisoner on any technical ground he destroyed it by his voluntary confession. The learned Recorder, in passing sentence of six months' imprisonment, showed that, while alive to the necessity of protecting female chastity, he could make some allowance for 'human nature,' and for the peculiar circumstances of a case in which there was evidently something to be said 'on the other side.'

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The late Mr. Bernard Wake, of Sheffield, whose attendance at the provincial meetings of the Incorporated Law Society made him familiar to hundreds of solicitors, had a lofty ideal of professional duty. His will has lately been proved for a large sum, and in the bequest to one of his sons of such 'goodwill' as subsisted in him in regard to his profession of a solicitor, the testator impresses on his son his earnest desire that he will continue his profession of a solicitor, which Mr. Wake regarded 'as a high calling and worthy of the full exercise of all the powers which a man possesses.' If this standard were more generally reached, or at least aimed at, there would be fewer scandals to the discredit of the legal profession.

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## TENANTS HOLDING OVER.

English people are, after all is said and done, instinctively conservative, and are more ready 'to bear the ills they have than' perhaps 'fly to others that they know not of.' Thus they permit old forms still to be used, though the delay caused by them is often needless. It is the fashion amongst some classes of politicians to speak of landlords as 'land-grabbers,' but they must remember that landlords have their grievances at the hands of their tenants which cry for redress. For instance, how hard it is to get rid of a tenant who will neither pay rent nor give up possession of the property! Witness the case of *Jones* v. *Foley*, 60 Law J. Rep. Q. B. 464. To facilitate the recovery of tenements after due determination of the tenancy an Act was passed in 1838. It only applies to property held for a term not exceeding seven years, and at a rent not exceeding 20*l.* a year. The following is a short summary of the requisite proceedings under it: The tenancy must, of course, have determined, and the landlord has to serve the tenant with a written notice in the form set out in the schedule to the Act, informing him that, if possession is not given up on or before the expiration of seven clear days from the service of the notice, an application will be made to the justices of the peace to issue their warrant, directing the district constables to take possession of the premises and eject any person therefrom. If the occupier does not appear and satisfy the justices that possession ought not to be given under the Act, they can order the constables to enter (by force if necessary) and give possession to the landlord within a named period not less than twenty-one days nor more than thirty days. It will be seen from this that, without making any allowance for other delays, at least four weeks must elapse before the landlord recovers his property. In *Jones* v. *Foley*, Lady E. Foley let a cottage and garden to the plaintiff, and due notice was given to him to quit on June 24, 1890. The plaintiff refused to give up possession, though repeatedly asked to do so, Lady E. having entered into a contract with a builder to pull down the plaintiff's cottage and the adjoining one and to rebuild them. On August 15—that is, three weeks after the expiration of the tenancy—Lady E. served the plaintiff with the notice, to which we have referred above, of her intention to apply to the justices for a warrant of possession. On September 3 (nineteen days later) the justices granted the warrant requiring possession to be given up within twenty-one days. If these various times are added up, they make a total of sixty-one days, since the expiration of the tenancy. Certainly Lady E. must be deemed to have been very merciful, especially as she had entered into the contract with the builder. The builder began to pull down the next cottage on September 3, and in doing so took off some tiles from the plaintiff's roof, and some damage was done to the plaintiff's furniture by falling tiles and mortar. The builder's men desisted when spoken to by the plaintiff. The next day, however, in digging the foundations of the new cottages in the plaintiff's garden, they pulled up some fruit-trees and cabbages, and on September 21 removed some tiles from the roof. In the execution of this latter act the plaintiff alleged that a piece of mortar injured his wife's ear and a clock. On October 30 the plaintiff commenced an action against Lady E. and the builder for 50*l.*, 'damages for trespass on and between September 3 and 24, 1890, at a cottage and garden in the occupation of the plaintiff, and damage to the plaintiff's furniture, pictures, garden produce, and other effects.' It is difficult to see under which head the tenant included his wife's ear. The County Court judge directed the jury to find in favour of the plaintiff, which they did with 40*l.* damages, nearly six years' rent of the cottage. The Divisional Court on appeal held that such a verdict could not stand, and entered judgment for the defendants. 'The tenant,' said Mr. Justice Day, 'had no right whatever, of any sort or kind, to remain or have his furniture on the premises; if he will act in defiance of the law, and leave his goods where they had no right to be, he must suffer any inconvenience and loss which is occasioned entirely owing to his own obstinacy, and to no fault on the part of the landlord. I cannot see the slightest trace of any cruelty, or even harshness, on the part of the defendants; they had no desire whatever to injure the plaintiff or his property, but simply wished to proceed with a contract which they had entered into with one another.' An awkward question might arise if the landlord had contracted to sell or let the property on the day of the expiration of the tenancy, and this tedious process involving at least four weeks' delay had to be resorted to. For he is bound upon being paid the purchase-money, and any interest on it that may have become payable, to put the purchaser into possession of the property ('Fry on Specific Performance,' 2nd edit. p. 586). Could the purchaser under these circumstances refuse to pay his purchase-money, or even declare that he would throw up his purchase?

Will not some of the reformers who advocate enfranchisement of leaseholds, taxing of ground-rents, and such measures for casting burdens on landlords, also advocate some scheme for redressing what must be deemed the wrong to them, which the present law causes?

## ENGLISH *CAUSES CÉLÈBRES*.—VI.

### REGINA *v.* NEWMAN.*

MOST students of the English law of evidence are familiar with at least the name of the case of *Regina* v. *Newman* and the 'points' in connection with which it is usually cited. Few, perhaps, know that not only in legal but in dramatic interest it is a *cause célébrable* if not *célèbre*. In any event the story is well worthy of being retold.

In the year 1851 Giovanni Giacinto Achilli, D.D., an Italian by birth, once a monk of the Dominican order and a priest of the Roman Catholic Church, afterwards a Protestant convert, and at the time of the episode in question minister of an Italian Protestant Church in the neighbourhood of Golden Square, made a series of bitter and popular attacks on the Inquisition and on the characters and doctrines of many of the professors of the Roman Catholic faith. By a curious coincidence these attacks were delivered just at the very time when Dr. Newman, in his 'Lectures on the Present Position of Catholics in England, addressed to the Brothers of the Oratory of St. Philip Neri,' was endeavouring to combat the traditional dislike with which most Englishmen regarded his faith, and was asserting that a nearer and truer knowledge of Catholics would effectually dispel the national prejudice against Catholicism. From the point of view of this argument, Dr. Achilli's public utterances were obviously inconvenient. Newman had not then established his reputation as 'the most dexterous controversialist of the century;' but he was universally recognised as a dangerous adversary, a forcible and elegant writer, and a perfect master of the irony that 'stings like a darting pain.' Naturally and, if his information was correct, properly he determined that Dr. Achilli should be silenced, and in delivering the fifth lecture in the series, on the 'Logical Inconsistency of the Protestant view,' he turned suddenly aside from his theme and, in the faint sweet tones which will live in the memory of Oxford for ever, proceeded to stifle the *vox clamantis*. The following are the material passages in this terrible philippic: 'Wiping its mouth and clasping its hands, and turning up its eyes, it' (*i.e.* the Protestant public) 'trudges to the Townhall to hear Dr. Achilli expose the Inquisition. Ah! Dr. Achilli! I might have spoken of him last week had time admitted of it. The Protestant world flocks to hear him because he has something to tell of the Catholic Church. He has something to tell, it is true; he *has* a scandal to reveal, he *has* an argument to exhibit. It is a simple one, and a powerful one as far as it goes—and it is *one*, that one argument is himself; it is his presence which is the triumph of Protestants; it is the sight of him which is a Catholic's confusion. It is indeed our confusion that our Holy Mother could have had a priest like him. He feels the force of the argument, and he shows himself to the multitude that is gazing on him. "Mothers of families," he seems to say, "gentle maidens, innocent children, look at me, for I am worth looking at. You do not see such a sight every day. Can any Church live over the imputation of such a production as I am?"' Then come the paragraphs, which the jury found to be libellous, and which contain specific charges of infidelity, hypocrisy, and the grossest immorality. Dr. Achilli is then made to conclude his introductory remarks to his imaginary audience thus: 'And now attend to me, such as I am, and you shall see what you shall see about the barbarity and profligacy of the inquisitors of Rome.' 'You speak truly, Dr. Achilli,' Dr. Newman continued, 'and we cannot answer you a word. . . . Yes, you are an incontrovertible proof that priests may fall and friars break their vows. You are your own witness; but while you *need* not go out of yourself for your argument, neither are you *able*. With you the argument begins, with you, too, it ends—the beginning and the ending you are both. When you have shown yourself you have done your worst and your all. . . . Your witness against others is utterly invalidated by your witness against yourself. You leave your sting in the wound; you cannot lay the golden eggs, for you are already dead.'

Charges of so substantial and so deadly a character could not be ignored. Newman's lecture was published, and Achilli proceeded by way of criminal information against Messrs. Burns & Lambert, the publishers. Newman at once admitted that he was the author of the alleged libel, his name was substituted as defendant by leave of the Court, and he set up a defence of 'justification' under 6 & 7 Vict. c. 96, s. 6. The information was tried before Lord Campbell in the Court of Queen's Bench in June, 1852, Sir F. Thesiger (Attorney-General), Sir Fitzroy Kelly (Solicitor-General), and Mr. T. F. Ellis (of Ellis and Blackburn notoriety) appeared for the Crown; while Sir A. E. Cockburn, Mr. Serjeant Wilkins, Mr. Bramwell, Q.C., and Mr. Badeley were counsel for the defendant. The jury found that none of the charges, except that alleging Dr. Achilli's suspension from the exercise of sacerdotal functions, had been proved. Thereupon Lord Campbell entered judgment for the Crown. The defendant subsequently moved for a new trial on two grounds—(1) rejection of material evidence, and (2) that the verdict was against the weight of the evidence. (1) The defendant's counsel had proposed at the trial to give in evidence a book called the 'Dublin Review,' which, it was suggested, had been published some time before the application for the information, and contained charges identical with those contained in the alleged libel. The Lord Chief Justice had rejected this evidence, and the Court of Queen's Bench upheld the rejection (1 E. & B. p. 271). (2) On the second ground of appeal, however, Newman was more successful, and a rule *nisi* for a new trial was granted (*ubi sup.* at p. 273). This rule was subsequently discharged (1 E. & B. 558), on the ground that 'where a justification is pleaded under 6 & 7 Vict. c. 96, s. 6, to an indictment for a defamatory libel, and the libel contains several distinct imputations, and the plea alleges the truth of all, and is traversed generally, if the evidence fail as to any one of them, the verdict will be entered generally against the defendant.' Many of his charges against Achilli Newman undoubtedly failed to prove; and although the Court was *apparently* * of opinion that, as to others, the preponderance of the evidence was against the prosecution, the fact of there having been at least a partial failure to support the plea of justification was held to be decisive. But Lord

* '*Achilli* v. *Newman*. A Full and Authentic Report of the above Prosecution for Libel, tried before Lord Campbell and a Special Jury in the Court of Queen's Bench, Westminster, June, 1852; with Introductory Remarks by the Editor of "The Confessional Unmasked."' London: W. Strange, pp. 65, and see 1 E. & B. pp. 268 and 558 (1852-1853).

* See the judgment of Lord Campbell, C.J., 1 E. & B. at pp. 577, 578. It seems that the new trial was refused only because, having regard to their lordships' view of the law, no other verdict than a general verdict of guilty could be returned.

Campbell intimated that their lordships, 'in deliberating upon the sentence,' would 'form their own opinion upon the evidence,' and increase or mitigate the punishment accordingly. Not a little to the annoyance of ultra-Protestants, Newman escaped with a fine of 100*l.* and an address, equally foolish in its compliments and in its censure, from Mr. Justice Coleridge.

(*To be continued.*)

# Correspondence.

## POPULAR UNIVERSITY EDUCATION.

SIR,—The interest manifested throughout England in this important subject has already become so pronounced that I should esteem it a favour if you would kindly permit me to state very briefly in your generous columns the suggestions I would put forward for bringing our national universities more fully into harmony with the requirements of those for whom they were originally founded :—

1. Earnest action by the university authorities and parents against extravagant expenditure.

2. Extension of the university teaching to at least nine months in each year.

3. Limitation of the university course for the B.A. degree to two years instead of three.

4. Removal of the Greek language from the list of compulsory subjects.

I believe that if these concessions were made thousands of middle-class parents—merchants, doctors, lawyers, manufacturers, and others—would eagerly afford their earnest and intelligent sons the opportunity of a two years' university course; the youths themselves would be greatly benefited, and the standard of middle-class education in England would thereby be speedily raised to at least the level of that of Germany and France.

JAMES HAYSMAN.

International University College,
London, N.W.

# Unreported Cases.

## COUNTY COURT.

INTERNATIONAL COPYRIGHT ACT, 1886, AND BERNE CONVENTION—PRIOR PRODUCTIONS—REGISTRATION.

AT the Brighton County Court, on August 7, the case of *Moul and others* v. *The Devonshire Park Company and Megone* was decided by his Honour Judge Martineau. The facts and arguments sufficiently appear from the following judgment delivered by his Honour: These are consolidated actions in which several composers of music, who are all Frenchmen, claim damages from the defendants for the infringement of their exclusive right to the public performance of various operas and other musical compositions, and ask for an injunction to restrain any further performance. For convenience I shall, in the course of this judgment, use the expression 'playright,' suggested by Mr. Scrutton in his book on the law of copyright, as the equivalent of exclusive right of public performance, and use the expression 'copyright' as the equivalent of multiplying copies. The defendants, the Devonshire Park Company, own the Devonshire Park at Eastbourne, which is open to the public on payment. For the amusement of the public they maintain a band, and give concerts and perform music. The defendant Megone is the conductor of the band, and presides at or conducts the concerts. The plaintiff Moul is the attorney in this country of a society of French authors and composers, and the various composers who are plaintiffs are members of this society. Hartmann, one of the plaintiffs, claims to be entitled by virtue of an assignment to the playright of 'Le Cid,' by Massenet. The rest of the plaintiffs are the composers. When I speak of the plaintiffs, I refer more particularly to the composers. Moul claims damages in respect of the performance of the opera of 'Carmen.' 'Carmen' was composed by Bizet, who is dead. The heir or legal personal representatives of Bizet, according to the law of France, are not joined as a co-plaintiff or co-plaintiffs; but it was arranged that they should, if necessary, be joined as co-plaintiffs, and that I should deal with the case as if they were plaintiffs. The rights of the different composers are several and distinct, and the questions arising differ in the case of some of the plaintiffs. This has considerably embarrassed me in coming to a decision. I cannot separate or classify the different cases except in a very general way. I have been greatly assisted, however, by the circumstances that the solicitors for the plaintiffs and the defendant Megone had agreed upon a statement as to the points in dispute which are to be settled by the Court. The Devonshire Park Company have not agreed to any such statement, and in strictness I ought to decide as between the plaintiffs and the company upon the evidence given in Court, and upon the points raised in argument before me; but I may mention here that I see no difference between the case of the two defendants. The defendant Megone has played all the music in question as the officer or servant of the company, which is responsible for his acts. Some of the sheets of music from which the band actually played happen to be the property of Megone, and some happen to be the property of the company; but nothing, I think, turns upon this, and, in my opinion, there is solidarity between the defendants. As the plaintiffs and the defendant Megone have agreed upon the points to be decided, and to a great extent upon the facts, I propose to decide the questions they wish me to decide first. I think the decision of these questions will cover all the questions raised by the evidence and the arguments between the plaintiffs and the defendant, the company; but if not, no doubt the counsel for the company will call my attention to any question particularly affecting the company which I may leave undisposed of. The questions which I propose to consider in the first instance, taken in the order in which they arise as between plaintiffs and defendants, appear to me to be as follows: (1) Are the plaintiffs other than Moul and Hartmann the composers of operas and musical compositions in respect of which these actions for infringement of playright are brought? (2) Have they accomplished the conditions and formalities required by the law of France (see article 2 of the Berne Convention) to entitle them to playright? (3) Does the fact that the plaintiffs have not complied with the provision as to registry and delivery of copies required by the Act of 1842, which applies to Englishmen and works produced in England, prevent the plaintiffs from sustaining the action? In connection with this question I have to consider the decision of Mr. Justice Stirling in *Fishburn* v. *Hollingshead*, 64 L. T. Rep. (N.S.) 647; L. R. 1891, 2 Chanc. Div. 371. (4) Have the defendants infringed the playright of these operas and compositions? (5) All the musical works having been published prior to December 6, 1887, did the defendants lawfully produce these works in the United Kingdom prior to December 6, 1887? (6) Had the defendants rights or interests arising from or in connection with such productions which were subsisting and valuable at the date of December 6, 1887? There are some minor questions

raised by the statement of points agreed upon between the plaintiffs and the defendant Megone; but I think practically my decision on these points will cover nearly every question raised. I will consider any further question arising on the evidence and arguments if counsel will call my attention to any question not covered by my decision on the before-mentioned points. My usual course in delivering a judgment is to state the facts which I consider established, and then to state the law applicable and the result. In this case I propose to refer, in the first instance, to the Act of 1886, the Order of Council under the Berne Convention, and to the decisions (two in number) under the Act—viz. *Moul* v. *Groenings* (*ante*, p. 120; 64 L. T. Rep. (N.S.) 569), and *Fishburn* v. *Hollingshead*. As to the infringement, it is admitted, I think, that the defendants have publicly performed the music of the composers though they may in some instances have performed the orchestral score of the opera, and in other instances the pianoforte arrangement. The operas and musical compositions in question were produced before December 6, 1887, and the defendants claim the benefits of the proviso in section 6 of the Act. The burden is on the defendants to prove, first, a lawful production by them prior to December 6, 1887, of the operas and musical compositions; secondly, a right or interest arising from or in connection with such production; thirdly, that such right was subsisting on December 6, and that it was valuable. The composers and Hartmann claim playright in the music performed by the defendants under the International Copyright Act, 1886, the Order of Council issued in November, 1887, and which came into operation on December 2, 1887, and the Berne Convention, which the Queen entered into under the provisions of the Act of 1886. The following are the material sections of the Act of 1886: Sections 1, 2, 4, 6, 7, 10, and 11. [Read.] The following are the material sections of the Order of Council: Sections 1, 2, 3, 6, 8, and 9. [Read.] The following are the material articles of the Berne Convention: Articles 2, 4, 9, 10, 11, and 14. [Read.] I will now refer to the case of *Moul* v. *Groenings*, in which a question arose as to the effect of section 6 of the Act of 1886. The case arose in this Court. There was an appeal from my decision to the Divisional Court, and from the Divisional Court to the Court of Appeal, and in the result my decision was affirmed. The material facts of that case are stated in the judgment I delivered in this Court and in the judgment of the Divisional Court. Mayeur, the plaintiff in that action, claimed, under the International Copyright Act, 1886, and the Order in Council of November, 1887, giving effect to the Berne Convention, to be entitled to the playright of a piece of music called the 'Caprice Polka,' composed and produced by him at Paris in 1877. It was not registered under the International Copyright Act of 1844, and so had become public property in this country in the sense that it was lawful for any person in this country to publish it and perform it. Lafleur, an English publisher, had some time before the Order in Council, which came into operation on December 6, 1887, published the 'Caprice Polka' in England. The music was arranged for a band. It was lawfully produced by Lafleur. Groenings, the defendant, bought the music so published of Lafleur and performed it prior to December 6, 1887. It was lawfully performed by Groenings before December 6, 1887. The piece of music was part of Groenings's *répertoire*. Groenings performed the 'Caprice Polka' after December 6, 1887. The principal question in *Moul* v. *Groenings* was, whether Groenings, in performing the piece after December 6, 1887, was protected by section 6 of the International Act, 1886. I held that the Act was retrospective. I also held that the defendant Groenings at the date of the Order in Council had a subsisting and valuable right or interest arising from or in connection with a lawful production of the 'Caprice Polka' prior to December 6, 1887. The Divisional Court, as I understand, abstained from expressing any opinion on the question whether the Act was retrospective, as it was unnecessary in their view of the case to do so. I adhere to my opinion that the Act is retrospective; indeed, I cannot understand what the meaning of the words used in section 6 is if that section has not a retrospective effect. The Act is to be treated, with reference to works produced prior to December 6, 1887, as if it were in operation at the date of the production. I was of opinion, though I did not go into that point in my judgment in *Moul* v. *Groenings*, that the plaintiff Mayeur could sustain the action though he had not registered under the English Copyright Act of 1842. This objection to the title of Mayeur to sue by reason of his not having registered under the Act of 1842 was, as I understand, taken on behalf of the respondents in the Divisional Court, and Mr. Asquith, the counsel for Mayeur, answered the objection. I understand Mr. Asquith was stopped by the Divisional Court in his reply on this point, the Court apparently being satisfied that the plaintiff Mayeur was not bound to register under the Act of 1842; but I understand that the Divisional Court delivered no judgment on the point, partly because it was unnecessary to do so, as they held that Groenings had a complete defence under section 6 of the International Copyright Act, 1886, and partly because they understood the point was not taken before me. Mr. Justice Smith apparently was of opinion that the publication by Lafleur gave him an interest within the meaning of section 6, and might entitle him not only to sell any copies remaining unsold at the date of the Order in Council, but also to publish a second edition; and he seems also to have been of opinion that this right of Lafleur might indirectly protect Groenings as a purchaser from him. From the report in the *Times* of Lord Justice Lindley's judgment in the Court of Appeal, he also would appear to have been of opinion that, inasmuch as Lafleur would not be able to sell unless a purchaser could perform the music sold, the interest of Lafleur would give a right to a purchaser to purchase and perform, for no one would buy unless he was at liberty to perform. The point, however, was not expressly decided by the Court. I do not understand that anything was said by any of the judges in the Court of Appeal on the question whether Mayeur, who had not registered under the Act of 1842, was not in a position to sustain the action. The only other decision or judgment given on the Act of 1886 with which I am acquainted is the judgment of Mr. Justice Stirling in *Fishburn* v. *Hollingshead* (reported L. R. 2 Chanc. Div. 371). [Read judgment.] I gather from that judgment that Mr. Justice Stirling has in effect held that a foreign author or composer cannot maintain an action for infringement unless he complies with the requirements of the Act of 1842 as regards registration and delivery of copies imposed on English authors and composers. I cannot help thinking, however, that Mr. Justice Smith and Mr. Justice Grantham, when they stopped Mr. Asquith, really intimated that their opinion was that foreign composers entitled to the benefit of the Berne Convention, who have complied with the formalities required by their own country, are not bound to comply with the formalities as to registration imposed on English composers by the Act of 1842 before commencing an action, and that they did not concur in the opinion of Mr. Justice Stirling. I will now consider the six before-mentioned questions. As to (1): Are the plaintiffs other than Moul and Hartmann the composers of the operas and musical compositions the subject of the action? It is not, as I understand, disputed that the plaintiffs the composers composed the operas and musical compositions in question. If the point is in dispute as a matter of fact, then in my opinion there is overwhelming evidence that they are the com-

posers of the operas and musical compositions the playright of which is claimed. The names of the plaintiffs (composers) appear on the sheets of music in the possession of the defendants, and from which, or copies of which, the defendants have performed, as being the composers respectively. Authenticated certificates have been put in under section 7 of the Act of 1886 in which the plaintiffs are stated to be the composers. I decide this question in favour of the plaintiffs. The next question is: (2) Have the plaintiffs the composers accomplished the conditions and formalities required by French law to entitle them to the enjoyment of their works? A French advocate was called to prove the law of France. Mr. Cannot, for the company, objected to his evidence. I think it was admissible. He proved the following facts: (*a*) That the composer or publisher has to comply with certain formalities as to the copyright, meaning the reproduction of copies of music, but that no formalities are required by French law to protect the enjoyment of the playright. This is what I understood him to say. (*b*) That the certificates produced and given in evidence were duly authenticated and apparently regular. (*c*) That an assignment of the copyright, according to the law of France, does not carry with it the playright—that must be expressly assigned. The law of France in this respect appears to be practically the same as the law of England. It is not necessary by French law to put any notice on the copies of music published that the rights of performance are reserved similar to that required by the English Act of 1882. The French advocate was cross-examined, but no question was asked him in cross-examination as to the conditions and formalities required by French law, or if any question was put to him I have no note of the answer, and the question and answer escaped my attention. Mr. Megone contended, as I understand, that I was to deal with the case as if the law of England applied, and he relied on the circumstance that the certificates are only evidence of the facts stated, and that it appeared in several, if not all, instances that pianoforte arrangements and not the full scores had been deposited. I am of opinion that the law of France is applicable, and that there is nothing to show that a deposit of the piano arrangements may not be a sufficient deposit for the purpose of securing copyright in the opera. In this state of things, and regard being had to section 7 of the Act of 1886 and article 11 of the Berne Convention, I am of opinion that the composers have complied with the formalities required by the law of France. The next question is, whether the plaintiffs are unable to sustain the action on the ground that it was incumbent on them to comply with the provisions as to registry and delivery of copies required by the Act of 1842, applicable to English subjects. As to this, I am much pressed by the opinion of Mr. Justice Stirling in *Fishburn* v. *Hollingshead*, which is express on the very point. If no opinion adverse to this view had been expressed by any other judge of the High Court, I should have felt myself bound by that opinion, though, with the greatest possible respect for the opinion of Mr. Justice Stirling, I am unable to agree with it. It is the duty of a County Court judge to decide in accordance with the law as laid down by the judges of the High Court. It appears to me, however, though the Divisional Court did not decide the question, both judges thought the plaintiffs were not prevented from suing by the omission to register under the Act of 1842. I feel myself at liberty, therefore, to decide this point in accordance with my own view of the construction to be put on the Act of 1886, the Order in Council, and the convention. It is, I think, clear that before the Act of 1886, the Order in Council, and the Berne Convention, a foreign composer who duly registered under the Act of 1844 was not required to register under the Act of 1842 before commencing an action for damages for infringement of copyright or playright. The registration required by the Act of 1842, in the case of English subjects, authors, and composers entitled to copyright and playright, differs from the registration required in the case of foreign authors and composers under the Act of 1844. By the Act of 1842 an English author has to deliver copies of books and to register the title of the book, the time of first publication, the name and place of abode of the publisher, and the name and place of abode of the proprietor of the copyright; and in the case of dramatic pieces or musical compositions the first public representation or performance, and the Act contains a form of entry. By the Act of 1844 and the Order in Council, the foreign composer had to deliver a copy, and register the title of the copy, the name and place of abode of the composer, the name and place of abode of the owner of the copyright, the time and place of first publication or performance in the foreign country. There is considerable resemblance, but the requirements are not identical. I may observe in passing that, singularly enough, the entries in the registry made under the Act of 1844 are treated in the copies issued at Stationers' Hall as made under the Act of 1842, and not the Act of 1844; but nothing, I think, turns on this. The Act of 1886, s. 4, left it to the Queen to determine by the Order in Council whether the provisions as to registration imposed on foreign authors and composers by the Act of 1844 should apply or not, and, if they were to apply, to what extent they should apply. The Order in Council does not contain any direction as to the provisions of the Act of 1844 applying apparently. Therefore there are no provisions that the foreign author or composer should register, as he had to do under the Act of 1844. I cannot see why the foreigner, who under the law prior to 1886 was not bound to register under the Act of 1842, should all of a sudden have the duty cast upon him of registering under the Act of 1842, which did not apply to foreign authors or composers at all. The only words in either Act, Order in Council, or Berne Convention, pointing to any obligation of the kind that I can discover are contained in section 2, subsection 3, of the Act, section 3 of the Order in Council, and art. 2 of the Convention. [Read.] The foreign author is to have the same rights as natives. It is quite true, as Mr. Justice Stirling remarks, that the Act of 1842 distinguishes between the copyright or playright and the right to sue, and that the right of maintaining an action depends on previous registration; but I think the whole scope of the convention and of the Order in Council authorised by the Act of 1886 is reciprocity between Great Britain and the foreign countries. The French composer has to comply with the formalities imposed by French law to secure copyright, and perhaps playright, in his own country, and by order of the convention, to which effect is given by the Act of 1886 and the Order in Council, he is to enjoy the same privileges in England as an English author and composer. *Vice versâ*, the English author and composer who has complied with the formalities required by English law in the case of English subjects by registering under the Act of 1842, has the same privileges in France as a French author and composer who has complied with French formalities. In my opinion, the plaintiffs are not prevented from sustaining this action by reason of their not having registered under the Act of 1842. The Act of 1886, with the Order in Council of November, 1887, are, in my opinion, substituted for the Act of 1844 and the Order of 1852. I decide this point in favour of the plaintiffs. The next question is, whether the defendants have publicly performed the operas and musical compositions of the plaintiffs the composers. I think this point reasonably clear on the evidence. Whether the music actually played by the defendants was played from the orchestral score of the different

operas or compositions, or from an arrangement for the voice and pianoforte of one of the operas, or a particular scene in the opera, is, in my opinion, immaterial. The defendants have played the composers' music, using that word in the larger sense. I may illustrate what I mean by a reference to the opera of 'Roméo et Juliette,' one of the operas the subject of the action. The opera was composed by Gounod, who is living. There is an arrangement of the opera for the voice with a pianoforte accompaniment, *partition et chant*, the piano expressing as far as it is practicable the various instruments, such as the violins, flute, drum, &c. There is, in one sense, a material difference between the opera and the *partition et chant*, but each express the same musical ideas of the composer as regards the air and melody, and the composition is identically the same, though the composer's ideas are expressed in different ways. I was referred to *Wood* v. *Boosey*. That case turned on a question of registration; but, on looking at that case, it appeared that the plaintiff, who was the composer of a pianoforte arrangement, had not complied with the Act of 1842; but it was intimated in the Exchequer Chamber, if not in the House of Lords, that if the composer of the opera had sued he could have sustained the action, provided the copyright or playright in the opera had been duly registered. I may refer, in connection with this point, to the decisions in *D'Almaine* v. *Boosey*, 1 Y. & C. 289; *Planché* v. *Braham*, 8 C. & P. 68; *Wood* v. *Boosey*, 37 L. J. Rep. Q. B. 84; and *Boosey* v. *Fairlie*, 46 L. J. Rep. Chanc. 726; 48 *ib.* 697. I find as a fact, and decide, that the defendants have publicly performed the operas and musical compositions of the plaintiffs the composers. The next two questions are, whether the defendants have lawfully produced the operas and musical compositions prior to December 6, 1887, and whether the defendants had a right or interest arising from or in connection with such production at that date. I do not feel any difficulty about the last point. The music was purchased and performed by the defendants prior to December 6, 1887, and the music was part of the *répertoire*, and formed part of the stock-in-trade of the defendants, or one of them. I have no doubt, if they lawfully produced, they had a subsisting right or interest on December 6, 1887, and that as to most of the operas and music composed, and particularly 'Faust' and 'Carmen,' the right or interest was valuable. I think the right or interest was, as regards all, as valuable as the right or interest which Groenings had in the 'Caprice Polka'; and, as the Court of Appeal thought I might fairly find a valuable right or interest in the case of the 'Caprice Polka,' I find to the same effect in this case, leaving only the question whether the production was lawful to be disposed of. 'Lawful' means without infringing any existing copyright or playright as regards all operas and musical compositions which were not duly registered in proper time under the Act of 1844. I follow the decision in *Moul* v. *Groenings*. As far as I can make out, the following operas and musical compositions were not duly registered under the Act of 1844: (*a*) The opera of 'Faust;' (*b*) the opera of 'Mireille; (*c*) 'Silvia;' (*d*) 'Scènes Napolitaines;' (*e*) 'Philemon and Baucis;' (*f*) 'La Souveraine.' The case of the plaintiffs therefore fails as to all these, on the ground that the defendants lawfully produced these operas and musical compositions—*i.e.* had performed them before December 6, 1887, and had at that date a valuable and subsisting right or interest therein. There may be one or two other operas or musical compositions which were not duly registered under the Act of 1844; I refer now particularly to 'Mignon' and 'Loin du Bal.' It is stated on behalf of 'Mignon' that the date of first publication was not correctly stated in the entry at Stationers' Hall. If so, 'Mignon' follows 'Faust' and 'Mireille.' As to 'Loin du Bal,' of which a pianoforte arrangement only was registered, I should like to hear a very short argument. I do not recollect the point being argued. The decisions apparently bearing on the question are *Wood* v. *Boosey* and *Fairlie* v. *Boosey*. I have not finally settled the list. I now proceed to deal with the operas or musical compositions which have been duly registered—*e.g.* 'Carmen,' 'Le Cid,' 'Faust' ballet music, and apparently one or two others. The burden is on the defendants to prove lawful production. Though the consent in writing of the author may be necessary to avoid an action for penalties under 3 & 4 Wm. IV. and the provisions of the Act of 1844, this is not an action for penalties but an action for infringement of playright. I think there may be a consent which will estop the composer from suing, though the performance was not authorised by the composer or author in writing. The question is whether the defendants have made out what is equivalent to a written consent by the composers who are entitled to the playright to the defendants performing. The music has been bought and sold in this country with the consent of the owners of the playright, and in some instances the publishers have published and sold, apparently without objection by the composer, band music, which would be practically useless unless the purchaser could perform. I entertain a doubt on this point, but the burden is on the defendants, and I decide that they have not proved a lawful production as regards opera music duly registered under the Act of 1844. The plaintiffs, therefore, succeed as to 'Carmen,' Le Cid,' ballet music ('Faust'), 'Danse Macabe.' I may notice here the Act of 1882. A worse drawn Act I never saw. I am of opinion it is not retrospective, and that it does not apply to foreign composers. The plaintiffs, therefore, fail as to most of the operas and musical compositions, but succeed as to some. The action will be dismissed as to the operas and musical compositions not duly registered, and there will be judgment for the particular plaintiffs whose operas or musical compositions were duly registered. I do not propose to give costs, but I will hear counsel on the question of costs. I propose to consider the evidence as to 'Mignon' and 'Loin du Bal' with the assistance of counsel. [On investigation it appeared that the true date of the first performance of 'Mignon' was not entered in the registry at Stationers' Hall.] I hold that the defendants lawfully performed the music from 'Mignon,' and that the plaintiffs' case fails as to this opera. [On further argument with respect to 'Loin du Bal,' it appeared that a pianoforte arrangement had been duly registered, being the original composition first published, but that the composer had subsequently published an arrangement for stringed instruments, being the arrangement performed by the defendants, which was not registered. The counsel and solicitors proposed to leave the question as to 'Loin du Bal' to the judgment of the Court, without argument.] I hold, but with doubt, that the defendants lawfully produced 'Loin du Bal,' and that the case of the plaintiffs fails as to this also. Damages, 20*s.* in five cases in which the plaintiffs succeed, with injunction if asked for. No costs on either side.—Rose-Innes for plaintiff; Cannot and Megone for defendants.

## POLICE.

### FALSE TRADE DESCRIPTION.

At the Thames Police Court, Mr. Henry Crosse, of Cordova Works, Copperfield Road, Mile End, appeared to answer two summonses for 'selling certain goods to which a false trade description was applied—to wit, a bottle of sauce bearing the name Goodall, Backhouse & Co.,' and 'for selling certain goods and a bottle of relish to which a trade-mark was falsely applied.'—Mr. J. Seymour Salaman prosecuted; Mr. George Hay Young defended. In opening the case the former said that twenty-four bottles purchased of defendant's sauce were

all marked 'Yorkshire Relish. Goodall, Backhouse & Co.' Mr. Henry Parker, manager to Messrs. Goodall, Backhouse & Co., starch manufacturers, Whitehorse Street, Leeds, deposed he had been in the employ of the firm for eighteen years. They had a registered trade-mark, which was the one produced. Two dozen bottles like the one produced were handed to him. The sauce in the bottles was not supplied by his firm.—Cross-examined by Mr. Young: Their trade-mark was 'Yorkshire Relish.' Several firms used the word 'relish.' Retail tradesmen frequently sold the bottles with the outside labels on. The label produced was greatly different to their own.—William Edward Dixey, of 3 Dynevor Road, Stoke Newington, stated he went into a shop and purchased the goods. He took them home to his father, who put his initials on the bottles. In cross-examination, the witness said he had no written order from the office when he went and got the goods, and he purchased them with the wrappers produced. —Mr. Young, in answer to the charge, maintained that no injury had been done to the complainants, as their labels were quite different to those used by his client.—Defendant was then called and stated that he had given orders that no goods were to be delivered without a written order from the City office. If a dealer went to their works and ordered a gross of bottles, the foreman would disobey orders in supplying them without a written order from the City office. An order hardly ever went to their works. He bought bottles from all over the country and used them, whatever name might be upon them. It did not occur to him that he was sailing under false colours. In cross-examination witness said he was manager of the works. He did not deny selling the sauce, and had not forbidden them to use any other bottles.—Mr. Mead, in an elaborate summing-up, observed he had carefully considered the matter. It was satisfactory to him to believe that what defendant had done was not with the deliberate intention of misleading the public and trading on the reputation of complainants. At the same time he had made use of another man's property, and was open to great censure. As complainants' only object was to prevent others from carrying on this kind of thing, he should only fine defendant 20*s.* and 23*s.* costs on each summons.

## FAREWELL TO MR. MONTAGU WILLIAMS.

WHEN the magistrate (Mr. Montagu Williams, Q.C.) took his seat for the despatch of afternoon business at Worship Street Police Court on September 18, there was a full attendance of solicitors at the table and the Court was crowded, for it was known that the learned magistrate, whose translation to Marylebone had been announced, would occupy the bench there for the last time.

Mr. Bedford (of the firm of Abbott & Co.) remained standing when the other solicitors resumed their seats, and requested permission to say a few words on behalf of his legal colleagues and himself expressing regret at the magistrate's departure. Mr. Bedford said that he was also spokesman of the officers of the Court, who desired to convey the expression of their good wishes to the magistrate. He himself, with his legal colleagues, had had constant evidence of the fearless career the learned magistrate had pursued on the bench; and, combined with his power of getting through a great amount of work, the happiest results had been achieved by the stamping out of assaults on the police and the offences of the receiver. Those were of the class of persons who, perhaps, would rejoice at the magistrate's departure from the district; but, while those who practised before him and the officers of the Court regretted their loss, there was one class who would experience the keenest regret—the poor. He (Mr. Bedford) had learned through the missionary of the Court that during the past winter only the learned magistrate had given from the funds of the poor-box over 100*l.* for the relief of the poor. The distressful stories which were sometimes indicated in the Court had always been probed to the bottom by the magistrate with a ready and sympathetic ear for their struggles, not a few of those assisted being Jews. Those were the people who would be the losers by the learned magistrate's removal, but others in the district of Marylebone would be the gainers, and he (Mr. Bedford) sincerely hoped that, with improved health, Mr. Montagu Williams would have a long career as a magistrate on the London bench.

Mr. Montagu Williams, after a moment's pause, said that he was extremely touched by the kind and sympathetic tone of Mr. Bedford's address, and to him and his legal colleagues he returned his most sincere thanks for their good wishes. To the officers of the Court he was indebted for their assistance in carrying on the work of the Court, and to the missionary (Mr. Massey, of the Church of England Temperance Society) he was greatly indebted for his valuable assistance. He (Mr. Williams) felt the greatest regret at leaving that Court. It might be said that, if so, why did he go? The answer to that was that whilst it was the rule for the senior magistrate of the Court to remain at home it entailed on the junior magistrate the onus of doing all the outside duty. He (Mr. Williams) had had therefore to sit very often at four Courts a week. Not being of strong health he had often felt the tax upon him, and those who took some interest in his health had pointed out to him that the change to Marylebone would entail less work. Otherwise it had been his intention to have remained at Worship Street as long as he was a magistrate. With respect to what had fallen from Mr. Bedford as to the poor, he (Mr. Williams) had always felt that the sufferings of the poor were borne with the greatest patience, and the struggle often heroic. He should not lose sight of those poor of this district, although no longer a magistrate of the Court. He should always take the greatest interest in them, and the homes conducted by such good women as Miss Headland and others for assisting them. Thanking again the clerks of the Court, the officers, and the inspectors of police, who, he remarked, had great difficulties to contend with in the district, the learned magistrate concluded by saying that, though he parted from the Court with regret, he should always take an interest in those connected with it.

## LANDLORDS AND LEASES.

MR. SEXTUS DYBALL, F.S.I., writes to the *Times* as follows:—

The stringent lines upon which leases are now drawn may account in a great measure for the weighty feeling of dissatisfaction that has sprung up between landlord and tenant, as expressed in the correspondence which has been proceeding in your columns on the subject of insanitary houses.

During an experience of forty years as a surveyor, my practice has to a large extent lain in the assessment and settlement of claims for dilapidations—*e.g.* the amount payable by a tenant to his landlord on the expiration of a lease in respect of repairs which he (the tenant) has during his holding failed to execute in accordance with certain covenants in the lease. Consequently a considerable number of leases relating to all varieties of property pass annually through my hands, and I am becoming more and more struck with the increasing one-sidedness of the covenants in favour of the landlord. The equitable construction of the law of dilapidations is to guarantee the landlord against any injury committed or permitted by the tenant, whether by neglect or otherwise, beyond

reasonable use and wear, and my experience is that landlords were formerly satisfied with a general covenant—on the part of the tenant—upon these lines. But latterly it has become the custom to introduce into repairing leases exceedingly stringent covenants in favour of the landlord, which, unless interpreted in an equitable spirit, may and notoriously do afford a pretext for great injustice and extortion.

I have now before me a draft lease for a term of twenty-one years (determinable at the end of the fifth, seventh, or fourteenth years) of a house and stable in the West End, upon which I have been consulted by a proposed tenant, and from which—in support of my contention—I will give some extracts. After making the tenant liable to pay and discharge all rates, taxes, charges, duties, assessments, and outgoings—Parliamentary, parochial, or otherwise—now or hereafter charged upon or affecting the demised premises, or the landlord or tenant in respect thereof (except the landlord's property tax), the covenants bind him (the tenant) during the term to keep, and at the end to surrender, the premises in good and substantial repair, order, and condition, to paint the outside stucco and cement work, and to paint, grain, and varnish all the external wood and iron work within the last three months of the fourth, seventh, eleventh, fourteenth, eighteenth, and twenty-first years of the term; and to paint, paper, colour, flat, grain, marble, gild, varnish, decorate, and French polish the inside during the last three months of the fifth (if the lease be determined at the end of that year), or otherwise of the seventh, fourteenth, and twenty-first years, the whole to be done in the best manner, in appropriate colours and patterns, the outside paints with not less than two coats, and the inside with not less than three coats.

On writing to the landlord to the effect that I considered these covenants unreasonable at the rack-rent demanded—viz. 400*l.* per annum—and that I could not advise my client to agree to them, he replies: 'I cannot admit that the covenants of the proposed lease are unreasonable, seeing that I have over a hundred similar ones now in existence. . . . The terms, however, can be altered if desired and the rent increased to relieve the tenant of certain outgoings'—a suggestion which amounts to no more than a transfer of the liability, as it were, from one hand to the other.

A tenant at rack-rent is entitled to the fair and reasonable use and occupation of the premises, and he should not be held liable to execute repairs beyond such as are necessary for the upholding and maintenance of the fabric or for the making good of damage occasioned by neglect or misuse on his own part. The liability of a tenant was originally never meant to extend to the work of purely decorative and ornamental character, which is now so generally called for under the specific covenants of leases, and it seems to me that, in a great measure, tenants have only themselves to thank for the addition. Of course, a lease, as soon as it is executed—no matter how stringent or exacting the covenants may be—constitutes a hard-and-fast contract, which, like the drains that were said to be all right, will in all probability—so far as the interest of the tenant is concerned—prove to be all wrong.

At this season of the year, when so many properties are changing hands and new leases are being drawn, it is of the utmost importance for tenants to protect themselves against such excessive liability as the draft lease from which I have quoted seeks to impose, and which, apart from the manifest unfairness of the covenants, might lead to serious legal complications if, by reason of illness or other cause, the tenant were unfortunate enough to lay himself open to an action for breach of covenant in not having at the stipulated period performed the repairs specifically provided for.

## LONDON SKY SIGNS ACT.

'A DISTRICT SURVEYOR' writes to the *Times* as follows:—

I think it probable that many occupiers and owners of business premises within the jurisdiction of the London County Council are entirely unaware of the provisions of this Act, and will be very glad to have their attention drawn to it.

It enacts that any person having any 'word, letter, model, sign, device, or representation in the nature of an advertisement, announcement, or direction,' 'supported on or attached to any post, pole, standard, framework, or other support, wholly or in part, over any house, building or structure which, or any part of which, shall be visible against the sky from any point in any street or public way, with the exception of any flagstaff or pole or any vane or weathercock not adapted or used for advertisement,' and with the exception of 'any sign which is securely fixed to or against, but not over, any building, or which rests immediately upon the top of any wall or building,' shall be compelled to remove such sign under heavy penalties, unless, on or before October 3, 1891, he applies in writing to the district surveyor for a survey and inspection of such sign and a certificate of its safety.

The surveyor cannot grant a certificate unless the application be made to him within three months after the passing of the Act, and no sign can be allowed to remain without such certificate has been obtained.

I wish to point out that all signboards of public-houses and other places of business which rest upon a cornice in front of a parapet or blocking-course will fall within this category, as they do not rest immediately upon the top of any wall or building, the top of the building being the highest part of the roof, and the cornice being a projection from the wall.

It will be the duty of the district surveyor to report to the Council from time to time all such signs existing in his district.

The County Council will be bound to prosecute any offender against the Act, and no cautionary notice is due to any one.

I am induced to call attention to this matter because, although my district is very large, I have had but one application, which leads me to believe that the public are in a blissful state of unconsciousness as to the trouble which will come upon them by-and-by.

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SIR RUPERT KETTLE.—Mr. Home Secretary Matthews will shortly have another County Court judgeship at his disposal, Sir Rupert Kettle, of Merridale, Wolverhampton, having signified his intention of resigning the judgeship of the Worcestershire County Courts on account of ill-health. Sir Rupert has held the appointment since October, 1859.

OLD BAILEY BARRISTERS AND 'SOUPS.'—Certain leading members of the bar practising at the Central Criminal Court feel somewhat aggrieved at the new method of handing out the briefs for Court prosecutions there. On the first morning of the present session there was a crowd of unemployed barristers in the robing-room, waiting to secure these, which are known in bar slang as 'soups;' and it is urged that the practice does not conduce either to professional etiquette or dignity.

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HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & CO., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## CALENDAR OF THE COUNTY COURTS.

FROM SEPTEMBER 28 TO OCTOBER 3.

| No. of Circuit | His Honour | Sept. 28 | Sept. 29 | Sept. 30 | Oct. 1 | Oct. 2 | Oct. 3 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Birkenhead | Altrincham | Warrington | Leigh | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 22 | Judge Harington | Chipping Norton | Stow-on-the-Wold | — | — | — | — |
| 26 | Judge Jordan | — | — | — | Stafford | Leek | Market Drayton |
| 47 | Judge (?) | — | Langport | Greenwich | Lambeth | Greenwich | Lambeth |
| 54 | Judge Metcalfe | Lambeth | — | — | — | — | — |

## LAW STUDENTS' SOCIETIES.

DEBATING.—The first meeting of the session will be held at the Law Institution, Chancery Lane, on Tuesday evening, October 6, at seven o'clock. Mr. G. Pitt-Lewis, Q.C., M.P., has kindly consented to open the subject for discussion, which is as follows: 'That it is desirable to bring the circuit system into accordance with modern requirements by greatly reforming it and by largely supplementing it by permanent sittings of the County Courts with the unlimited jurisdiction of the High Court of Justice throughout England and Wales.' The society was established in 1836 for the discussion of legal and general subjects and the delivery of an occasional address or the reading of a paper. By the courtesy of the Incorporated Law Society the meetings are held at the Law Institution, Chancery Lane, every Tuesday evening, from October to May, and members are permitted the use of the library of the Incorporated Law Society for the purpose of the debates. Barristers, solicitors, articled clerks of solicitors, clerks who have been articled to solicitors, and members or students of any of the Inns of Court or of any of the universities are qualified for election as ordinary members. Gentlemen desirous of joining the society are requested to communicate with either of the honorary secretaries: Mr. J. D. Crawford, 3 King's Bench Walk, Temple, E.C.; Mr. H. F. Pattinson, 7 South Square, Gray's Inn, W.C.

COMMERCIAL FAILURES.—According to *Kemp's Mercantile Gazette* the number of failures in England and Wales gazetted during the week ending September 19 was seventy-four. The number in the corresponding week of last year was fifty-nine, showing an increase of fifteen, being a net decrease in 1891 to date of two.

A SHEFFIELD SOLICITOR'S REMARKABLE WILL.—Probate duty has been paid on 100,613*l.* 17*s.* 11*d.* as the net value (the gross value being 153,146*l.* 19*s.* 6*d.*) of the personal estate of Mr. Bernard Wake, late of Abbeyville, Sheffield, solicitor, who died on April 30 last, aged seventy years. He bequeaths to his son, Mr. Edward Henry Wake, absolutely the goodwill which may subsist in him in regard to his profession of a solicitor, adding: 'Commercially I do not consider that such goodwill is capable of being assessed at a money value, and in thus giving away the goodwill my principal object is to impress upon my son my earnest desire that he will continue his profession of a solicitor, which I regard as a high calling and worthy of the full exercise of all the powers which a man possesses.' The testator also alludes to certain property which he expects his children to devote to ecclesiastical purposes, saying that his views were well known that 'the Church of England can only maintain her position by establishing the principle that the floors of parish churches are free and open commons for the use of all parishioners.' With regard to the liability of trustees, Mr. Wake, in a codicil to his will, makes some remarks to which his long experience and the high esteem in which he was held give much interest.

## OBITUARY.

WE regret to record the death of MR. CHARLES EDWARD HAWKINS, barrister-at-law. The deceased gentleman was the third son of Mr. John Hawkins, of Hitchin, and brother to Mr. Justice Hawkins. He was called to the bar in 1849, and practised as an equity draftsman and conveyancer. For some years he did good work upon the staff of the LAW JOURNAL REPORTS. He was buried on Wednesday, the 16th inst., at Brompton Cemetery, the funeral service being read by the Rev. Henry Hawkins and the Rev. Edward Hawkins, cousins of the deceased. Mr. Hawkins leaves a widow, but no family.

The late MR. JOHN DARLINGTON, K.C.I., whose death occurred at the end of last week at his residence, Netherwood, near Ilkley, Yorkshire, in the eighty-fourth year of his age, was one of the best known and most widely respected members of the legal profession in the North. He was a son of the late Mr. William Darlington, of Marbury, Cheshire. For many years he was in practice as a solicitor at Bradford, where he acted as consul for the King of the Belgians and for the King of Servia. He was a Knight of the Order of Leopold and of the Royal Crown of Italy, and was a magistrate for Bradford and for the West Riding of Yorkshire. Mr. Darlington some years ago obtained a royal license to assume the name of De Dutton, as twentieth in direct descent from Odo, first Lord of Dutton, and twenty-sixth from Rollo, Duke of Normandy, but he never acted on that permission.

THE PAWNING OF PENSION PAPERS.—Mr. J. M. Elliott and Mr. Curtis, sitting at the Manchester City Police Court on September 18, heard a summons against Walter Griffiths Lloyd, of the Church Inn, St. Michael's Square, Manchester, which charged him with having contravened that section of the Army Act which provides that 'every person who receives, detains, or has in his possession the identity or life certificate of a person entitled to a military pension or reserve pay as a pledge or security for a debt, or with a view to obtain payment of a debt,' &c., shall be liable to a penalty.—Mr. J. F. Price (Messrs. Price & Son), instructed by the Treasury, appeared in support of the summons.—There were two charges, one of which was that defendant had lent on June 5 last 20*s.* to Thomas Lee, now working at Chester, on the security of his pension papers and identity certificates, and the second was that he had on May 10 advanced 21*s.* to Thomas Bunting, a labourer employed at Golborne, on similar security. These two men being called as witnesses said that the money was lent to them by the defendant on the understanding that they should pay interest at the rate of 4*s.* in the pound. He had refused to give up the papers until the debts were paid, with the result that they had been unable to draw their pensions for some time and so repay the money.—Mr. J. H. Cooper, who defended, said that the defendant had offended in ignorance. He had lent the money as a favour.—A fine of 1*l.* 1*s.* and costs in each case was imposed.

## HONOURS AND APPOINTMENTS.

THE Queen has been pleased to approve the appointment of the Right Hon. James Patrick Bannerman Robertson, Q.C., M.P., Lord Advocate for Scotland, to be Lord President of the High Court of Justice in Scotland, in the room of the late Right Hon. John Inglis, Lord Glencorse.

The Queen has approved the appointment by the Home Secretary of Mr. Abel John Ram, of the Oxford Circuit, to the Recordership of Hanley, in succession to Mr. Rose, recently appointed a metropolitan police magistrate. Mr. Ram, who is the second son of the Rev. Abel Ram, rector of Rollestone, Stafford, was born in 1842, and was called to the bar at the Inner Temple in 1872. He married in 1874 the Hon. Mary Grace O'Brien, daughter of Lord Inchiquin.

Mr. Frank Adcock, the Advocate and Legal Adviser of the Swazi nation, has been appointed Attorney-General to the Joint Government Committee of Swaziland during the absence of Dr. Esser.

Mr. Robert Alfred Clarke, of 5 Bank Street, Bradford, has been appointed a Commissioner for Oaths. Mr. Clarke was admitted in 1881.

Mr. Mirehouse, of the Oxford Circuit, has been nominated Revising Barrister for Monmouthshire, in the room of Mr. Rose, appointed a metropolitan police magistrate.

Mr. William Walker, of Corporation Street, Manchester, has been appointed a Commissioner for Oaths. Mr. Walker was admitted in 1866.

Mr. John Allington Hughes, of Wrexham, has been elected President of the Chester and North Wales Incorporated Law Society. Mr. Hughes was admitted in 1859.

METROPOLITAN PAUPERISM.—Census of metropolitan paupers, exclusive of lunatics in asylums and vagrants, taken on the last day of the weeks named hereunder (enumerated inhabitants in 1881, 3,815,000): Second week of September, 1891—indoor, 53,967; outdoor, 31,432; total, 85,399. Second week of September, 1890—indoor, 54,443; outdoor, 32,841; total, 87,284. Second week of September, 1889—indoor, 55,354; outdoor, 34,948; total, 90,302. Second week of September, 1888—indoor, 55,239; outdoor, 36,249; total, 91,488. (These figures exclude patients in the fever and smallpox hospitals of the Metropolitan Asylums District, the number of whom on the last day of the week was returned as 1,297 in 1891, 1,744 in 1890, 1,255 in 1889, and 832 in 1888.) Vagrants relieved in the metropolis on the last day of the second week of September, 1891: 447 men, 150 women, 12 children under sixteen; total, 609.

THE TITHE DISTURBANCE IN WALES.—In Cardiganshire, on Tuesday, September 22, Mr. Cecil Beresford, deputy County Court judge for Cardiganshire, had before him an action in which the Hon. George Augustus Vaughan, of the Union Club, Trafalgar Square, sued Mr. John Evans, farmer, for 26*l.* 8*s.*, which represented treble damages and costs for what is legally known as 'pound breach.' Acting for the plaintiff, David Owen, a bailiff, seized two ricks of hay belonging to the defendant for arrears of tithe. Subsequently, when a visit to the farm was made, it was discovered that the whole of the hay had disappeared. Owen admitted in cross-examination that no marks had been placed upon the ricks to indicate that they had been seized. Several police constables were called to prove that there was a good deal of rowdyism prevailing at the time of the bailiff's visit.—Mr. S. Evans, M.P., in defence, contended that there had been no seizure of the hay, and if so the distraint had been abandoned.—The judge held that the action had been sustained, and found for the plaintiff with costs.

SIR HENRY HAWKINS.—Sir Henry Hawkins was much fatigued for some days after his journey to Aix-les-Bains, but he is now better and is gaining strength.

THE TEMPLE CHURCH.—The services at the Temple Church will be resumed on Sunday, October 4, when the Very Rev. Dr. Vaughan, Dean of Llandaff, will preach in the morning.

VACATION SITTINGS.—Mr. Justice Jeune will, on and after Thursday, September 24, and every Tuesday and Thursday during the Long Vacation, sit at Queen's Bench Judges' Chambers, at half-past ten instead of one o'clock as hitherto.

UNLICENSED ADVOCATES IN BURMA.—The report on civil justice during the past year in Lower Burma by the judicial commissioner reveals an extraordinary state of affairs in regard to the advocates practising before the subordinate Courts in that country. The commissioner had reason to suspect that many of the advocates were not properly licensed, and he therefore directed all the district officers to require advocates practising before them to produce their licenses, with a view to having them submitted to the Chief Court in Rangoon for verification. The result was that out of 448 advocates only 250 were able to send in licenses, and of these it was found that some were forged and were not true extracts of any entry on the rolls, while in some cases the rolls themselves were found to have been tampered with. The offenders, wherever possible, were prosecuted and punished, and a rule has now been made that all advocates shall take out fresh licenses annually or cease to practise.

## BIRTHS.

On Sept. 18, at Ashford Lodge, Putney, the wife of John Henry Keeling, Esq., Barrister-at-Law, of a daughter.

On Sept. 18, the wife of Frederick R. B. Leacroft, Solicitor, Birmingham, of a son.

On Sept. 19, at Scarborough, the wife of J. R. Pagot, Barrister-at-Law, of a son.

On Sept. 19, at Headingly, Bowes Park, Southgate, the wife of J. H. Boome, of Lincoln's Inn, Barrister-at-Law, of a son.

On Sept. 20, at East Horsley Rectory, Surrey, the wife of Bethune Horsbrugh, Barrister-at-Law, of a daughter.

## MARRIAGES.

On Sept. 17, at 12 Lansdowne Crescent, Glasgow, John Kinmont, Solicitor before the Supreme Courts of Scotland, Edinburgh, to Isabella (Ella) Collie, only daughter of the late George Davidson Milne, M.D. (Edin.), Royal Artillery.

On Sept. 17, at Boldon Parish Church, county of Durham, Alfred Dobson, of the Inner Temple, Barrister-at-Law, Solicitor-General of Tasmania, to Alice Ramsay, daughter of the Right Rev. Bishop Sandford, D.D., LL.D., Rector of Boldon.

On Sept. 17, at the Parish Church, Great Yarmouth, Francis Bird, Solicitor, Maldon, Essex, to Alice M. J. England, widow of the late Albert England, of Maldon.

On Sept. 19, at St. Mary Abbot's, Kensington, William Russell Cooke, second son of William Major Cooke, Esq., of 123 Westbourne Terrace, Hyde Park, W., Metropolitan Police Magistrate, to Margaret Mary Dilke, of 23 Hyde Park Gate, S.W., daughter of Thomas Eustace Smith, Esq., formerly M.P. for Tynemouth, and widow of Ashton Wentworth Dilke, Esq., late M.P. for Newcastle-on-Tyne.

## DEATHS.

On July 21, at 326 Victoria Street, Sydney, N.S.W., Latimer Thrale Williams, B.A. Cantab., in his 38th year, eldest surviving son of the late Frederick Sims Williams, Esq., M.A., of Lincoln's Inn, Barrister-at-Law.

On Sept. 14, at Promontogno, Switzerland, Charlotte Anne Williamson, widow of the late John Williamson, of Westoe, South Shields, and of Villa Giuseppina, Cadenabbia, Italy, and sole surviving child of Joseph Guy, Solicitor, of Gainsborough and Manchester, aged 67 years.

On Sept. 15, suddenly, aged 75, John Joseph Powell, Q.C., Judge of the County Courts at Lambeth and Greenwich, Recorder of Wolverhampton.

On Sept 18, at his residence, Granville House, Angell Road, Brixton, William George Withers, Solicitor, aged 47 years.

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# The Law Journal.

*SATURDAY, OCTOBER* 3, 1891.


## 'OBITER DICTA.'

Those members of the Middle Temple who are in town will be glad to learn that the library, which has been closed during the Vacation for cleaning and repairs, will be re-opened for the use of members on Monday next.

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Tuesday last was a day of rejoicing for all the dogs in the county of Southampton and the boroughs of Southampton, Bournemouth, Portsmouth, and Winchester. The Board of Agriculture have seen fit to exercise the powers vested in them by the Board of Agriculture Act, 1889, and the Contagious Diseases (Animals) Acts, 1878 to 1890, and have made a very sensible change in the muzzling regulations. Instead of the use of the muzzle being insisted on, owners have the option of letting their dogs (in the county and boroughs referred to) wear collars with their names and addresses legibly engraved on same. It is to be hoped that this concession will be appreciated and generally acted on, and that lovers of animals, including the Lord Chief Justice, Mr. Candy, Q.C., Miss Frances Power Cobbe, and many other well-known persons, will feel rewarded for their long-continued efforts on behalf of their four-footed clients and friends.

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A point of some interest to the profession was considered in *Westacott* v. *Bevan* (60 Law J. Rep. Q. B. 536), which decides that where there is a counterclaim arising out of the same transactions as the claim, the plaintiff's solicitor is only entitled to a charging order on the net result of the proceedings; in other words, that the solicitor's lien is subject to the defendant's right of set-off. We think no doubt can be entertained as to the correctness of this decision, though it is perfectly true that under the old practice of cross-actions the set-off would not have prevailed. If, indeed, under the existing practice the counterclaim related to matters wholly unconnected with the claim, it might not, as Mr. Justice Williams observes, be just to treat them as one action for this purpose, but in such a case the Court, it will be remembered, has jurisdiction to put a stop to the trial of the two actions in one proceeding.

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The question whether a proxy appointed by a creditor under the Bankruptcy Act and Rules can be the attesting witness to the instrument of proxy is the occasion of an interesting judgment delivered by Mr. Justice Cave and Mr. Justice Charles in the case of *In re Parrot, ex parte Cullen*, 60 Law J. Rep. Q. B. 567. In the case of *Seal* v. *Claridge*, 50 Law J. Rep. Q. B. 316; L. R. 7 Q. B. Div. 516, the Court of Appeal held that the solicitor, being himself the grantee of a bill of sale, could not be the attesting witness under the Bills of Sale Act, 1878, s. 10, subs. 1, which, it will be remembered, required every bill of sale to be attested by a solicitor. In *In re Parrot* it was contended that the principle of that decision only went to this—that no person having an interest in an instrument can be a witness to it. The Court, however, read the case as an authority for the wider proposition that no party to the transaction can be an attesting witness, and consequently held that it applied to the case of a proxy who, though not beneficially interested, was the donee of the power conferred by the instrument. It is singular how little direct authority there is on the subject in English law, which, as pointed out by the Court, is probably due to the fact that 'the far wider rule excluding witnesses on the ground of interest obscured the narrower, but far more reasonable, rule incapacitating a party to the transaction from being an attesting witness.'

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In the recent case of *The Coupé Company* v. *Maddick* a Divisional Court decided a new and interesting point in the law of bailments. The defendant, a surgeon, hired a horse and carriage for a year from the plaintiff company. During the hiring the horse and carriage were injured in a collision, caused by the negligence of the defendant's coachman; and the plaintiff company brought this action to recover damages from the defen-

dant. The defence was that at the time of the accident the coachman was not acting in the course of his employment as servant, but was driving on an errand of his own contrary to his duty. It is clear that if the plaintiff had been a stranger suing for injury to person or property caused by the negligence of the coachman while so engaged the defendant would not have been liable (*Storey* v. *Ashton*, 38 Law J. Rep. Q. B. 223). But the Divisional Court (Mr. Justice Cave and Mr. Justice Charles) were of opinion that as regards the plaintiff company the defendant was subject to a larger liability arising out of the contract of bailment, and that the coachman's breach of duty afforded him no defence.

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In the course of their judgment the Court are reported to have used an illustration which appears to be erroneous. They said: 'If two partners hire a horse and cart for the purposes of their business, and one of them, while driving the cart in the usual course of their business, negligently runs against and injures a person passing along the highway, and at the same time injures the horse and cart, the partner driving is alone responsible to the person injured, but both partners are responsible to the person from whom they have hired the horse and cart.' In the circumstances supposed, both partners would be liable to the person injured. The law is so laid down by Lord Justice Lindley ('Partnership,' 5th edit. p. 149), and the cases cited by him seem amply to justify his statement of the law. Moreover, the Partnership Act, 1890, s. 10, makes the firm liable for loss or injury caused 'by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm.' One is inclined to conjecture that the report is incorrect, and that the words should be, 'while driving the cart *not* in the usual course of their business.' The alteration would make the passage no less apposite as an illustration, and quite as effective as a link in the reasoning of the learned judges.

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We observe that the Upper House of Convocation not long ago considered a report presented to their lordships of the Lower House to the effect that the Act of 1845, by which wagering contracts had been made void, is met by the establishment of 'betting agents,' who (see *Read* v. *Anderson*, 53 Law J. Rep. Q. B. 532) are enabled to recover betting debts. The Bishop of London considers that the introduction of the 'betting agency' *with the consequent systematising of betting as a kind of business* (see *Cohen* v. *Kittell*, 58 Law J. Rep. Q. B. 241) had made a vast change from the previous mode of betting as between man and man. The only conclusion which the House arrived at, however, was to request the president to appoint a joint committee to suggest the means by which some amendment might be made in the law. As we have frequently explained (see *e.g.* Law Journal for May 24, 1890), the bad judge-made law of *Read* v. *Anderson* has placed 'turf commission agents' in a position practically unassailable except by the Legislature. The questions for the joint committee of Convocation to consider will be whether they will venture to suggest that persons making bets through agents should be allowed to disclaim them, which would be bringing the law back to the state in which it was before *Read* v. *Anderson*, or that turf commission agency in itself should be prohibited, as betting-house keeping is, as a common nuisance and contrary to law. For ourselves, if any alteration is to be made, we strongly favour the latter alternative. The former would amount to too express a sanction of dishonesty, which, although practised towards a turf commission agent, is still dishonesty. The latter would cause great practical inconvenience in betting circles, but this, we think, the country as a whole may very well put up with.

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It is quite right that a man should provide for his wife; but there would seem to be no reason why, when his estate proves to be much smaller than the testator expected, he should be presumed to wish that his wife should take her legacy without any abatement, whilst the other legatees, possibly children, have a deduction made from theirs. Vice-Chancellor Malins is responsible for having given this preference to the widow of the testator in *In re Hardy; Wells* v. *Borwick*, 50 Law J. Rep. Chanc. 241; L. R. 17 Chanc. Div. 798, and for having neglected, or rather practically overruled, Lord Hardwicke's decision in *Blower* v. *Morret*, 2 Ves. Sen. 419. Two learned judges have preferred to follow the Lord Chancellor's opinion in the two recent cases of *Cazenove* v. *Cazenove*, 61 L. T. Rep. (N.S.) 115, and *In re Schweder; Oppenheim* v. *Schweder*, 60 Law J. Rep. Chanc. 656. In the case before Lord Hardwicke the legacy was to be paid to the testator's widow immediately after his decease out of the first money belonging to him that should be got in after his death. His lordship was of opinion that that direction only related to the time of payment. 'He directs that, whereas the general rule of law is that legacies should not be paid until a year, this should be paid immediately. The consequence is, that if it is not then paid, it should carry interest immediately, which is always considered as a compensation for delay of payment, and puts her in the same condition as if it was paid.' In *In re Hardy* the gift was to the wife to be paid to her immediately after his decease. The Vice-Chancellor said that, with the greatest respect to Lord Hardwicke, he dissented from his decision, and would not follow it unless compelled by the Court of Appeal. Vice-Chancellor Malins may have systematically disregarded *Blower* v. *Morret* when similar questions came before him, but Mr. Justice Kekewich did not see his way to do so, and held that a legacy of 1,000*l.* to be paid to his widow immediately after the testator's death for her immediate wants must abate with the other legacies. Mr. Justice Chitty in *In re Schweder*, where the legacy was to the testator's wife 'to enable her to provide and furnish a suitable home and to defray any other expenses,' and was to be paid to her within three months of his death, decided against the widow's priority. In spite of the Vice-Chancellor's view, *Blower* v. *Morret* is therefore still law, and likely to remain so. If given in lieu of dower apparently the widow can claim priority, as she has in that case, so to speak, purchased the legacy.

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The Public Health Act, 1875, s. 257, is not so omnipotent as Mr. Justice Stirling would have us believe. At least that is the effect of the decision of the Court of Appeal in *The Guardians of Tendring Union* v. *Dowton* (26 Notes of Cases, p. 128). The case is reported in the Court below in 59 Law J. Rep. Chanc. 528;

L. R. 45 Chanc. Div. 582. Dowton was the owner of certain land in Great Clacton, Essex, which was subject to a restrictive covenant. The plaintiffs, as the local sanitary authority, executed certain works which the owners and occupiers had failed to do, and called upon Dowton to pay his share, and subsequently obtained the order of a Court of summary jurisdiction that he should do so. Having failed to find anything which could satisfy the warrant of distress which they had issued, the guardians brought this action claiming that Dowton's share of the expenses, with costs and interest, should be a charge upon the premises, and that for the purpose of satisfying the charge the premises might be sold free from the restrictive covenant. The late Master of the Rolls held, in *The Corporation of Birmingham* v. *Baker*, L. R. 17 Chanc. Div. 782, that the charge was 'on the respective interest of every owner of the property according to the value of his ownership,' and not merely on the interest of any particular owner, and declared that such a charge had priority over a previous mortgage. Mr. Justice Stirling thought that the person entitled to the benefit of the restrictive covenant was a kind of owner within the meaning of Sir G. Jessel's words, and therefore the sanitary authority should have priority to him and be able to sell free from the covenant. There is, however, a very important distinction, for the owner of the mortgage would not necessarily lose his security, but was only postponed to the local authority, whereas the owner of the restrictive covenant would obviously lose the benefit of the covenant altogether, if once the land was sold and persons claiming under the guardians could build on it as they chose. As between the mortgagor and mortgagee the mortgage was still subsisting, but what benefit would it be to the covenantee to be told that as between him and the covenantor the covenant was still subsisting when there was no property to which the covenant could apply? On these grounds we would respectfully express our agreement with the judgment of the Court of Appeal in reversing that of the Court below.

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Among the many intentions which the law imputes to testators, both learned and unlearned, there is one of which they are frequently ignorant and innocent, and that is 'advancement.' A wealthy parent, on making a present to his son of a substantial sum of money, probably seldom reflects that that sum will be deducted from his son's share under his (the parent's) will. At all events, it is a doctrine which no doubt often causes surprise to an expectant legatee who finds his share thus docked by a sum which he may have spent years before, and is one not unfruitful of litigation. *Lacon* v. *Lacon*, 60 Law J. Rep. Chanc. 403, is a case in point. The late Sir E. Lacon was, at the date of his will, entitled to twenty-one twenty-fourth shares in a partnership business of brewers. He gave those shares to his three younger sons, of whom the defendant was one, providing that his two other younger sons should not take any active part in the business. Soon after the date of the will the defendant, who had been for some time employed in the business at a salary, applied for an increase. His father did not accede to this, but when the business was reconstructed gave him two twenty-fourth shares. The defendant refused to treat this as a case of advancement, on the grounds (1) that he was by his services a purchaser for value, and (2) that the presumption in question did not apply to interests of this nature. The rule is, however, inexorable, and as the parent had not declared that he had not intended an ademption at the time when he made the gift of the two shares, Mr. Justice Romer held that the defendant must treat the two shares as an advance *pro tanto* of his legacy.

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The *ejusdem generis* rule—that is, the rule that general words following particular ones will be restricted to the genus to which the preceding ones belong—may often have wrought an effect contrary to what was intended. A testator, for instance, enumerates a few articles which he can recollect, and then, by some general words, hopes to sweep in a great many other things, but he is supposed in law to have referred only to those things which possess a close resemblance to what he has already described. In *In re Jones; ex parte Lloyd*, 26 N. C. 111, the bankrupt had work at a colliery and was paid according to the work he did, his earnings averaging from 25*s.* to 30*s.* a week. It was sought to make these earnings, or rather a portion of them, applicable for the benefit of his creditors, under the provisions of section 53 of the Bankruptcy Act, 1883. The first subsection relates to the appropriation of the pay or salary of officers in the army or navy or persons engaged in the civil service, but the second provides that 'where a bankrupt is in receipt of a salary or income other than as aforesaid, or is entitled to any half-pay, or pension, or to any compensation granted by the Treasury, the Court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of the salary, income, half-pay, compensation, or any part thereof, to the trustee, to be applied by him in such manner as the Court may direct.' A Divisional Court, consisting of Mr. Justice Cave and Mr. Justice Charles, held that the earnings of this bankrupt, not being *ejusdem generis* with salary in the preceding part of the section, were not caught by the section. In so deciding they followed *Re Hutton; ex parte Benwell*, 54 Law J. Rep. Q. B. 53; L. R. 14 Q. B. Div. 301, where the Court of Appeal held that the fees of the well-known 'bone-setter' were not a salary within the meaning of the Act. Lord Esher said: 'The question is whether the income which a man earns by the exercise of his personal skill, and which is dependent upon the accident whether people come to consult him or not, and upon whether he chooses to be consulted, is income of the nature of a salary. It is only necessary to state the case to show that it is not.' From these two cases it would appear that earnings must not be of uncertain amount, but must be fixed, before they can be deemed to form a salary.

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In the earlier editions of Messrs. Wolstenholme and Turner's treatise on the Conveyancing Acts (see 4th edit. p. 10) it is stated that Malins' Act (20 & 21 Vict. c. 57) only applies to a reversionary interest in 'personal estate,' so that neither the married woman nor her husband, separately or together, can assign a simple *chose in action*—for instance, a debt or a policy of assurance effected in her name—as distinguished from an equitable *chose in action*, such as a legacy or other money held in trust for her, which would not come under the description of 'personal estate.' In the fifth edition (p. 185) the learned authors modified this state-

ment by the alteration that it was 'not clear' that the Act gave them power to do so. In the future editions the statement or suggestion will disappear altogether if Mr. Justice Chitty's decision in *Witherby* v. *Rackham*, 60 Law J. Rep. Chanc. 511, is correct, that learned judge having held that the words 'any personal estate whatsoever' in Malins' Act are large enough to comprise legal as well as equitable *choses in action*, and that a woman married before the Married Women's Property Act can, under Malins' Act, with the concurrence of her husband, dispose of a policy of assurance effected by her on her life before marriage. The view taken by Mr. Justice Chitty will, we think, meet with the approval of conveyancers generally.

## 'LAW JOURNAL REPORTS' FOR OCTOBER.

The current number of the Law Journal Reports constitutes a goodly volume of 368 pages, of which 272 pages are devoted to the Statutes of the Realm, which are now completed.

The Chancery Division Reports (in which there is one case in the House of Lords, four appeal cases, and six cases before the judges of that division) open with the case of *Bennard* v. *Perryman*, on which we have already commented at length. It is a decision by the full Court of six judges that the High Court has jurisdiction to restrain by interlocutory injunction the publication of a libel. Lord Justice Kay differed from his brethren in thinking that the injunction ought to have been granted in the case before them. *In re Fitzgerald's Estate* is a case of the exclusion from sharing in a portion fund of a person becoming the eldest son. *Moore* v. *The North-Western Bank* was a case of equitable priorities to shares in a company. In *Harrison* v. *The Southwark and Vauxhall Water Company* it was held that the temporary character of lift-pumps of the defendants prevented the annoyance caused thereby from constituting a legal nuisance, and it was held that when an Act of Parliament authorises the execution of works the authority includes all that is reasonably necessary for such execution. *In re Sartoris* decides that income determinable on becoming 'payable to or vested in some other person' was determined by a receiving order under the Bankruptcy Act, 1883, though no adjudication of bankruptcy followed. *In re Bence* was concerned with the construction of a will in respect of a gift to a class, remoteness and the character of a gift over. According to *Bentley* v. *The Manchester, Sheffield, and Lincolnshire Railway Company*, when a special tribunal appointed by statute for ascertaining the compensation to be given for damage sustained by the exercise of compulsory powers is no longer available, the compensation may be ascertained and enforced by action. In *Payne* v. *Esdaile* it was held by the House of Lords that no appeal lies to that House from the refusal by the Court of Appeal to grant special leave to appeal after the statutory period has expired. *In re Metcalfe* was a case of forfeiture on bankruptcy under a will. *Cox* v. *Bennett* decided that income of a married woman restrained from anticipation which was due at the date of the order might be attached in execution. In *In re Schweder* it was held that a legacy to a wife, though given her to provide a home and made payable a short period after the testator's death, had no priority over other legacies.

Fifteen cases in the Queen's Bench Division are reported, of which nine were in the Court of Appeal. *Stuart* v. *Bell* was a case of a privileged communication in which, there being no evidence of malice, judgment was entered for the defendant, who privately communicated to his guest the contents of a letter casting suspicion of theft upon the guest's valet, who was thereupon discharged. *Burchard* v. *Macfarlane* was an application arising out of a Scotch action in which it was held that there was no jurisdiction under 6 & 7 Vict. c. 82, s. 5, to order third persons, not parties to the litigation, to produce documents. *Regina* v. *Powell* was a licensing case, and involved the construction of the term 'new tenant,' in 9 Geo. IV. c. 61, s. 14. *In re Dodds* was a case in which the client of a bankrupt solicitor was held entitled to the benefit of an informal transfer of shares by the solicitor to the client in satisfaction of a misappropriated fund. *The Attorney-General* v. *Chapman* illustrates the meaning of 'passing under' as distinguished from 'passing by' in the Customs and Inland Revenue Act, 1881, s. 38, subs. c. *Schleibler* v. *Gilchrest* settled complicated questions of an owner's liability to shippers for loss of cargo. *In the Matter of the Duty upon the Bootham Ward, Strays, York*, was a case of exemption from duty of charity property belonging to a corporation. In *Regina* v. *The Local Board of Goole* the question at issue was the extent of the term 'street' in the Public Health Act, 1875, s. 4. *Reeves* v. *Butcher* was a case under the Statute of Limitations (21 Jac. I. c. 16), s. 3. In *Smith, Hill & Co.* v. *Pyman, Bell & Co.* a charterparty provided that freight should be paid on unloading and right delivery of cargo, 'one-third freight if required to be advanced, less 3 per cent. for interest and insurance.' The ship was lost on the day of sailing, and shortly after the loss the shipowners demanded the advance freight, and it was held that the charterers were not liable. *Salaman* v. *Warner* decided that an order made under Order XXV., rules 2, 3, dismissing an action upon a hearing before trial of a point of law raised by the pleadings, is not a 'final' order within Order LVIII., rule 3. An order is 'final' only when it is made upon an application, a proceeding which must in any event, whether it succeed or fail, finally determine the rights of the parties. *Ex parte Latimer, Clarke & Co.* settled questions as to solicitor's charges for shorthand notes and typewritten copies. According to *Harmann* v. *Powell*, the lessor of a public-house, who had covenanted not to 'do or suffer to be done on the premises any act whereby the licenses necessary for using the said premises as an inn, tavern, or public-house may be forfeited or the renewal thereof withheld,' and against whom two convictions were indorsed on the license, assigned his lease, and a subsequent occupant obtained a renewal of the licence: held that the lessee had committed a breach of the covenant. In *The Skinners' Company* v. *Knight* it was held that the expenses to which a lessor might be put in the preparation of a notice specifying, as required by section 14, subsection 1, of the Conveyancing Act, 1881, a breach of a covenant by a lessee, were not payable as compensation within the meaning of the Act. *Alldred* v. *The West Metropolitan Tramways Company* (*The Vestry of Hammersmith third parties*) confirms the principle of *Howitt* v. *The Nottingham Tramways Company*, 53 Law J. Rep. Q. B. 21, that the effect of a contract made in pursuance of the powers given by section 29 of the Tramways Act, 1870, by a tramway company with the road authority for the

maintenance by the latter of the roadway and lines, is to transfer to the road authority the liability *primâ facie* imposed by section 28 upon the company for damage occasioned by the roadway being out of repair.

## ENGLISH *CAUSES CÉLÈBRES.*—VII.

### Regina *v.* Courvoisier.

Manzoni—the Walter Scott of Italian literature—has made one of his characters—a Milanese lawyer of the seventeenth century—address a youthful and somewhat unconfiding client in the following language *—which forms a suitable introduction to a sketch of *Regina* v. *Courvoisier*: 'He that tells lies to his counsel, my son, is a fool who will speak the truth to his judge. To us advocates you must state facts as they are; it is our part to involve them in confusion.'

In these words the Italian novelist has very tersely and cleverly, though only by implication, defined the charge under which the theory of advocacy has laboured in all ages—that of plucking the sleeve of justice, and so averting from guilty heads the stroke of her descending arm. The trial of Courvoisier for the murder of Lord William Russell is the *locus classicus* to which critics of the morality of the English bar have for now more than half a century referred, and from which they have drawn their most poignant arguments. It may be worth while to consider—not, be it observed, for the first time †—how far the facts of this case justify the strictures that have been based upon them.

Lord William Russell was found murdered in bed, at his private house, No. 14 Norfolk Street, Park Lane, on the morning of Monday, May 6, 1840. The only inmates of the house besides the unfortunate nobleman were two female servants—a housemaid and a cook—and a Swiss valet, François Benjamin Courvoisier, who had entered Lord William Russell's service a few months before the catastrophe. Accident and death from natural causes were equally untenable hypotheses. The head of the deceased gentleman had been nearly severed from his body. Suicide was out of the question, partly from the known character, health, and spirits of the murdered man, partly because no human being could have inflicted such a wound upon himself. It was difficult to believe that burglary had been the primary motive; for, while a certain amount of plate and silver had disappeared, a number of valuable articles had been left behind; the state of the premises, too, almost negatived the presumption of burglarious entry—*the door had been broken open from the inside.* A careful search of Courvoisier's box revealed nothing of an incriminating character; but on May 8 the police discovered behind the skirting in the pantry five gold rings, which Courvoisier at once and frankly identified as having belonged to his master, five gold coins, a Waterloo medal, and a ten-pound note. Courvoisier was immediately taken into custody. Further discoveries followed. On May 9 a locket, containing the hair of the late Lady Russell, was found secreted near the hearthstone in the prisoner's pantry. Lord William Russell had missed this locket for some time before his death. On May 13 a fresh examination of Courvoisier's box disclosed a pair of gloves, slightly stained with blood. They dropped out of the fold of a shirt. Lord Russell's watch was also found behind the lead in the pantry sink. Five days later Courvoisier's trunk was again examined, and two blood-stained handkerchiefs, marked with the prisoner's initials, were taken out. *Practically this was the sum total of the evidence on which Courvoisier was arraigned* before Chief Justice Tindal and Mr. Baron Parke and a jury, at the Old Bailey, on June 18, 1840. Mr. Adolphus was leading counsel for the prosecution. Mr. Charles Phillips and Mr. Clarkson defended the prisoner, who waived his right to a trial *de medietate linguæ*, and pleaded 'Not guilty.' Mr. Adolphus opened the case for the Crown with ingenuity, but with conspicuous unfairness. Unchecked by the bench, this gentleman informed the jury that, while 'Englishmen are not in the habit of considering murder as a prelude to robbery . . . with foreigners it is different; for they imagine that if they destroy the life of the person they rob, there will then exist no direct testimony against them!' He alleged as an evidence of guilt that Courvoisier exhibited no interest or excitement on or after the discovery of the murder—a statement which was false in fact and would have been irrelevant even if it had been true. Finally, he boldly asserted that 'the secreted articles' had been 'secreted by none but the prisoner, who during the whole night . . . . had been roaming about seeking how he could dispose of the stolen treasure.' This overstrained advocacy all but missed its mark. Many of Mr. Adolphus's most confident statements were disproved by his own witnesses, and one of the constables, Baldwin by name, who first swore that he knew nothing of the offered Government reward of 400*l.*, 'not being a scholar,' and then admitted that 'there was something read out about it in general orders,' though 'he did not recollect the sum that was mentioned,' equivocated and prevaricated in such a way as to put the whole case for the Crown in jeopardy. On the morning of the second day of the trial, Mr. Adolphus announced to the Court that most important additional evidence had been discovered, and offered to open the facts to the jury. The Chief Justice recommended that the evidence should be called without comment. Meanwhile Courvoisier had asked for an interview with his counsel, and had announced to them that he was the murderer. 'Of course, then,' said Mr. Phillips, 'you are going to plead guilty?' 'No, sir,' was the reply; 'I expect you to defend me to the utmost.' Mr. Phillips returned to his seat and resumed the defence. The 'additional evidence' brought forward by the Crown was decisive; *it was nothing less than the missing plate*, which Courvoisier was proved to have left in the custody of the keepers of a small French hotel in Leicester Place, Leicester Square. The charge against Mr. Phillips, and in his person against the profession to which he belonged, is that with full knowledge of Courvoisier's guilt he (*a*) still cross-examined the Crown witnesses and commented in no unsparing terms upon the weak points in their evidence; and (*b*) asserted to the jury his belief in the prisoner's innocence, or at least his ignorance of who the criminal was. The first part of this charge is true, has often been answered, and need not detain us now. The second part is false. Mr. Phillips's peroration is given by Mr. Townsend (*ubi supra*, at pp. 309–10), and is as follows:—

'But you will say to me, If the prisoner did it not, who did it? I answer, Ask the Omniscient Being

* 'Che dice le bugie al dottore, vedete figliuolo, è uno sciocco che dirà la verità al giudice. All' avvocato bisogna raccontar le cose chiare; a noi tocca poi a imbrogliarle.' *I Promessi Sposi*, p. 41.

† Cf. Townsend's 'State Trials,' vol. i. p. 244; Forsyth's 'Hortensius.'

above us who did it; ask not me, a poor finite creature like yourselves; *ask the prosecutor who did it. It is for him to tell you who did it; it is not for me to tell you who did it; and until he shall have proved by the clearest evidence that it was the prisoner at the bar, beware how you imbrue your hands in the blood of that young man.* . . . To violate the temple which the Lord Himself hath made; to quench the spirit in that clay which the Lord Himself hath kindled—is an awful and tremendous responsibility. The word once gone forth is irrevocable. Speak not that word lightly, speak it not on suspicion, however strong, on moral convictions however cogent, on inference, doubt, or anything but a clear, irresistible, bright noonday certainty. I speak to you in no spirit of hostile admonition. Heaven knows I do not. I speak to you in the spirit of a friend and fellow Christian, and in that spirit I tell you that if you pronounce the word lightly its memory can never die within you. It will accompany you in your walks, it will follow you in your solitary retirements like a shadow, it will haunt you in your sleep and hover round your bed, it will take the shape of an accusing spirit and confront and condemn you before the judgment-seat of God. So beware how you act!'

Courvoisier was found guilty, and he was executed on July 6, 1840.

(*To be continued.*)

# Correspondence.

## THE COUNTY COURT RULES.

Sir,—Will any of your readers kindly give their views and experiences as to the correct interpretation of some of the County Court Rules—in particular, Order XXIII., rule 14, and also Order XXV., rule 17.

Under Order XXIII., rule 14, it is provided that the Court may, upon an *ex parte* application of the plaintiff, vary the order for payment by instalments. We find some registrars will not act upon this unless an application is made to the judge in Court, while others make the order as a matter of course; and this latter, we venture to think, is correct, having regard to the interpretation clause (Order LII.), which says: '"Court" includes a judge or registrar exercising the powers of the Court in chambers, as well as in open Court.'

The second instance is under Order XXV., rule 17, which provides the procedure by way of judgment summons in the County Court upon a judgment recovered in (*inter alia*) Queen's Bench. At the present moment we have several instances of judgments which we were compelled to obtain in the Queen's Bench as the amounts exceed 50*l.* (which, by the way, is also cheaper than the County Court in fees), which judgments were transferred to the County Court for the purpose of judgment summons; and in nearly every case our clients happened to be large firms, and the partners, at this period of the year, are away—in fact, we have two judgments, representing 70*l.* or 80*l.* each, where the sole plaintiff is abroad under doctor's orders, and is not likely to return until early next year. He has several establishments, and a large number of *employés* who transact the business; and we understand in one of these cases the debt was incurred after the plaintiff went away. Yet, upon our applying to the County Court for the district in which the defendant resides for a judgment summons to issue, the same is refused, as the affidavit verifying the judgment (see the rule) is not made by the plaintiff himself. We must say this is a new feature to us. We have issued many hundreds of these, following, of course, the form of affidavit No. 51, with such variations as were absolutely necessary to fit the circumstances. The Court we just referred to as refusing to issue, we believe, relies upon the words set out in the form of affidavit, 'I, A. B., the above-named plaintiff,' and considers that it is imperative upon the plaintiff personally to make the affidavit. Now, it really does seem to us absurd that for the purpose of issuing a judgment summons (which, as we all know, has to be served personally on the defendant to show cause, &c.) this affidavit could not be made by any person who could depose to the facts. We have offered that the solicitor shall make the affidavit, but this is refused. A clerk or other *employé* who can speak to the facts is allowed to make an affidavit entitling the plaintiff to obtain judgment in the County Court, and proceed to execution or judgment summons, without the slightest question; and almost any proceedings could have been taken on the judgment in the Queen's Bench without the plaintiff necessarily making an affidavit himself.

Again, in either Court, for the purpose of attachment of debts, the affidavit is not usually made by the plaintiff; and there are many other instances which we could quote, if it were necessary, to show the many steps open to the plaintiff upon an affidavit by an *employé*. It seems to us that an affidavit by any person in the employ of the plaintiff or his solicitor, or in fact any other responsible person who can depose to the facts, should be sufficient compliance with the rules, and especially when we bear in mind the extreme instance above referred to. How is it possible for the plaintiff in that case to conscientiously swear the affidavit, when the debt has been incurred by his servants and a judgment obtained entirely in his absence abroad?

Finally, we would ask, Is it reasonable to expect our First Lord of the Treasury, the Right Honourable W. H. Smith, to make affidavits in respect of the debts that may be due to him from his various bookstalls—probably seven or eight hundred—at any rate covering the whole area over which the County Courts have jurisdiction? But this is the logical consequence of the ruling of which we complain.

We refrain from mentioning the Courts in question, although we feel sure the registrars themselves would be glad to learn what the universal practice is; and we think the sooner the County Courts construe the rules alike the better it will be for the practitioners, and certainly cheaper for the public. At the present moment nearly every registrar has his own peculiar way of construing the rules; thus, what is the practice of one Court is totally ignored in another. Surely this should not be so.

Practitioners.

September 24.

Bills of Sale.—The number of bills of sale in England and Wales registered at the Queen's Bench for the week ending September 19 was 152. The number in the corresponding week of last year was 120, and the corresponding weeks for the three previous years 169, 197, and 242.—*Stubbs' Weekly Gazette.*

# Unreported Cases.

## COUNTY COURT.

ORDINARY SUMMONS—INDORSEMENT.

At the Newport (Mon.) County Court, on Thursday, August 13, before his Honour Judge Owen, the case of *Moxon* v. *The Equitable Assurance Society of the United States* was heard. His Honour, in giving judgment, said: In this case the plaintiffs, on June 19, 1891, issued an ordinary summons against the defendants claiming 29*l.* 17*s.*, with 1*l.* 1*s.* the costs of the plaint, and 1*l.* 8*s.* 10*d.*, the solicitor's costs up to and including the issue of the summons, being together 32*l.* 6*s.* 10*d.* The summons was returnable on July 16. On July 10 the defendants paid into Court the sum of 32*l.* 6*s.* 10*d.*, and notice of such payment in was on the same day sent by the registrar to the plaintiffs. The plaintiffs did not send to the registrar any notice, under Order IX., rule 12, accepting the money so paid in as satisfaction of their claim. Before the money was so paid in the plaintiffs incurred certain costs, which, it is admitted by the defendants, the plaintiffs would have been entitled to recover from the defendants if the action had gone to trial and the plaintiffs had obtained judgment and had been allowed the costs of the action. The plaintiffs now apply to be allowed those costs, and the application is opposed by the defendants upon the ground, as they contend, that by Order IX., rule 11, if the defendants pay into Court five clear days before the day fixed for trial the full amount of the debt or claim mentioned in the summons, together with the costs of the plaint and the solicitor's costs also mentioned in the summons, they are not liable to pay any other costs. And, further, that this is the proper construction of the rule is shown by the indorsement on the summons, which states, 'If you pay the debt and costs as stated in the summons five clear days before the trial, you will avoid further costs.' It is contended by the plaintiffs that the rule in question is made under section 107 of the County Courts Act, 1888, and that the rule and indorsement cannot go beyond the express enactment in the section, and that if they do so the rule and indorsement are *ultra vires*. The section provides that a defendant may pay into Court a sum sufficient to satisfy the plaintiff's demand 'together with the costs incurred by the plaintiff up to the time of such payment;' and it seems to me that those words are sufficient to entitle the plaintiffs in this action to the costs which they now claim, if the registrar, upon taxation, is of opinion that they have been properly incurred. I also think that this point has been decided in the plaintiff's favour in the case of *Regina* v. *The Judge of the City of London Court and Woolnough & Co.*, 83 L. T. (1887), 190; 11 County Courts Chronicle (Aug. 1887), 173—a case decided under section 82 of the Act of 1846, but which section is re-enacted by section 107 of the present Act. In giving judgment Lord Coleridge, L.C.J., says: 'The Act of Parliament is clear that, upon payment into Court in the manner which has been pursued, the plaintiff is at liberty to take it out if he likes, and the defendant must pay in a sum sufficient to cover the question in dispute, and all costs up to that time.' I am unable, however, to reconcile the endorsement on the summons either with the Act of Parliament or with the rule in question. The plaintiffs are therefore, I think, entitled to all costs properly incurred up to the time when they received notice of the payment into Court, and also to the costs of this application.—William Daniel for the plaintiffs; Bailhache for the defendants.

## SOLICITORS AND THE LAND TRANSFER BILL.

Mr. H. H. Richardson writes to the *Morning Advertiser* as follows:—

The Solicitor-General is reported to have said at Plymouth that 'the Government would have passed a really substantial measure of land law reform if it had not been defeated by the solicitors, who rallied against it in defence of their charges upon the transfer of land.' I thought that Mr. John Morley had already nailed this extremely bad shilling to the counter by showing clearly that the bill was dropped in consequence of the action of the House of Lords; and powerful as the lower branch of the profession may be, the compliment to our influence that Sir Edward Clarke would pay is one, I fear, we can hardly accept. But if the solicitors have been so powerful as to induce the Lords to stand between the people and 'this great advantage,' it is an additional argument to show that the time has arrived when the House of Lords should be either mended or ended. Moreover, if it be true—and I deny it to be so—that the solicitors have rallied in defence of their charges, the Solicitor-General is hardly the man to throw stones at them for doing so. Who, let me ask Sir Edward Clarke, was it but his learned self who led the opposition to the reduction of counsels' refresher fees, and sought to render the new legal scale abortive, and to force solicitors to pay fees to which the law declared counsel were not entitled? This, it seems to me, is rather worse even than to rally in defence of charges that the Court awards and the law allows. Perhaps, too, it is hardly gracious on the part of Sir Edward Clarke to cavil at solicitors whose lines, as a rule, are cast by no means now in pleasant places for defending their charges, whilst he, in addition to the fees from his private practice, has received from the public purse during the last four years, for his salary and charges, the comfortable sum of forty thousand pounds.

It is believed a debate is to be raised in the House next session on the question of the fees of the law officers of the Crown, and it will be interesting to see then whether the Attorney-General and Sir Edward Clarke will themselves 'rally in defence of their charges.'

## UNARTICLED CLERKS.

A 'Lawyer's Fag' writes to the *Echo* as follows:—

Having been in the legal profession for nearly half a century, I can confirm what your correspondent, 'A Clerk,' in yesterday's *Echo*, affirms as to solicitors leaving their articled clerks to acquire a knowledge of the practice as best they can, and for a very good reason—many solicitors knowing next to nothing of the practice themselves, whatever they may of the theory of the law; and the few who are up in the practice are too much engaged in 'conferring and advising' with clients to waste their valuable time by initiating their articled clerks into the multifarious mysteries of judges' chambers—considerably increased under the Judicature Act. It requires the heads of Hydra to 'read, mark, learn, and inwardly digest.' But such is the frequent alteration of the rules, that it is unlearning to-morrow what is learnt to-day, that even the most experienced unarticled clerks in the *modus operandi* of judges' chambers are at times uncertain whether they are 'moving on' in the right direction. It therefore requires constant vigilance on the part of the aforesaid unarticled solicitor's fag to be 'up to date' as to what rules are *de facto* and what null and void. To this generally underpaid, unarticled, and unappreciated fag the solicitor leaves his articled clerk for the acquisition of what he has undertaken to

teach when his articled clerk was 'bound in calf' to him' but cannot or will not do for the reason above stated After the articled clerk has had the benefit of the brains of the unarticled fag the former supersedes the latter. When the articled clerk admitted having no practice of his own becomes a salaried clerk, the underpaid, unarticled, and unappreciated fag, usually married, with a family, may be turned adrift on the Dead Sea of the Long Vacation, to keep his head above water with a millstone round his neck as best he may. I have known solicitors, men of means, act thus towards their helpless and faithful fags in this way. There are solicitors and solicitors—it is those who are gentlemen upon the 'lower scale' who have the tender mercy to 'use a giant's strength like a giant' in the way in question. There are already more solicitors than can live by their profession, notwithstanding, if an articled clerk passes his final examination he is admitted, Government not caring whether he sinks or swims, so long as he 'renders unto Cæsar the things that are Cæsar's.'

## LAW AND PROFESSIONAL NOTES.

By T. F. Uttley, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law, &c.

### THE DUTIES OF MAGISTRATES.

In connection with a recent licensing question in Manchester, which excited keen interest, one of the magistrates thought fit to put his ideas into print. He pointed out in a daily contemporary that amongst the numerous functions of magistrates there are some which are distinctly of a judicial nature. Magistrates have to try prisoners and to hear charges of assaults, &c., brought by one person against another. In every such case a magistrate is a judge, and ought to base his decision on the evidence laid before him. In any such case, therefore, it would obviously be most improper for a magistrate to express in public, or even to form in his own mind, any opinion till he has heard and weighed all the evidence. But the duties of magistrates with regard to the granting of new licenses are not judicial. The magistrates in such cases have not to deal with complainants and defendants, but have to decide whether they shall or shall not grant to an applicant a privilege, often of very great pecuniary value—a privilege which often gives the recipient an overwhelming advantage in relation to his competitors. In such cases, though the magistrates before deciding ought to hear and consider a certain amount of evidence as to the character and position of the applicant and the fitness of his buildings for their purpose, he ought also and chiefly to take into account what he knows or honestly believes to be the influence on the welfare of the community of the whole work, with and without the sale and liquor, of such a place as that for which the license is asked; and he probably ought, or even if he ought not, he is pretty sure to take into account the wishes of the community on the subject. If a magistrate forms the opinion that the influence of certain places is an evil one, a conscientious magistrate will not only vote against the grant of the license, but will also try by his influence as a citizen to induce his fellow-citizens not to desire the grant of the license and the magistrates not to make the grant. Referring to this remarkable letter, another correspondent says he looks in vain for any justification of this contention that magisterial duties in such cases are not judicial. His reason is that they have not to deal with plaintiffs and defendants. Is it necessary to consider the value of this remark? Yet this is the only reason assigned, as the subsequent part of the letter is irrelevant to this question. Look at what the Lord Chancellor said in *Sharp* v. *Wakefield*: 'An extensive power is confided to the justices in their capacity as justices to be exercised judicially, and "discretion" means when it is said that something is to be done according to the rules of reason and justice, and not according to private opinion—according to law and not humour.' If a magistrate is in the humour or mood to grant no licenses, can it be said that he is in a frame of mind to exercise a 'judicial discretion?' or, if he does so, will he have committed a breach of public morality? It is stated in a well-known text-book that the ordinary duties devolving under the commission of the peace are partly of a judicial, partly of an administrative character. Under the head of administrative duties fall all those matters of civil polity which are entrusted to the hands of justices in the interest of social order, and otherwise for the general good. The control of the liquor traffic in all its branches—the granting of licenses for various purposes; the general and authoritative superintendence exercised with respect to highways, lunatics, and the poor; the attendance at prison and asylum committees, &c., may serve also as instances in this direction.

### 'BONÂ FIDE' TRAVELLERS.

The *vexata quæstio* as to what are *bonâ fide* travellers or, rather, how to ascertain them, recently arose in the Isle of Man. Charges had been brought by the police against the landlords of various hotels for supplying persons with drink on Sundays without taking necessary precautions to ascertain whether they were *bonâ fide* travellers. The police visited all three houses on Sunday evening, and found people inside who had been supplied with drink. At each house a person had been stationed at the door to ask the people whether they were travellers, and had been answered in the affirmative. The police discovered that most of them had slept the previous night in Douglas, and were, in fact, visitors staying in the town. It was not sufficient to ask merely whether people were travellers. Inquiry should have been made where they slept, and further precautions taken. The advocate for the defence contended that the prosecution must fail. The police maintained that it was necessary to go beyond the language of the Act, and that a series of questions were to be put to every customer to ascertain whether or not he answered to the legal requirements of a *bonâ fide* traveller. The Act did not justify such a contention. It said that the publican was to take all reasonable precautions, not all possible precautions. In the present case no specific questions had been asked, but reasonable precautions had been taken to ascertain whether the persons were such *bonâ fide* travellers. An attempt could not be made to establish a refined distinction between the expression 'traveller' and '*bonâ fide* traveller.' The high bailiff stated that the defendants appeared to have tried to do all that was required to satisfy the Act, but on looking to recent decided cases in England, and reading the Act, the defendants were technically in the wrong, and a penalty must be imposed. The case is likely to go to a higher Court. A traveller—*i.e.* a person travelling either for business or pleasure—is not to be considered as a *bonâ fide* traveller unless he lodged during the preceding night three miles at least (by the nearest public thoroughfare) from the place where he demands to be supplied with liquor. It lies upon the publican to show that the person supplied was either a *bonâ fide* traveller or honestly believed by him to be such, after he had taken all reasonable precautions to ascertain the fact. If he was imposed upon in the matter, the *soi-disant* traveller is punishable. It is obvious that a very difficult and unpleasant duty is imposed upon the publican. He cannot escape liability by declining to supply the traveller, who had as good a right to refreshment as any other customer, neither can he evade it by plying his visitor with argument instead of

liquor until the closing hours have ebbed away. In many cases, probably, the traveller's arrival is an unwelcome intrusion upon his afternoon nap; and so long as a difficult question of mixed law and fact may be forced upon him for decision at any moment he has a right to more indulgence than he frequently receives in the event of an occasional mistake.

PAUPERS AND CHARITABLE TRUSTS.

A curious question with regard to paupers and charitable trusts was discussed lately by the guardians of the Nantwich Union. It was suggested that inquiries should be made in the district to ascertain if paupers who were receiving relief from the union were also the recipients of doles from charitable trusts, and, if so, the amount of such doles. The guardian who made this suggestion had communicated with the Charity Commissioners and asked their views upon the matter, and the secretary to the Charity Commissioners had sent a reply to the following effect: 'I am to explain that the participation in the benefits of a charity for the poor by persons who are in receipt of poor-law relief is prohibited by the principles of law by which the administration of charitable trusts (similar to those which are applicable for the benefit of the poor of the township of Weston) is regulated. The infringement of the rule in question would have a tendency to destroy the incentives to thrift and provident habits which are furnished by the restriction of the benefits of charities to persons who are not in receipt of relief. In order to guard against the funds of the charities being applied, directly or indirectly, in relief of the rates, the trustees should take care to select as beneficiaries poor persons belonging to a class higher than those who are in the habit of having recourse to poor-law relief.' Probably the authorities who have been dealing with this matter have been considering the Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict. c. 73), or at least have been roused up by its passage into law.

STEAMING IN COTTON MILLS.

On March 1 of last year there came into force a useful statute yclept the Cotton Cloth Factories Act, 1889. Its object was to regulate the temperature and humidity of the atmosphere in cotton mills. A firm of cotton manufacturers were recently summoned at Blackburn under its provisions for permitting an excess of moisture in the atmosphere of their mill, this being a repetition of a similar offence within twelve months. The inspector stated that the records taken by the defendants at their mill on the date named would show that in one part of the shed the temperature was 80½ degrees and the humidity 77 degrees, which was a fraction of a degree of humidity beyond what was allowed by law. The Act allowed such a very liberal margin to manufacturers that he did not think they could complain if they were dealt with for exceeding it. The thermometers were not affected by the moisture in the external air. The firm's man who had charge of the glasses at the mill said he found that the instruments were affected by the external air. He sometimes found that by a certain pressure of steam he could keep within the margin at one time, and that he had two points more at another. He always turned the steam down at dinner-time and opened the doors, and yet had no margin when the workpeople returned. The glass near the door was most difficult to manage. It was submitted for the defence that everything had been done to keep the mill right; but nevertheless a fine and costs were imposed. The provisions of the Act are not easy to fulfil, and it is somewhat strange that a clause should be given providing for arbitration in the case of a dispute between occupier and inspector as to inhalation of dust, but that in the case of any difficulty as to temperature or humidity no arbitration should be permitted.

TIMERS AND HALF-TIMERS.

A continual struggle goes on between parents who desire to see their children earning wages and school authorities. The latter desire to give the little ones more education, but the former prefer the money. In the case of the Factory and Workshop Act, 1891, the greedy parents raised a great storm because it was proposed to keep children from work until they attained the age of twelve, and it was reduced to eleven. The disputes between parents and school authorities sometimes terminate in proceedings, as was the case at the Stockport Borough Police Court recently, when the secretary for the Cotton Powerloom Weavers' Association was summoned by the corporation school attendance committee for not sending his child to school. Counsel for the committee stated that the defendant had a boy aged twelve, who only went to school half-time, and who had only passed Standard III., although at his age he should have passed Standard V. The attendance committee asked defendant to comply with the Act and send the boy full time. He refused, explaining that the boy assisted him at his office in secretarial duties. The committee failed to see that the boy was 'beneficially and necessarily employed' in this way, according to the authorised regulations, as it could not be argued that a man in such a good position as the defendant needed this boy's assistance for the maintenance of the family, and therefore took these proceedings. Counsel for the defence said under section 38 of the Education Act of 1876 not less than two members of the attendance committee must sign a written authority for a prosecution. In this case there was only one signature, but the bench overruled the objection. Defendant thereupon made a statement, contending that under the Education Act he had taken the right course, and was not compelled to receive the sanction of the attendance committee provided he got the labour certificate, which he had obtained. In his office he further urged the boy was receiving an education sufficient to fit him for his future life, for he was taught book-keeping, to deal with the weight of yarns, to make percentages, and so forth. The bench took defendant's view and dismissed the case, as they considered they had no right to convict. This case will doubtless be a cause of rejoicing to those who consider themselves aggrieved by the School Boards.

MINOR OFFENCES AND PUNISHMENTS.

Mr. Alderman Fielding, of Bolton, has made a public statement with regard to the punishment which the law provides for minor. The worthy alderman is the presiding magistrate at the Bolton Police Court, and enunciated his views in his public capacity. He pointed out that since January 1 of the present year, 299 persons in Bolton, in default of paying a fine or costs or orders to find sureties, had to go to gaol. Of course, in such cases as violent assaults or felonies, offenders should be imprisoned and associate with criminals, but where a tramcar conductor was prosecuted for carrying too many passengers or a carter for sleeping during his journey a small fine ought to meet the case, and sometimes the men could not meet it and had to be committed for fourteen days, and have to associate with criminals. Would it not, therefore, be better to treat these individuals as persons unable to pay their debts, and forward them to the debtor's side of the prison? That was done in some County Court cases. Why not here? The suggestion is worth consideration by magistrates elsewhere.

Messrs. Ormiston & Glass, of 17 St. Bride Street have sent us samples of their new 'XXX' barrel pens. They are ball-pointed and write very freely, holding a good quantity of ink. We can thoroughly recommend them.

## BRISTOL INCORPORATED LAW SOCIETY.

The following report of the council of the Bristol Incorporated Law Society was read at the twenty-first annual meeting:—

The council desire to call attention to the following Acts which have been passed in the present year: The Custody of Children Act, 1891; the Tithe Act, 1891; the Charitable Trusts (Recovery) Act, 1891; the Bills of Sale Act, 1891; the Stamp Duties Management Act, 1891; the Stamp Act, 1891; the Forged Transfers Act, 1891; the Commissioners for Oaths Act, 1891; and the Mortmain and Charitable Uses Act, 1891.

A correspondence has taken place between the council of this society and the council of the Chief Society on the disproportionate representation of the provinces on the council in London. It appears that last year the society was composed of 6,350 members, of whom 3,020 were town members, and 3,330 were country members, while of the forty ordinary members of the council in London twenty-nine were town members and only eleven represented provincial societies. To correct this disparity the proposal was made that the council should be increased to its authorised complement of fifty, the additional seats being assigned, so far as is possible in an elected council, to important areas of population at present not represented by ordinary members. The council in London are not disposed to recommend this alteration, and the matter is now under the consideration of a committee appointed by the council of this society.

The committee appointed to inquire into the existing jurisdiction and procedure of the Tolzey Court reported that the various alterations which they had been prepared to recommend could not be made except by Act of Parliament.

The council beg to acknowledge with thanks the presentation to the library of the following books: 'The Law of Building and Engineering Contracts,' by A. A. Hudson, Esq.; a Supplement to his work on 'The Law of Libel and Slander,' by W. Blake Odgers, Esq.; 'The Law of Prescription,' by H. A. Herbert, Esq.; and 'The Law of Musical and Dramatic Copyright,' by F. Weatherly, Esq., and others.

The members of the council retiring by rotation are Mr. D. T. Burges, Mr. F. F. Cartwright, and Mr. F. Sturge, and the place occupied by Mr. Pease has become vacant under rule 6.

In pursuance of the power given them by the fourth article of association, the council nominate Mr. D. T. Burges for re-election.

On behalf of the council,
C. R. Hancock, President.
H. N. Abbot, } Hon.
W. W. Ward, } Secretaries.

September 18, 1891.

## THE LIVERPOOL BOARD OF LEGAL STUDIES.

Arrangements have been made by the board for the continuation during the present session of three courses of lectures on 'The Law of Real and Personal Property and Conveyancing,' 'Equity,' and 'Common Law.' The courses will be delivered consecutively, and each course will consist of ten lectures and classes. At the end of each course an examination will be held, and in case there are not less than nine candidates, two prizes of the value of 3*l.* 3*s.* and 2*l.* 2*s.* respectively will be offered for competition amongst articled clerks and bar students. If there are less than nine candidates, only one prize of the value of 3*l.* 3*s.* will be offered. A student who has been successful in obtaining a prize in any particular course in one session shall not be eligible for a prize in the same course in any subsequent session, although he shall be eligible for a place.

The subjects of the courses will be as follows:—

First Course: 'The Practice of Conveyancing,' dealing more particularly with settlements of real and personal estate and the law to which the practice gives effect. Lecturer: W. H. Cochran, Esq. (Barrister-at-Law).

Second Course: 'Mercantile Contracts.' Lecturer: A. T. Carter, Esq., M.A., B.C.L. (Barrister-at-Law), late scholar Queen's College, Oxford; Vinerian Law Scholar and Eldon Scholar, Oxford; one of the authors of the Factors Act, 1889.

Third course: 'The Principles of Equity,' relating to married women, infants, partnership and other accounts, suretyship, administration of assets, specific performance and injunctions. Lecturer: J. S. Seaton, Esq., B.A., B.C.L. (Barrister-at-Law), Vinerian Law Scholar, 1886; studentship and three scholarships, Inns of Court, 1885 and 1886.

The lectures will be delivered weekly, from 5 to 6 P.M., in the Law Association Rooms, Cook Street. The classes will be held in the law library, from 10 to 11 A.M., on the mornings following the lectures.

The first course of lectures will be delivered as follows: First lecture, Wednesday, September 30; second lecture, Wednesday, October 7; third lecture, Wednesday, October 14; fourth lecture, Wednesday, October 21; fifth lecture, Wednesday, October 28; sixth lecture, Wednesday, November 4; seventh lecture, Wednesday, November 11; eighth lecture, Wednesday, November 18; ninth lecture, Wednesday, November 25; tenth lecture, Wednesday, December 2.

Fee for lectures (including classes): Members of the Liverpool Law Students' Association, 7*s.* 6*d.* each course, or 1*l.* the three courses. Others, 10*s.* 6*d.* each course, or 1*l.* 10*s.* the three courses. The first lecture of each course will be free.

Arrangements have also been made for the delivery of the following two courses of evening lectures, each consisting of six lectures, to be delivered at the University College on Fridays, at 8 P.M., commencing on October 30, viz.: (1) 'Commercial Contracts,' by O. H. Hardy, Esq. (Barrister-at-Law); and (2) 'Bills of Exchange, Cheques, and Promissory Notes,' by A. Aspinall Tobin, Esq. (Barrister-at-Law).

## ANNUAL REPORT ON PRISONS.

A Blue-book containing the fourteenth report of the commissioner of prisons was issued on September 17. The report gives statistics and other information respecting local prisons in England and Wales for the year ending March 31, 1891.

The number of prisoners received during the past year in local prisons under sentence of the ordinary Courts was 140,632, besides 1,526 soldiers and sailors sentenced by courts-martial. There were also 8,401 persons imprisoned as debtors or on civil process, making a total of 150,559.

The corresponding numbers for the preceding year were respectively: Convicted by the ordinary Courts, 145,268; by courts-martial, 1,243; debtors and civil process, 8,926; total, 155,437.

The population of the prisons on March 31, 1891, was 12,814, having been 13,745 at the end of the previous year. The average daily population in 1890–91 was 13,495—viz. 11,118 males and 2,377 females. In the previous year it was 14,389—viz. 11,852 males and 2,537 females.

If the increase due to retaining convicts under sentence of penal servitude in local prisons be deducted, the average daily population would be 13,076 in 1890–91, and 13,877 in the previous year. The average population

of local or short-sentence prisoners was therefore lower by 801 in 1890–91 than in the previous year.

It is satisfactory to note that since 1877 there has been an almost regular decrease year by year in the prison population. For the half-year ended March 31, 1878, the figures were 20,833; in 1885, 16,619; and in 1891 they fell to 13,076. And this number would be still lower but for the number of prisoners sentenced by courts-martial, who before were sent to military prisons, but now serve their time in civil prisons. By the latest returns there were 282 military, thirty-eight naval, and nineteen marine prisoners in our local prisons.

The highest number of prisoners shown in any of the monthly returns was 14,662 on October 7, 1890, and the lowest was 11,919 on January 6, 1891, the highest number being 23·01 per cent. above the lowest number, which latter was less by 1,329 than the corresponding number in the previous year.

The decrease in the number of juvenile prisoners under sixteen years of age during the last twenty and a half years is remarkable. In 1870 the number was 9,998; in 1880, 7,416; and in 1890, 4,366. A return enumerating the cases in which the Probation of First Offenders Act, 1887, was applied in metropolitan police and five other large provincial districts during the years 1888, 1889, and 1890 shows that of the total number—namely, 2,530—only 169, or 6·6 per cent., have been called upon to appear and receive judgment, or are known to have been subsequently convicted of a fresh offence.

The number of deaths from natural causes was 103, giving a death-rate per 1,000 of 7·6 per annum. Here, again, there has been a marked improvement, the figures in 1870 being 252, giving a rate of 12·7. The low mortality is due to the care exercised by the medical authorities, and it is the more noteworthy considering the prevalence of influenza last year. Only five cases of suicide have occurred in the past year, as compared with an average of thirteen per annum in the previous twelve years.

## LAW STUDENTS' SOCIETIES.

DEBATING.—The first meeting of the session will be held at the Law Institution, Chancery Lane, on Tuesday, October 6, at 7 o'clock, when Mr. G. Pitt-Lewis, Q.C., M.P., will open the debate. The subject for discussion is 'That it is desirable to bring the circuit system into accordance with modern requirements by greatly reforming it, and by largely supplementing it by permanent sittings of the County Courts as District Courts, with the unlimited jurisdiction of the High Court of Justice throughout England and Wales.'

THE October number of the *Law Quarterly Review* will contain articles on 'Natural Law and the Bering Sea Question,' by Mr. T. B. Browning (Toronto); 'Terminology in Contract,' by Sir W. R. Anson, Bart.; 'The County Court System,' by Mr. Charles Cautherley; 'Frankalmoign in the Twelfth and Thirteenth Centuries,' by Prof. F. W. Maitland; 'The American and British Systems of Patent Law,' by Mr. J. H. Bakewell; 'Maintenance Clauses,' by Mr. J. Savill Vaizey; 'Wrongful Intimidation,' by Mr. S. H. Leonard; and a 'Note on the *Vagliano Case*,' by Mr. J. R. Adams.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## OBITUARY.

WITHIN the last few days the deaths have been announced of the mother and also the elder brother of Lord Thring, the latter at the age of seventy-five and the former in her hundred-and-second year. MR. THEODORE THRING, of Alford House, near Castle Cary, Somerset, was a barrister-at-law, of the Middle Temple, and formerly a commissioner of bankruptcy at Liverpool. He was also a magistrate and deputy-lieutenant for Somerset, and a deputy-chairman of quarter sessions for that county. He married Julie Jane, daughter of Mr. William Mills, of Saxham Hall, Suffolk, by whom he has left a numerous family. His mother, whose death preceded his own by only two days, was Sarah, second daughter of the late Rev. John Jenkyns, vicar of Evercreech, near Shepton Mallet. She married in 1811, just eighty years ago, the Rev. John Gale Dalton Thring, of Alford House, who died in 1874. Her third son was the Rev. Edward Thring, the late head-master of Uppingham School; and her second son is Lord Thring, better known, perhaps, to the world by his former name of Sir Henry Thring, late Parliamentary counsel to Her Majesty's Government.

MR. HENRY HAWKES, the coroner for Birmingham, died on Saturday, September 26, in his seventy-eighth year. Until quite recently the deceased had been able to attend to his professional duties. Of late he had suffered from bronchitis, but his condition only became serious a fortnight ago. Mr. Hawkes, who was a solicitor, took an active part in the political and municipal life of the city. He was an ardent Radical, but a few years ago he moderated his views, and ultimately became a member of the Conservative Association, on behalf of which body in 1884 he successfully contested South Birmingham. He was elected a member of the town council in 1846, was appointed an alderman in 1850, and in 1875 was unanimously elected coroner in succession to Dr. Birt Davis. In the same year Mr. Hawkes contested Tamworth, in the Radical interest, the other candidates being Sir R. Peel (L), Mr. Butt, Q.C. (L), and Mr. Hanbury (C). He, however, was defeated, the first and last named being returned.

MR. JUSTICE WEBB, of Hathrop, Bathurst, New South Wales, whose death was briefly announced in the *Times* of September 28, was born at Liskeard, Cornwall, in 1830. He arrived in Sydney in 1847, and in 1850 settled down to business pursuits at Bathurst. He retired from business in 1875. Mr. Webb was returned five times as mayor for Bathurst, and in 1870 represented West Quarie in the Legislative Assembly. In 1882 he was called to the Legislative Council. He was for many years a magistrate for the Bathurst district.

MR. F. A. BOSANQUET, Q.C., has resigned the recordership of the city of Worcester owing to his appointment to the vacant recordership of Wolverhampton. He received his appointment as recorder of Worcester on June 18, 1879.

THE SITTINGS IN THE QUEEN'S BENCH DIVISION.—The following are the arrangements made by the judges of the Queen's Bench Division for holding their Courts during the ensuing Michaelmas sittings—viz Three Courts will be formed to sit in Banco, the first of which will be composed of Lord Chief Justice Coleridge and Mr. Justice Wright, the second will consist of Mr. Justice Mathew and Mr. Justice Smith, and the third of Mr. Justice Day and Mr. Justice Grantham. Eight judges will sit to try special and common jury and non-jury cases, they being Baron Pollock and Justices Denman, Hawkins, Cave, Wills, Charles, Laurence, and Collins. Mr. Justice Williams will be the judge in attendance at Judge's Chambers during the sittings.

## CALENDAR OF THE COUNTY COURTS.

FROM OCTOBER 5 TO OCTOBER 10.

| No. of Circuit | His Honour | Oct. 5 | Oct. 6 | Oct. 7 | Oct. 8 | Oct. 9 | Oct. 10 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Runcorn | Northwich | — | Birkenhead | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | — | — | — | Middlesbrough | Stockton-on-Tees | — |
| 16 | Judge Bedwell | Whitby | Goole | Selby | Malton | — | — |
| 26 | Judge Jordan | Stoke | Uttoxeter | Hanley | Hanley | Rugeley | Cheadle |
| 47 | Judge (?) | — | Lambeth | Woolwich | Lambeth | Greenwich | — |
| 54 | Judge Metcalfe | Wells | Wells | Wells | Wells | Wells | — |
| 55 | Judge Machonochie | Shaftesbury | Wincanton | Crewkerne | Yeovil | Salisbury | — |
| 57 | Judge Paterson | — | Taunton | Taunton | — | — | — |
| 58 | Judge Edge | — | Exeter | Exeter | Exeter | Newton Abbot | Newton Abbot |

## BOOKS RECEIVED FOR REVIEW.

COURT BARON (The). Edited for the Selden Society by Frederic William Maitland and William Paley Baildon. London: Quaritch, 15 Piccadilly. 1891.

Legal Handbook for Executors and Administrators (A). By Almaric Rumsey, Barrister-at-Law. London: Swan Sonnenschein & Co. 1891.

Principles of the Law of Torts (The). By L. C. Innes. London: Stevens & Sons (Lim.). 1891.

Selection of Leading Cases in the Common Law (A). Fourth Edition. By Richard Watson, Barrister-at-Law. London: Stevens & Sons (Lim.). 1891.

Summary of the Law of Companies. By T. Eustace Smith, Barrister-at-Law. Fifth Edition. London: Stevens & Haynes. 1891.

COMMERCIAL FAILURES.—According to *Kemp's Mercantile Gazette*, the number of failures in England and Wales gazetted during the week ending September 26 was seventy-four. The number in the corresponding week of last year was sixty-six, showing an increase of eight, being a net increase in 1891 to date of six.

A JUROR AS A WITNESS.—The unusual incident of calling a juror from the jury-box to testify in the case on trial occurred in Supreme Court Circuit. The plaintiff, Emil Brusnitz, claimed 10,000 dollars damages from the Netherlands Steam Navigation Company for injuries he received in March, 1889, while a passenger in the second cabin of the steamer Leerdam. By a lurch of the vessel, Brusnitz was thrown heavily against an iron socket which projected above the deck, dislocating his shoulder. Edward A. Levy, one of the jurors, so impressed the counsel for the defence by the questions he put to witnesses as to his knowledge of the subject-matter, that he was called as an expert on strapping and shifting of cargoes. The Court allowed the juror to testify, against plaintiff's objection.—*Daily Record.*

RECENTLY, in the Alabama Supreme Court, in *Thomas* v. *State*: On indictment for robbery, it appeared that defendant met a person on the road carrying a gun, whom he stopped and engaged in conversation respecting its purchase, and the gun was handed to him. Being informed that the gun was loaded, he stepped back a few steps, and, pointing it at the prosecutor, said, 'Run, or I will shoot you;' whereupon the latter backed off some distance, frightened, and the defendant ran off with the gun. Held, that the defendant was not guilty. This seems to us to be very bad law. Handing over a gun for a moment for inspection is not parting with the possession; and here the thief got possession only and because the owner abandoned it through fear. Our Penal Code expressly provides for a case of this kind.—*Indian Jurist.*

THE Lord Chancellor will receive the Lord Mayor-Elect in the Princes' Chamber, House of Lords, on the 24th inst., when his lordship will announce to the coming chief magistrate for the City Her Majesty's sanction of his appointment by the citizens of London. The Sheriffs-Elect will be present on the occasion. Later the Lord Chancellor will receive the judges of the High Courts, and will proceed with them to the Palace of Justice to open the Michaelmas law sittings.

ACCIDENT TO JUDGE NELIGAN.—Judge Neligan, Recorder of Londonderry, was thrown from his carriage on September 22 and seriously injured. The unfortunate gentleman was driving to his son's residence, near Tralee, when his horse became restive and caused the accident. Dr. Falvey, who happened to be passing, had the judge conveyed to Tralee, where he remained unconscious for several hours.

## BIRTHS.

On Sept. 22, at 55 Gorst Road, Wandsworth Common, the wife of Frank Henry Chapman, Solicitor, of a son.

## MARRIAGES.

On Aug. 19, at All Saints' Church, St. Kilda, Melbourne, Donald Mackinnon, Barrister-at-Law, eldest son of the late D. Mackinnon, of Marida Yallock, Victoria, to Hilda Eleanor Marie, youngest daughter of the late Brice Frederick Bunny, Judge of County Courts and Commissioner of Titles, Melbourne, and formerly of Speen House, Newbury, Berks.

On Sept. 19, at Brussels, Charles Elliott Edward Jenkins, of Lincoln's Inn, Barrister, to Julie Marie Craven, of Brussels.

On Sept. 23, at Henbury, Gloucestershire, Ivor Augustus, fourth son of Sir George F. R. Walker, Bart., and the late Honourable Lady Walker, to Georgiana, youngest daughter of the late John Osborne, Esq., Q.C.

On Sept. 24, at St. Stephen's, Worcester, Nathaniel Merridew, of Leamington, to Emma, widow of the late Harry Caldicott, Esq., Solicitor, Worcester, and daughter of the late Captain Mayne, of the same city.

On Sept. 24, at St. John's Church, Notting Hill, London, W., Robert Samuel Wemyss Barnes, Assoc. Mem. Inst. C.E., Durban, Natal, second son of Frederick Piers Barnes, C.E., of Birkenhead, to Elizabeth Emma Bradford, daughter of the late John Craven Ogle, A.M., T.C.D., Barrister-at-Law, Tranmere Park, Birkenhead.

On Sept. 26, at St. Mark's, Dalston, Alfred Gammon Wilkie, Solicitor, youngest son of James Wilkie, of Richmond Place, Southampton, to Annie, eldest daughter of Andrew Gifford Soutter, of 27 Pembury Road, Lower Clapton, N.E.

On Sept. 29, at St. John's, Waterloo, Liverpool, Rev. Charles Frederick Knight, M.A., Vicar of St. Simon's, Sheffield, youngest son of the late Thomas John Knight, Esq., Q.C., Tasmania, to Amy Elizabeth, eldest daughter of Thomas Harrison, Esq., of Cranmore, Waterloo, Liverpool.

## DEATHS.

On Sept. 24, at his residence, Bollinwood, Wilmslow, Cheshire, Richard Hilditch, of Manchester, Barrister-at-Law, in his 79th year.

On Sept. 25, at Davos Platz, Switzerland, James Benjamin Byrne, Barrister-at-Law, only son of John Alexander Byrne, Esq., Q.C., of 85 Lower Leeson Street, Dublin.

On Sept. 27, at Melbourne, George Henry Frederick Webb, judge, Supreme Court, Colony of Victoria, aged 63.

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# The Law Journal.

*SATURDAY, OCTOBER* 10, 1891.


## 'OBITER DICTA.'

The Solicitor-General does not pick and choose his phrases, especially when in the full swing of oratory. But he certainly did less than justice to solicitors when he charged them in a recent speech with having stood between the British public and reform of the land laws. The ill-starred scheme for which the Lord Chancellor became responsible died of a fatal internal disease—officialism; and if some of the ablest solicitors in London—men who know more about practical conveyancing questions than anyone else—took some trouble to indicate the weak points and mistakes in the proposals for cheap land transfer, they deserved the hearty thanks of the Government. Men who talk of dealing with land as cheaply and rapidly as with stocks will not be satisfied with a Land Registry Office; and nobody knows better than Sir Edward Clarke that landowners, whether large or small, prefer privacy to publicity and officialism.

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To entitle the vendor's solicitor to the scale fee for negotiating a sale two conditions are needed—a positive one, that he should, in fact, have arranged the sale and the price and terms and conditions thereof; and a negative one, that no commission be paid by the client to an auctioneer or estate or other agent. This is the effect of schedule 1 to the General Order made under the Solicitors' Remuneration Act, 1881, and of rule 11, as is clearly laid down by the Court of Appeal in *In re Macgowan*, 60 Law J. Rep. Chanc. 6; L. R. (1891) 1 Chanc. Div. 105. In the recent case of *In re Withall*, L. R. (1891) 3 Chanc. Div. 8, the solicitor had apparently done the necessary work to fulfil the positive condition; but in doing it he had the assistance of a local surveyor who acted in the general management of the vendor's estate, the surveyor's remuneration being 2½ per cent. on the purchase-money of all lands sold. The Court of Appeal, affirming Mr. Justice North, held that the remuneration of the surveyor in this way was fatal to the solicitor's claim for the negotiation fee. We think there can be little doubt that, under the circumstances, the second or negative condition to which we have referred was not fulfilled. The taxing-master, it is true, was of opinion that the payment to the surveyor, being a payment for general services, was not such a payment as is contemplated by rule 11, and the Court agreed that this would have been so if the services of the surveyor had not been called in at all in the particular case, but that as they were called in commission had been paid to the surveyor within the meaning of the rule, although that commission also covered the remuneration for other work.

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The Infants' Settlement Act, 1855 (18 & 19 Vict. c. 43), s. 1, empowers settlements to be made by infants of property 'whether in possession, reversion, remainder, or expectancy.' In *In re Johnson; Moore* v. *Johnson*, 60 Law J. Rep. Chanc. 499; L. R. (1891) 3 Chanc. Div. 48, Mr. Justice North had to decide whether an interest subsequently acquired by the infant under the will of a testator who died after the execution of the settlement was subject to a covenant in the settlement to settle after-acquired property. The covenant referred to any real or personal property exceeding in value 100*l.* to which the infant or her husband, in her right, should 'become entitled in any manner, and for any estate or interest.' Mr. Justice North decided that the interest in question was bound by the covenant. In the language of the old conveyancers such an interest is described as a 'bare or naked' possibility, or a 'mere expectancy,' as opposed to possibilities coupled with interest, such as contingent remainders, executory devises, or shifting uses (see 'Watkins on Conveyancing,' 8th edit. p. 219); but we see no reason why the word 'expectancy' in the Act of Parliament should be read in any other than its widest sense.

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It is well settled law that the father who is clothed by law with the right of directing the religious education of his children cannot, even by ante-nuptial contract, bind himself to exercise in a particular way that power which the law gives him for the benefit of his children and not of himself (*Andrews* v. *Salt*, L. R. 8 Chanc. App. 622). In *In re Nevin* (60 Law J. Rep. Chanc. 542), in addition to an ante-nuptial promise to educate the children of the marriage in the Roman Catholic religion, the father had also allowed the child to be baptised in that faith. The father died in 1886 intestate, the child being then three years old, and on his

deathbed he commended his wife and child to a charitable lady of the Protestant faith, who maintained the mother and child in her house, and after the death of the mother, who died intestate in 1889, continued to maintain and educate the child in the Protestant faith. Then followed a story of forcible abduction and rival claims to the guardianship of the infant, involving a dispute whether she should be educated in the Roman Catholic or Protestant faith, which was heard before Mr. Justice Chitty in January and before the Court of Appeal in April last. The Court had no hesitation in deciding against the claim to guardianship set up by the forcible abductor. Her religious education was a matter of greater difficulty; but, acting on the rule laid down in *Titus* v. *Salt*, the Court thought the father was at liberty to change his mind, and that there had been a sufficient change of mind on the father's part in committing his child to the care of her benefactress, and decided that, in the true interests of the child, she should remain under the care of her Protestant friends and be educated in the Protestant faith.

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Section 118 of the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), adds one more to the long list of cases (see, *e.g.*, Criminal Law Amendment Act, 1885, s. 20, and the Law of Libel Amendment Act, 1888, s. 9) in which a person charged with a criminal offence may give evidence on the hearing of the charge. The phraseology in which the exception is introduced is various. This, the latest enactment of the kind, runs as follows: 'Any person charged with an offence under this Act, and the wife or husband of such person, may, if such person thinks fit, be called, sworn, examined, and cross-examined as an ordinary witness in the case.' Therefore, in London (after January 1, 1892), if a person be charged with keeping swine in an unfit place, he may defend himself on his own oath, whereas if he be charged elsewhere than in London with a similar offence his evidence would be inadmissible. This is a curious anomaly, and if the Government cannot see its way to passing the general Criminal Evidence Amendment Bill which has been so often introduced by successive law officers, the endeavour might at least be made to apply the principle of that bill to summary proceedings generally and to appeals therefrom. *A propos*, does section 118 of the Public Health (London) Act apply to appeals? Is a person appealing against a conviction still 'charged with an offence' within the meaning of that section? And to take a somewhat similar case of more general importance, what is the effect of section 51, subsection 4, of the Licensing Act, 1872, by which, 'in all cases of summary proceedings' under that Act, 'the defendant and his wife shall be competent to give evidence'? Does this apply to appeals? We think not; nor, on the whole, do we think that section 118 of the Public Health (London) Act, 1891, applies to appeals under section 125 of that Act, which must, of course, be read with section 31 of the Summary Jurisdiction Act, 1879. But the point is by no means free from doubt.

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A return just published of the convictions for drunkenness in England and Wales is full of interest and of unexpected disclosures. There are, however, so many elements which swell or diminish the totals in different localities, apart from the actual number of cases of drunkenness, that any conclusion must be subject to modification. The efficiency of police and the bias of magistrates differ very widely, but it is certainly very significant to note that in Wales, where for ten years there has been rigid Sunday closing, the convictions were one in 148 of the population, whereas in England they were only one in 169. It is amusing to find that in Sir Wilfrid Lawson's county, Cumberland, there were about five times as many convictions as in Essex, of which we once heard an ardent Radical say that it was governed by a syndicate of brewers. In Cumberland the number was about one in 110, whereas in Essex it was only one in 600. Learning *emollit mores*, and it is pleasant to find that at Cambridge only one in upwards of 1,600 was brought before the magistrates for overindulgence, and in the county one in 1,800. Oxford, however, is not so ascetic, and the number is rather more than one in 400 in the city and a little over one in 1,000 for the county. As might be expected, the North is rather worse than the South in habits of intemperance, and Newcastle and Grimsby show a total of one in fifty; whilst Tynemouth, to use Sir Wilfrid Lawson's phrase, is perhaps the largest contributor to the revenue of all our towns, and one in thirty of its population of 46,000 takes a good deal more than is good for him. Rural counties like Norfolk, with a proportion of one in 800—as much, perhaps, from the thinness of population and fewness of police as from actual abstention—make a much greater show of sobriety than those which are full of great towns, and of the latter the seaports naturally present larger totals. The city of London cuts apparently a very bad figure, as the return makes it appear that one in sixty comes before the magistrates. But the explanation is simple, as the population is given at 37,694, and the convictions were 547. But the day population is ten or a dozen times as great, and the real drunkenness is probably very small indeed. The only tolerably safe deduction from the figures appears to be that Sunday closing is no panacea, as in Wales in less than twelve hours on Sunday 1,269 persons got drunk as compared with 8,981 on the other six days. It seems also to be a fair inference that total closing would not greatly tend to temperance.

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We referred last week to the decision of Mr. Justice Romer in *In re Lacon; Lacon* v. *Lacon*, to the effect that two shares in a brewery business, given by a father in his lifetime to one son in lieu of increased salary, must be considered as an advancement of what that son took under his father's will. The Court of Appeal have reversed that decision (see 60 Law J. Rep. (N.S.) 407; L. R. (1891) 2 Chanc. Div. 482). All the members of the Court expressed doubts as to whether the gift of the two shares was a provision by way of portion, and of course, if it was not, there could be no question as to there being two, or double, portions. Assuming, however, that it was, their lordships were unanimously of opinion that the circumstances of the case rebutted the presumption that the testator did not intend double portions for that son. 'It was not,' said Lord Justice Lindley, 'simply giving him now what he would have when his father died. It was something very different.' Lord Justice Bowen expressed his conviction that 'the dealing between the father and the son in the year 1887 was not intended in any way by the father to be an advancement towards what the son was to receive under

the will, and that it was not intended as a part performance of the distribution which the will was intended by the father to make of what the father should leave behind him at his death;' while Lord Justice Kay came to the conclusion 'that the testator did intend, in consideration of the experience which he had of the son's capabilities in carrying on an important part of his business, to put him in a somewhat better position in respect of his interest in the business than the other younger children.' We welcome Lord Justice Bowen's declaration that the doctrine should not be extended, believing that many wealthy fathers would be surprised to learn that, if they gave any son a gift of (say) 200*l.* or 300*l.* in their lifetime, it would be considered as intended by them in anticipation *pro tanto* of that son's share under his will. On the other hand, we do not advocate the total abolition of this doctrine, as most fathers would probably intend that very large sums of money advanced to a child on marriage, or as capital for a business, should be deemed given to him in advance as part of what he would finally take.

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Prosecutions undertaken by the very useful Society for Prevention of Cruelty to Children have undoubtedly done a vast amount of good in checking the barbarity of brutal parents. But it is just as well that the society and its supporters should understand that magistrates will not separate parents and children unless it is clearly necessary for the protection and safety of the latter, and that a stain on the moral character of a mother is not sufficient reason for depriving her of the custody of her offspring. Mr. Bushby expressed himself very strongly on this subject, and in a case brought before him resolutely declined to punish the woman, who was charged with neglecting her little girls. The circumstances had excited public sympathy, and the mother had already derived material and moral benefit. On the same day a mother of quite a different type was convicted of gross physical violence to her step-children, and Mr. Rose very properly sentenced the prisoner to six weeks' imprisonment.

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The revelations of a Metropolitan Police Court are always interesting and frequently curious; but it is not often that a magistrate is asked to deal with a claim for the restitution of deeds representing a value—according to the complainant's story—of four millions of money. Mr. Curtis Bennett, before whom the summons was recently heard, told the complainant to go to the Supreme Court, as he did not 'deal in millions.' Whether this is an undeveloped *cause célèbre* remains to be seen.

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Mr. P. Edward Dove, founder of the Selden Society, barrister-at-law, who obtained permission from the benchers for the 'pied piper' to play to the poor children in Lincoln's Inn Fields, is probably the greatest living authority on the Highland bagpipe and its music. Mr. Dove's manuscript collection of pibrochs is said to be one of the largest in existence, and contains several hundred unknown to any modern piper. The pibroch, which is, it may be stated, an elaborate form of musical composition, is, owing to Mr. Dove's efforts, exciting considerable interest among many Continental musicians, though most English musicians are pleased to ignore it.

## A NEW CASE OF LEGACY DUTY.

There is no more stringent rule of equity than that a trustee or executor cannot, in the absence of an enabling clause, make a profit out of services rendered by himself to the trust estate. That the foundation of this rule, which rests on the supposed conflict between interest and duty which might otherwise ensue from the position of trustee, does not always accord with actual fact or popular sentiment may be judged by the frequency of a clause in trust-instruments, especially in wills, enabling a trustee or executor, who is a solicitor or other professional man, to charge for his services. The testator who inserts such a clause in his will intends, no doubt, simply to alter or reverse the general rule in the particular case; but in some cases the mere existence of the general rule operates to defeat this intention. Thus in *In re Barber; Burgess* v. *Vinnicome*, 55 Law J. Rep. Chanc. 373; L. R. 31 Chanc. Div. 665, Mr. Justice Chitty was of opinion, first, that an enabling clause in favour of a solicitor-trustee who attests the will is void under the Wills Act (1 Vict. c. 26), s. 15; and secondly, that where the estate is insolvent, the solicitor-trustee cannot claim the benefit of such a clause against creditors of the testator. The two propositions flow from the same source—viz. that, as the general rule forbids the solicitor to charge profit costs, the authority to do so operates by way of bounty only, and the stated consequences are the logical result. The first point—viz. that the enabling clause is void if the solicitor attests the will—was expressly affirmed by the Court of Appeal in *In re Pooley*, 58 Law J. Rep. Chanc. 1; L. R. 40 Chanc. Div. 1. Singular as these consequences are, a still more remarkable result of the general rule is involved in the question whether, where by virtue of an enabling clause, profit costs have become payable, the Crown can claim legacy duty on those profits. In the third edition of Mr. Hanson's well-known work (p. 63) the writer lays down the law against the Crown, saying: 'If the effect of the will is merely to authorise him [an executor] to make professional charges for services rendered to the estate by himself in the character of, for instance, a solicitor (*In re Sherwood*, 10 Law J. Rep. Chanc. 2; 3 Beav. 338), or an accountant (*Henderson* v. *M'Ivor*, 3 Madd. 275), or a land agent (*Willis* v. *Kibble*, 1 Beav. 559), or to receive a salary or commission for doing what he might otherwise employ an agent to do, as, for instance, getting in the testator's outstanding debts (*Weiss* v. *Dill*, 3 Myl. & K. 26; *Hopkinson* v. *Roe*, 1 Beav. 183), or collecting the rents of houses let to weekly tenants (*Wilkinson* v. *Wilkinson*, 2 S. & St. 237), this does not amount to a legacy, but merely prevents the operation of the rule of equity that an executor or trustee shall not make his office a source of profit, and thus enables him to charge for services which in the absence of any such direction he would not be bound to render gratuitously.' We have little doubt that this statement represents the notion hitherto entertained, though it is worthy of remark that in the cases to which the learned author refers not only is there no direct authority on the payment of legacy duty, but, so far as we have been able to discover, there does not appear to be the slightest allusion to it in the reports. In addition to which, these cases were all decided prior to 8 & 9 Vict. c. 76. The question appears to have been first discussed in the case of *In re Pooley*, the argument being that if Mr. Justice Chitty's

decision in *In re Barber*, which was practically then under appeal, was right, then the Legacy Duty Acts as well as the Wills Act would apply to the case, and duty would be payable on the solicitor's profits—a contention, of course, intended as a *reductio ad absurdum*. The Court, however, in no way shrank from the supposed absurdity. Lord Justice Cotton said, The solicitor, 'as a trustee of the will, could not, in the absence of any direction in the will, do professional work for the estate and charge profit costs. It is urged that if we hold a clause enabling a trustee to do so, to have the effect of giving him a legacy, a difficulty will arise, for in that case a solicitor-trustee will be liable to legacy duty on his profit costs. I decline to give any opinion on that point; it may hereafter come before us for decision, and I do not wish to bind myself upon it; but that consideration ought not to prevent us from giving a fair construction to the words of the enactment now before us.' In the case of *In re Thorley; Thorley* v. *Massam*, 60 Law J. Rep. Chanc. 537; L. R. 1891, 2 Chanc. Div. 613, the question arose on a direction in a will that while the trustees of the will should carry on the testator's business each of them should receive the annual sum of 250*l.* out of the profits of the business, and that while the testator's son should manage the business in conjunction with the trustees, he, too, should receive another annual sum of 250*l.* The Court of Appeal, affirming Mr. Justice North, held that the sums received by the trustees and by the son in pursuance of these directions were legacies within the definition contained in 8 & 9 Vict. c. 76, s. 4, to the terms of which we presently refer; and the question we wish to lay before our readers is whether the *ratio decidendi* of this case does not apply equally to profit costs paid to a solicitor-trustee. Clearly it would apply if the testator directed payment by way of a salary. Is there any valid distinction for this purpose between the payment of a definite sum for the solicitor's services and the payment for those services according to their recognised value, the payment in each case being admittedly a matter of bounty? By way of answer we will only refer to section 4 of 8 & 9 Vict. c. 76, and a passage in Lord Justice Lindley's judgment in *In re Thorley*. Section 4 says that 'every gift by any will . . . of any person which by virtue of any such will . . . is or shall be payable, or shall have effect or be satisfied out of the personal estate of such person, . . . whether such gift shall be by way of annuity or in any other form, shall be deemed a legacy;' while in *In re Thorley* Lord Justice Lindley says: 'If the trustees are to obtain this 250*l.* a year at all they must do so under the will. They cannot get it in any other way. Then is that, or is that not, a gift by the will within the meaning of section 4 of the Act? I cannot in my mind say that it is not. Of course it is put in this way: It is said there is a consideration for it, that they are to give their services, their time, and their attention; and that is perfectly true. But does that alter the question? If they could charge the estate of their testator for their services apart from the will it would alter the question very materially, but they cannot. They cannot get a shilling out of the estate either at law or in equity for their services except under the will. That appears to me to bring this case so far within the section; nor do I think that we could possibly hold the contrary, without running counter to the reasoning of the Court in the case of *In re Pooley*. It is very true that that case did not raise the question of legacy duty; but the decision in it proceeded upon the principle which I have been endeavouring to explain—namely, that a solicitor who is entitled to charge profit costs under a will takes a benefit under the will, and therefore is an interested person, and if he attests the will he cannot claim the benefit which the will gave him, which was the right to remuneration for his services. I cannot see, in principle, any distinction between that case and this.'

## ENGLISH *CAUSES CÉLÈBRES*.—VIII.

### Ryves *v.* The Attorney-General.*

The case of the *soi-disant* Princess Olive is almost too complicated to be dealt with adequately within the necessary limits of such a series of papers as the present, but we will make the effort.

In 1859 a certain Mrs. Ryves filed a petition under the Legitimacy Declaration Act, praying that the marriage between her mother, Olive Wilmot, and a Mr. Serres might be declared valid, and that she might be declared the legitimate issue of that marriage. The petition was heard in January, 1861. The Attorney-General was cited on behalf of the Crown. There was no opposition, and the Court duly pronounced a decree granting the prayer of the petition. Then the drama began to unfold itself. Mrs. Ryves presented a second petition under the Legitimacy Declaration Act, in which she alleged, and prayed the Court to find, that her mother, Olive Wilmot, was the legitimate daughter of the Duke of Cumberland and Olive Wilmot, his wife, 'who had been lawfully married on March 4, 1767, by the Rev. James Wilmot, D.D., the father of the bride.' This audacious claim to royal descent was at once opposed by the Attorney-General (Sir Roundell Palmer) on behalf of the Crown; and in due time the case came on for trial before Chief Justice Cockburn, Chief Baron Pollock, Sir James Wilde, and a special jury. Sir Roundell Palmer, the Solicitor-General, the Lord Advocate, Mr. Hannen—then Treasury 'devil'—and Mr. R. Bourke, for the Attorney-General of Ireland, appeared for the Crown. Mr. J. W. Smith and Mr. Thomas were counsel for the petitioners.

The case for Mrs. Ryves, as Sir Roundell Palmer cleverly said, was a play in several acts. The hero of the first act was the Rev. James Wilmot, D.D., a country clergyman and quondam Fellow of Trinity College, Oxford, who died 'in the odour of celibacy in 1807, at the mature age of eighty-five.' Several years after his death it was discovered that he had been secretly married to the Princess Poniatowski, who was sister to the King of Poland. The issue of this marriage was Olive Wilmot. The hero of the next act was Prince George of Wales, afterwards King George III., whom Mrs. Ryves represented as having married, with the connivance of Pitt, first a lady named Lightfoot,† and afterwards, during her lifetime, the Princess Charlotte of Mecklenburg-Strelitz. The hero of the third act was Henry Frederick, Duke of Cumberland. Olive Wilmot had now grown up to be a beautiful woman. She was engaged to the Earl of Warwick, but the Duke of Cumberland desired her for his bride, and the Earl generously waived his claims. The marriage was cele-

* Annual Register, 1866, 223-259.

† Two princes and a princess were alleged to have been the issue of this marriage. Indirectly, therefore, the case of *Ryves* v. *The Attorney-General* was nothing less than a claim to the Crown.

brated by Dr. Wilmot on March 4, 1767, and Olive—afterwards Olive Serres, the mother of Mrs. Ryves—was born on April 3, 1772. Mrs. Serres was therefore a princess of the blood royal. A preliminary difficulty, however, of some magnitude lay in Mrs. Ryves's way. She had already obtained a judicial decree establishing her own legitimacy. But if the *soi-disant* Princess Olive S. were really the legitimate daughter of the Duke of Cumberland, her marriage with Mr. Serres, not having been sanctioned by the reigning sovereign, was invalid within the Royal Marriage Act (12 Geo. III.); so that Mrs. Ryves could succeed in proving her mother to be of royal blood only by disproving her own legitimacy. But, apart from this curious dilemma, the case for the petitioners was, in the language of the Attorney-General, one of 'fraud, fabrication, and imposture from beginning to end,' palliated only by the insanity of some of the parties principally concerned. It was bolstered up by an enormous mass of certificates, declarations, grants, and letters, written for the most part on loose scraps of paper. The value of this evidence may be judged by the following specimens: (1) The petitioners put forward an alleged will by Hannah Lightfoot in favour of Olive Wilmot. It bore date July 7, 1762, was signed 'Hannah, Regina,' and purported to have been attested by Dunning and Chatham. The date of this document was *subsequent* to the marriage of George III. and the Princess Charlotte; and yet the jury were invited to believe that men like Dunning and Chatham had put their names to a paper in which the discarded wife claimed and assumed the title of queen. (2) Then there was another document in the following terms:—

'George R.,

'We are hereby pleased to create Olive of Cumberland Duchess of Lancaster, and to grant our royal authority for Olive, our said niece, to bear and use the title and arms of Lancaster should she be in existence at the period of our royal demise.

'Given at our palace of St. James's May 17, 1773.

'Chatham.
'J. Dunning.'

The Chief Justice pointed out that such grants were always conferred by letters patent under the Great Seal, and that it was a strong argument against the authenticity of a document which was not good in law that it bore the signature of Dunning. It was proved, too, that the *soi-disant* Princess Olive had not always given the same account of herself. At one time she alleged that she was the daughter of the Duke of Cumberland by a Mrs. Payne, a married woman. Then she asserted that her mother was an unmarried sister of Dr. Wilmot. Lastly she put forward a claim that she was the offspring of a lawful marriage between the Duke and Dr. Wilmot's daughter. Perhaps the feeblest part of Mrs. Ryves's case, however, was the expert evidence of handwriting. Mr. Netherclift was called to prove the authenticity of a number of the certificates and other documents produced. He began by stating that in his opinion certain signatures were in the handwriting of Dr. Wilmot. On being questioned as to the grounds upon which he had arrived at that conclusion, he announced that it was by comparing them with *tracings* of Dr. Wilmot's handwriting which had been given to him by the solicitor for the petitioner, and which he *assumed* to be genuine. The Lord Chief Justice, on whose mind the very name of expert, since the trial of Palmer, acted like an irritant poison, tartly observed that if Mr. Netherclift had no better foundation for his evidence he ought not to have given it so positively. Mr. Netherclift next proceeded to compare the disputed with admitted signatures of George III., and maintained that the former were genuine, although different from the latter in style. One of the jurymen, however, discovered an important difference between the two sets of documents—viz. that a dot invariably followed the final R in the authentic signature, while there was no dot after the R in the contested signatures, with a single exception. Mr. Netherclift had no better explanation of this curious coincidence to offer than that 'such differences were often found in the signatures of the same person to official and to private documents!' With the signatures of Dunning the witness was still more unfortunate. He commenced by being very clear that the disputed signatures were genuine. Then the Attorney-General put into his hand a number of opinions given by Dunning as a law officer of the Crown, produced by the Treasury, and letters written by him to Lord Shelburne, produced by the Marquis of Lansdowne, and called his attention to a remarkable peculiarity in the formation of the capital 'D' and in the junction of the letters 'J' and 'D' in the signature. This peculiarity was present in the signatures to all the genuine documents and absent in the signatures to all the documents in dispute. This coincidence was not to be explained away, and Mr. Netherclift intimated that he 'did not adhere to the opinion' he had just before so confidently expressed. The expert evidence as to Chatham's handwriting was disposed of in the same way. Mr. Netherclift had come to curse the Crown: he remained to bless. Besides this *fiasco*, the rottenness of the petitioner's case displayed itself in a number of minor anachronisms on which it is unnecessary to dwell. In the end the jury stopped the Attorney-General, and, after a brief charge by the Lord Chief Justice, returned a verdict for the Crown.

Perhaps the only incident of forensic interest in connection with this case was the following: Mr. Smith, in replying for the petitioner, said that 'he believed, on his word of honour as a gentleman, that the documents which Mrs. Ryves had produced'—but the Lord Chief Justice interrupted him in a moment. 'I insist,' he said, 'on your not finishing that sentence. It is a violation of a fundamental rule of conduct, which every advocate ought to observe, to give the jury your personal opinion.' Sir Alexander Cockburn's own reply in the *Palmer Case* was a bad precedent that may well have led Mr. Smith astray.

(*To be continued.*)

# Reviews.

## MARRACK ON TRUST INVESTMENTS.

*The Statutory Trust Investment Guide.* By Richard Marrack, M.A., of Lincoln's Inn, Barrister-at-Law. London: F. C. Mathieson & Sons. Price 4*s.* net

Mr. Marrack has produced an admirable little book on the important subject of the investment of trust funds in the securities authorised by the Act of 1889. The work is one of great value both to the lawyer and to the trustee who desires to keep strictly within his powers, and at the same time to do the best he can

with the fund intrusted to his care. Much conscientious labour has been bestowed on this little treatise, and Mr. Marrack has carefully studied the debates in Parliament, and has given interesting accounts of the fluctuations of Parliamentary opinion with reference to some of the stocks at present excluded from the statutory list, as, for example, Colonial Inscribed Securities and Irish Tramways. An introduction of ninety-five pages contains a clearly arranged classification of the different kinds of securities in which funds may be invested, and the nature of debenture and preference stock is accurately explained, and the investor warned of pitfalls into which there is danger of running. The Trust (Scotland) Amendment Act is inserted, as well as the Trust Investment Act of 1889, and the Irish and Scotch, as well as the English investor, will find in the book all the information he is likely to want. Mr. Marrack does not fail to notice the curious anomaly that a trustee holding a security outside the statutory list is not enabled by the statute to change it for one which is on the list. Messrs. Mathieson have prepared a very full list of securities *primâ facie* eligible, and the dividends of railway companies are given for ten years past as a guide to the stocks in which investment is authorised by the Act of 1889. It is a pity, however, that no reference to reported cases except in the 'Law Reports' is given.

## ALPE ON THE STAMP DUTIES.

*The Law of Stamp Duties on Deeds and other Instruments.* Containing the Stamp Act, 1891; the Stamp Duties Management Act, 1891; a Summary of Case Law; Notes of Practice and Administration; Tables of Exemptions; the Probate, Legacy, and Succession Account and Estate Duties; and the Excise License Duties. Being the Second Edition of 'A Digest of the Law relating to Stamp Duties.' By E. N. Alpe, Barrister-at-Law, and of the Solicitors' Department, Inland Revenue. London: Jordan & Sons. 1891.

This is really the second edition of Mr. Alpe's 'Digest of the Law relating to Stamp Duties,' which we have already favourably reviewed in these columns. The changes effected by the recent consolidating Acts have been duly noticed, and the book has undergone a certain amount of necessary rearrangement. The original plan, however, of grouping the sections containing particular regulations under the heads of charge to which they relate has been wisely retained. It is certainly the most convenient for handy and speedy reference. Tables of the Death Duties and Excise License Duties have been added to the appendices, and the whole work has been carefully revised. We regard it as a most useful manual on the law of the stamp duties. The price is only 5*s.*

The Sharp *v.* Wakefield Case.—The fund for the purpose of defraying the costs in the *Sharp* v. *Wakefield* case is now closed, and amounts to 765*l.* Of this sum 460*l.* has been subscribed by thirty-nine of the Westmoreland justices of the peace. The amount collected is more than is required. A return of 4*s.* 2*d.* in the pound is, therefore, to be made to the subscribers. The judgment delivered in this case in the House of Lords has just been issued by the Executive of the United Kingdom Alliance as a pamphlet, and is specially prepared for circulation among magistrates and their clerks.

# Unreported Cases.

## COUNTY COURTS.

### EMPLOYERS' LIABILITY.

At the Brompton County Court, on September 29, an important point with respect to employers' liability was raised in a case before Judge Stonor. A lighterman named Henry Arnold sued Messrs. Williams & Wallington, the contractors for the Battersea new bridge, for damages for personal injuries sustained by an accident which happened at the works. The plaintiff had taken some baulks of timber to the bridge and they were being raised by cranes, when, owing to insufficient fastening, they fell into the river, smashed the boat, and severely injured the plaintiff's right arm. He was in hospital for several weeks, and it was found necessary to stitch his injured hand to his side, so that some of the flesh from his body might grow over it. The evidence as to the accident showed that the chain put round the baulks was not tight. The man in charge called out 'Ease up the slack' so that the chain might be tightened, but the 'Right away' was given instead, and the baulks were lifted into the air before the chain was properly put on. On behalf of the defendants a case was cited which had been before the Court of Appeal, and in which a man who usually superintended gave an order to a crane man and thus caused the accident. At the time he gave the order, however, he was engaged in manual labour, and on this ground a verdict was given for the employers. In the present case the banksman who gave the signal was a labourer, but at the time he gave the order was superintending only and was not engaged in manual labour. Some amusement was caused by a witness who had described the banksman as a manual labourer being unable in cross-examination to say what he meant by manual. Eventually he adopted the suggestion of counsel that football was manual labour. After a long legal argument, the judge ruled in favour of the defendants, and withdrew the case from the jury on the point of law.

### SOLICITORS AND TOUTS.

At the Brompton County Court on Thursday, October 1, a case of considerable interest to solicitors occupied the attention of His Honour Judge Stonor during the greater part of the day. The suit was *Brack* v. *C. & N.*, and there was a further suit of *Briggs* v. *Brack* which was heard at the same time.—Counsel for Brack opened the case, and explained to His Honour that Brack was a general dealer living at Fulham, and the defendants Messrs. C. & N. were solicitors. His client made two claims against them—one for having acted as bailiff, on the instructions of Mr. C., in the case of *Briggs* v. *Turner*, and another for commission for introducing a client. The claim on the other side by *Briggs* v. *Brack* was for negligence whilst acting as a bailiff in the case before mentioned, and it was worthy of mention that that claim was not made until the summons was served on Messrs. C. & N. Brack was engaged by Mr. C. to make a distraint at the suit of a Mr. Briggs on premises occupied by a man named Turner in a railway arch at Shepherd's Bush, and as the premises were only used for business purposes it was arranged that the bailiff should remain in possession till about ten o'clock at night and should return about seven in the morning. This was done; but one night after the bailiff left an engine and a horse and cart were taken away. Brack made inquiries, and eventually discovered the articles and brought them back, and it would be proved in evidence that the engine and the horse and cart were in the same condition when brought back as they were when the seizure was made. After this the bailiff

remained in possession night and day until the distraint was satisfied. He received all his instructions in the matter from Mr. C., and never in any way came across or had any dealings with Mr. Briggs. Further than this, Mr. C. promised to pay him, and especially informed him that he should not be out of pocket in recovering the articles which were removed. Since the service was complete the defendants had refused to pay, and now denied their liability. With respect to the claim for commission, Brack knew a man named Moyses who met with an accident in the street and desired to bring an action. Moyses wished to be introduced to a solicitor, and Brack went to Mr. C. and informed him that he could introduce a client on terms. Eventually it was agreed that Brack should have one-third of the profits that Messrs. C. & N. made out of the case, and the introduction was made. The defendants now refused to pay, although they recovered damages and were paid costs.—His Honour expressed a doubt whether the defendants were liable on either claim, but said he should hear the case.—The plaintiff Brack was then sworn and bore out the statement of his counsel. In cross-examination he admitted a number of documents, upon which he acted in making the distress, and these were signed, 'C. & N., solicitors for Mr. Briggs.' He denied that he had been guilty of any negligence in making the distress, and said he acted throughout on the instructions of the solicitors. With respect to the claim for commission he said he had had a previous transaction of the same kind with Mr. C. He introduced a person who had summoned another for assault to Mr. C. The solicitor received a fee of a guinea, and he (Brack) by arrangement received 7*s.* of that sum from Mr. C. It was agreed that he was to receive a third of what the client paid.—Mr. Moyses stated that Messrs. C. & N. acted for him in a suit for damages which was compromised by payment of 100*l.* He arranged with the solicitors that they should have one-third of what he recovered as their costs, and as he had previously paid them 13*l.* 5*s.* he received 80*l.* out of the 100*l.* He heard Mr. C. say that Brack would have something.—Other evidence having been given, the judge said he was prepared to hear arguments of counsel.—Counsel, on behalf of Brack, argued that the solicitors were personally liable to the bailiff, and quoted a case in which a firm of solicitors who had given a guarantee to the Court for costs were held liable, although the guarantee was signed 'as solicitors for.' With respect to the commission, he contended that it was not illegal for solicitors to employ touts about a Court and that they were only bound by the Solicitors Act.—The judge said he did not think they got as far as the Solicitors Act. He was convinced that the agreement was bad at common law. It was an illegal agreement, and, therefore, could not be enforced.—Counsel submitted that the agreement was not illegal, but His Honour said it was a partnership. It was one of the most disgraceful cases that had ever come before him, and it was certainly not competent for a solicitor to become partner with every blackguard he met.—Counsel on behalf of Messrs. C. & N. contended that his clients could not be held personally liable to the bailiff, for in every instruction given they stated that they were acting as solicitors for Mr. Briggs. Mr. Briggs declined to pay because of the negligence of the bailiff in allowing the goods to be removed, as he contended that when the engine was recovered several parts were missing and its value greatly impaired. His clients had acted in a *bonâ fide* manner, and, if they were held liable, he argued that no solicitors would be safe. There were numerous cases on his side, and he maintained that the case his learned friend had quoted was a special one which did not apply here. The solicitors gave a personal undertaking to the Court, and their undertaking was accepted by the Court when the undertaking of their client would not have been accepted.—His Honour said he must decide in favour of the solicitors on both points, and in the case of *Brack* v. *Clack and another* he ordered a nonsuit without costs. In the case of *Briggs* v. *Brack* he also ordered a nonsuit, with costs to the bailiff, as there clearly had been no negligence.

## POLICE CASE.

### BRITISH OYSTERS.

At the Mansion House, on October 1, a friendly prosecution was brought by the Fishmongers' Company against Mr. W. H. Williamson, an oyster merchant, of Billingsgate, with the object of deciding the question as to whether the Oyster, Crabs, and Lobsters Sea Fisheries Act, 1877, c. 42, is or is not applicable to French, Portuguese, and American oysters bedded in English waters. The summons, which was heard by Mr. Alderman Faudel Phillips, set out that the defendant 'did, on June 22, unlawfully sell 3,000 oysters.' Defendant admitted the sale, but pleaded that no breach of the Act had been committed. The section of the Act under which the proceedings were taken fixes the close time for oysters between May 14 and August 4; but there is also an exemption clause, which says that no vendor of oysters shall be liable to any penalty providing that he can satisfy the Court that the oysters sold were taken within the waters of some foreign State.—Mr. C. O. Humphreys, who appeared on behalf of the Fishmongers' Company, in opening the case, said the action was of a friendly character, and the defendant, who was a liveryman of the Fishmongers' Company, had rendered every assistance to the company for the purpose of obtaining a decision upon the construction of the Act. In the event of the alderman convicting, he would ask that only the nominal penalty of one penny be imposed. The defendant, he believed, would shelter himself under the exemption clause, and the decision would be of the utmost importance, this being the first prosecution under the Act. Mr. Williamson would no doubt contend that the 3,000 oysters in question were not English oysters at all, having been dredged in French waters. Mr. Williamson was a very large oyster planter, having beds in Sharfleet, Brightlingsea, and other places, and it would be proved that he imported large quantities of oysters from foreign waters and laid them in his beds in English waters. There they remained for some months, and were then taken out and sold to the public, and because their origin was French defendant held that they came under the exemption clause. If necessary he would call Captain Anderson, the nautical surveyor of the Board of Trade and chairman of the Whitstable Oyster Company, to show that these French oysters when laid in English waters deposited spat during the close season, and that it was therefore not only improper to take them, but that they were absolutely unfit for human food. Mr. Williamson no doubt sold the oysters as French, but he could not control others, and as a matter of fact large quantities of oysters were sold as Royal Whitstable natives which were not natives at all. The question really was whether the oysters were taken out of foreign or English waters, and he contended that inasmuch as they had been nurtured for some time in English seas they came under the Act of 1877 with regard to natives.—Alderman Phillips said the question as to whether oysters were fit for food or not during a certain period of the year did not arise in this summons; the sole question for him to decide was whether they were French or English oysters.—Mr. Williamson, in answer to the summons, said, as Mr. Humphreys had stated, this was a perfectly friendly action

between the Fishmongers' Company and himself. They both had a public duty to perform, and they were anxious to preserve the English oyster beds. The thanks of the public were due to the company for raising the question, because the English oyster fisheries were really in a very bad way. The alderman would see how serious the matter had become when he told him that by Friday next the price of natives would be 24*s.* a hundred. He strongly condemned the Board of Trade for their apathy in the matter.—Alderman Phillips said that was a matter he could not go into. Mr. Williamson had better confine himself to the immediate issue.—Mr. Williamson then contended that the fact of French oysters having been put down in his beds did not Anglicise them. They were French bivalves, and therefore came under the exemption clause. If the Fishmongers' Company wanted to carry out a great public work, they must set to work and get a new Act passed, for this one was mere waste paper. Men like himself, engaged in the wholesale trade, imported large quantities of oysters from French, Portuguese, Spanish, and American waters, and sold them in the close season. Much larger quantities were sold in the oyster season, but there was a big trade in the close season. There were many of them kept in English waters for three or four months, according to their condition, but that, he held, did not alter their nationality. Supposing American imported cattle were put out to grass for a time in this country to improve their condition, could it be contended that they were English beasts? and yet that was the argument that Mr. Humphreys had applied to these oysters.—Alderman Phillips said, after careful consideration of the case, he had come to the conclusion that the company were right in their contention. The law was made to protect both oysters and consumers, and his interpretation of the section was that 'taken within foreign waters' meant taken for exportation in barrels, not to be relaid in English waters, but for immediate consumption; and, further, he was of opinion that when foreign oysters were kept for such terms as had been mentioned in English waters they became British oysters. There must therefore be a conviction, but he would only impose the nominal penalty of 1*d.*

## A PIED PIPER IN LINCOLN'S INN GARDENS.

### Being just an Everyday London Scene.

It is five *post meridiem* and the sun still shines over Lincoln's Inn Fields. A very muggy sun, it is true, with an indifferent sunshine, being adulterated with London smoke, which is itself a low-class smoke. Lincoln's Inn is certainly a highly respectable quarter, but it is surrounded by some of the lowest rookeries that are to be found in all London. However, as this is a neighbourhood where sugar is sanded, where wheel-grease is called butter, and things are not exactly what they seem, it is not surprising that sunbeams are mixed with foreign substances such as blacks and coaly vapour. And it is the thousands of low-class fires in these very low-class rookeries which give such a muggy look to the sun's countenance this afternoon.

Five strikes, and every one of those narrow courts and fœtid alleys swarms with children. If you happen to be passing through one of these melancholy passages, you may notice that many of the children are making their way into the great square of Lincoln's Inn, as if bent on reaching some particular rendezvous. Some walk, some run, some even turn a cart-wheel, some go in perambulators, some are in arms, and one by one they disappear through a narrow gateway which admits you into a fine old garden cut off from the great square by a high wall. Rows of leafy plane-trees afford a pleasant shade from the heat, and the closely shorn grass, smooth and even, is delightfully cool and refreshing for weary eyes to rest upon. The sun cheers up a little; a puff of wind drives the sluggish heat mists along, and the slanting beams, divided by the trees, fall in patterns of rich golden green on the lawn. Every minute the children come trooping in through the open doorway. Most of them are in rags, most of them look as if they would be better in every respect if a steam fire-engine could play a few hundred gallons of water upon them. But dirt is such an old acquaintance that I really think they would miss it.

Suddenly the wild skirling of the pipes is heard. The Pied Piper of Hamelin had not a more instant magic:—

> And ere he blew three notes (such sweet
> Soft notes as yet musicians cunning
> Never gave the enraptured air)
> There was a rustling that seemed like a bustling
> Of merry crowds justling and pitching and hustling,
> Small feet were pattering, wooden shoes clattering,
> Little hands clapping and little tongues chattering,
> And like fowls in a farmyard when barley is scattering,
> Out came the children running.

At least 300 pairs of remarkable little legs begin to go like galvanised monkeys in Lincoln's Inn Fields. The music has got into their legs, and their arms, and their heads, and their eyes. The piper marches sedately down the gravel walks, cheeks distended, chest well out, head up, white-bearded. Under the skilful fingers of the old piper that mysterious bag full of air acts upon the children like a reservoir of laughing gas. The dull, slum-sodden little faces light up; the thick coats of dirt crack with laughter. Some turn somersaults; some form a circle and squat on the grass round the piper, gazing up at him with awe-stricken faces. A little girl of six, clad in a greasy petticoat, with a pair of black stockings, takes her shoes off, and dances through two holes in the heels of her stockings. Another little girl faces her. Arms akimbo, hats off, they go at it. They dance the stockings down; they dance the hair down; they dance the buttons off. Neither yields; the piper takes pity on them, stops, and the reel dies off in a gasping wail, as is the custom of the pipes. The pipes, I dare swear, take the old piper far away from the roar of London to his native glens. But the children are thinking of other things.

'Oh! Molly Down-at-heel, you'll catch it,' says one little girl.

'Who are you a-talking to?' says number two.

'You'll catch it.'

'Why shall I catch it?'

'Becos you've danced a hole in mother's Sunday stockings.'

'In for a penny, in for a pound,' replies Miss Down-at-heel, or that is what she would have said, only she had never seen a gold piece in her life. 'Fardens' was her currency. At any rate, she began again with the piper, until she blew like a porpoise in a gale, and nearly bit her tongue off—low little girls having a habit of allowing their tongues to loll out for an airing. Then the piper begins an inspiring march, to which he steps out, taking short, measured strides. A piper takes his music seriously.

The piper is Mr. John Mackenzie, a champion piper, once in the Scots Guards, and now garden porter to the benchers of Lincoln's Inn. He plays to the children every night for half-an-hour, and enjoys the music as much as they do.—*Pall Mall Gazette.*

Mr. Arthur Russell, eldest son of Sir Charles Russell, M.P., was married at Belfast on Wednesday to Miss Cuming, daughter of Professor Cuming, of Queen's College, Belfast. The ceremony took place in St. Malachy's Catholic Church, and was performed by Dr. M'Alister, bishop of the diocese. Sir Charles and Lady Russell were present.

## CALENDAR OF THE COUNTY COURTS.

FROM OCTOBER 12 TO OCTOBER 17.

| No. of Circuit | His Honour | Oct. 12 | Oct. 13 | Oct. 14 | Oct. 15 | Oct. 16 | Oct. 17 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | — | — | Warrington | Birkenhead | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | — | — | — |
| 15 | Judge Turner | Middlesbrough | York | Tadcaster | Easingwold | Knaresborough | Ripon |
| 16 | Judge Bedwell | Howden | — | — | — | — | — |
| 22 | Judge Harington | — | — | Bromsgrove | — | — | — |
| 26 | Judge Jordan | Newcastle | Tunstall | Lichfield | Burslem | Longton | Stone |
| 47 | Judge (?) | — | Lambeth | Greenwich | Lambeth | Lambeth | — |
| 55 | Judge Machonochie | Ringwood | Fordingbridge | Dorchester | Bridport | Weymouth | — |
| 57 | Judge Paterson | Langport | Williton | Tiverton | Barnstaple | Barnstaple | Southmolton |
| 58 | Judge Edge | East Stonehouse | East Stonehouse | East Stonehouse | East Stonehouse | East Stonehouse | Tavistock |

## LAW STUDENTS' SOCIETIES.

DEBATING.—The first meeting of the session was held at the Law Institution, Chancery Lane, on Tuesday, October 6; Mr. Douglas in the chair.—By invitation of the committee Mr. G. Pitt-Lewis, Q.C., M.P., opened the debate: 'That it is desirable to bring the circuit system into accordance with modern requirements by greatly reforming it and by largely supplementing it by permanent sittings of the County Courts as District Courts, with the unlimited jurisdiction of the High Court of Justice throughout England and Wales.'—Mr. D. Stewart Smith opposed.—The debate having been declared open, the following gentlemen spoke: In the affirmative, Mr. Collins; in the negative, Mr. F. K. Munton, Messrs. Crawford, Pattinson, and Watkins.—Mr. Pitt-Lewis replied.—The chairman having put the motion to the meeting, it was lost by a majority of four.—The subject for discussion at the next meeting of the society, on Tuesday, October 13, is: 'That the case of *The Coupé Company* v. *Maddick*, L. R. (1891) 2 Q. B. 413, was wrongly decided.'

## OBITUARY.

WE regret to announce the death of Mr. ALEXANDER ANDREW KNOX, which occurred at his residence, 125 Victoria Street, Westminster, on October 5. He was nearly seventy years of age. Mr. Knox was educated at Trinity College, Cambridge, where he graduated in 1845. In that year he was placed third in the Classical Tripos, and was second Chancellor's medallist. In the Mathematical Tripos of the same year he was among the senior optimes. He was called to the bar, and before long made himself known among a limited circle as a ready and powerful writer on several subjects. For some years he was a frequent contributor to the *Times*. He became one of the metropolitan police magistrates about 1860, settling finally at Marlborough Street. In this position he was markedly successful, and but few of his decisions were reversed upon appeal. He retired from the bench a few years ago, and it is not too much to say that his doing so was regarded as a great public loss.

THE Queen has been pleased to approve the appointment of Mr. Bosanquet, Q.C., as Recorder of Wolverhampton, and of Mr. R. H. Amphlett as Recorder of Worcester.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

THE Lord Chancellor has transferred his Honour Judge Bishop from Circuit 28 to Circuit 31, and has appointed Mr. C. H. W. Beresford the judge of Circuit 28.

COMMERCIAL FAILURES.—According to *Kemp's Mercantile Gazette*, the number of failures in England and Wales gazetted during the week ending October 3 was eighty-six. The number in the corresponding week of last year was fifty-six, showing an increase of thirty, being a net increase in 1891 to date of thirty-six.

THE RECOVERY OF INCOME-TAX.—The Chancellor of the Exchequer writes as follows, through one of his secretaries, in answer to a letter respecting the law relating to income-tax: 'I am directed by the Chancellor of the Exchequer to reply to your letter of September 18, and to acquaint you that collectors of taxes are not required by law to deliver demand notes, but merely to make demand for the taxes assessed. If, however, a demand note is not given in full, details of the charge must be given in full when payment is made. Taxes are payable on demand on January 1 in each year, and the collector having made one personal application for payment without effect may distrain immediately and without further notice for the amount.'

THE HEARING OF PROBATE AND DIVORCE CAUSES.—The following are the arrangements made by the judges of the Probate and Divorce Division for hearing causes during the ensuing Michaelmas sittings: Causes for hearing before the Court itself will be taken on Saturday, October 24, and following days—(1) Probate; (2) undefended matrimonial; (3) defended matrimonial. Common jury cases will be taken on Wednesday, November 11, and following days, probate first and matrimonial afterwards. The hearing of special jury cases will be proceeded with on Wednesday, November 25, and following days, probate causes being taken first and matrimonial second. Summonses will be heard in Chambers at 10.15, and motions will be heard in Court at 11 o'clock on Tuesday, October 27, and on every succeeding Tuesday during the sittings.

GROWTH OF THE PENSION LIST IN THE UNITED STATES.—According to the last annual report of the Commissioner of Pensions at Washington, there are now 676,160 pensioners on the rolls, or 138,000 more than at the close of the previous fiscal year. The amount paid away in pensions was 118,548,959 dollars, or over twelve millions of dollars more than the preceding year. Although the number of pensioners and the cost to the Treasury are thus increasing, it appears inevitable that both items will be still more largely increased, for the commissioner reports that his department is still issuing about 30,000 certificates to new pensioners every month, and he expects that during the current year 350,000 claims to pensions will be decided. At present the appropriation for pensions is 133,473,085 dollars; but Mr. Raum says that this will be insufficient when this year's batch of pensioners is added, and he calculates that, making full allowance for deaths, a further sum of fifteen million dollars will be needed to meet the enlarged pension list.

## BOOKS RECEIVED FOR REVIEW.

Guide to Criminal Law (A). By Charles Thwaites, Solicitor. Third Edition. London: Geo. Barber. 1891.

Law of Stamp Duties on Deeds and other Instruments (The). Containing the Stamp Act, 1891; The Stamp Duties Management Act, 1891. Second Edition. By E. N. Alpe, Barrister-at-Law. London: Jordan & Sons. 1891.

Law Quarterly Review (The). October. London: Stevens & Sons (Lim.).

Public Health (London) Act, 1891 (The). By Alexander Macmorran, Barrister-at-Law. London: Shaw & Sons. 1891.

Stamp Acts, 1891 (The). By Nathaniel Joseph Highmore, Barrister-at-Law. London: Stevens & Sons (Lim.). 1891.

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The Convict Glyka.—Antony Isadore Glyka, a convict undergoing a term of penal servitude at Chatham Convict Prison, made his third appearance at the Rochester Bankruptcy Court, before the registrar (Mr. W. W. Hayward), on October 5, to be examined with reference to a receiving order granted by the Court against his estate, upon the application of Messrs. Vagliano Brothers, merchants, of London, whose claim is for 82,105*l*. It will be remembered that Glyka was formerly in the employ of the petitioners as clerk, and by means of forged documents, made out in the names of Messrs. Vagliano Brothers, he succeeded in obtaining a very large sum of money from the Bank of England. He afterwards gave himself up, and was convicted of forgery and sentenced to a term of penal servitude, of which about four years have now expired. Subsequent to his conviction Messrs. Vagliano Brothers brought an action against the Bank of England to recover the money which had been obtained by Glyka, but it was finally decided that the bank was not liable. The official receiver (Mr. R. Prall) again questioned the convict with reference to his property, but he asserted that he had no further information to give.—Mr. Prall: Have you recollected any other property since the last adjournment?—No; I cannot give you any other information which would be useful. The convict was thereupon allowed to pass his examination.

Solicitors as Town Councillors.—The following has been communicated to us: 'Mr. Charles Ford, the well-known London solicitor, has written to Mr. Rhodes, solicitor, Halifax (the candidate for Market Ward), as follows: Dear Mr. Rhodes,—I am very glad you are "going in" for a town councillor, and I hope you will be elected. I thank you for the newspaper cutting stating that you will encounter opposition by reason of your profession. During the many years that I was actively engaged on the editorial staff of the *Law Times* I had to watch the work of solicitors in connection with the local government and municipal work of our cities and towns, and I can safely say that they have done for a quarter of a century, and are still doing, an immense amount of valuable work for the people throughout the country, far in excess of that of any other occupation or calling. I do not hesitate to say, as the result of my experience and observation, that municipal work and reform would not be as forward as it is throughout these Islands but for the business aptitude, the energy, and the tact and judgment of solicitors, who are to be found on almost every council or other local authority, and their knowledge of the law has over and over again saved the taxpayer from ruinous litigation being entered upon by corporations. They have watched the effect of legislative action in other towns, and where beneficial have been the means of its adoption in their own towns. Dozens of solicitors are chosen as mayors every year.'—*Halifax (Yorks) Free Press.*

In a town up north an ex-judge is cashier of a bank. One day recently he refused to cash a cheque offered by a stranger. 'The cheque is all right,' he said, 'but the evidence you offer in identifying yourself as the person to whose order it is drawn is scarcely sufficient.' 'I have known you to hang a man on less evidence, judge,' was the stranger's response. 'Quite likely,' replied the ex-judge, 'but when it comes to letting go of cold cash we have to be careful.'—*Central Law Times.*

Apropos of the authorship of law books, the writer of these lines went to consult a friend fellow-practitioner on the law of a subject on which the friend had written a book. 'My dear fellow,' said the learned author, 'why do you come to me?' 'Because you have written a book on the subject,' was the natural reply. 'Well,' said the author, 'that is the very reason why I should be the last man you should consult. What little I knew on the subject I forgot as soon as I got it into print, and what I have not forgotten I never knew, but merely collated from various sources. Yet the book is a good book, and I am aware is a useful one, and we'll look up the point together.' We did so with satisfactory results.—*Pump Court.*

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## BIRTHS.

On Oct. 3, at The Yews, Gleneagle Road, Streatham, the wife of H. B. W. Foulger, of Falcon Court, Fleet Street, Solicitor, of a son.

On Oct. 6, at 36 Tedworth Square, Chelsea, S.W., the wife of Frederic White, Barrister-at-Law, of a daughter.

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## MARRIAGES.

On Sept. 24, at Holy Trinity Church, Shrewsbury, Samuel Meson Morris, of Shrewsbury, Solicitor, to Mary Frances, only daughter of the late John Bidlake, of Wellington, Salop, Solicitor.

On Sept. 29, at St. Peter's, Woolton, near Liverpool, Lancelot Sanderson, of the Inner Temple, Barrister-at-Law, son of John Sanderson, J.P., Lancaster, to Edith Mabel, elder daughter of Alfred Fletcher, J.P., D.L., of Allerton, near Liverpool.

On Sept. 30, at the Parish Church of St. Mary-le-Bone, James Braidwood Birkbeck, second son of George Henry Birkbeck, Esq., Civil Engineer, 16 Primrose Hill Road, London, and grandson of the late Dr. Birkbeck, to Lilian Henrietta (Tiny), fourth daughter of the late Arthur White, Esq., Barrister-at-Law, on the Western Circuit, and granddaughter of the late Captain Crause, Summerhill, Kent.

On Oct. 1, at St. Mary's, Crumpsall, Alfred A. Manbré, of Liverpool, merchant, to Eleanor Christian, younger daughter of William Orford, of Manchester, Solicitor.

On Oct. 7, at St. Andrew's Church, West Kensington, Rowland Griffin Goody, of Brownwood, Texas, U.S.A., eldest son of Henry Goody, Solicitor, Colchester, to Abigail Mabel, youngest daughter of the late Edward Doyle, Solicitor, of Brondesbury Road, Kilburn, and Chancery Lane.

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## DEATHS.

On Sept. 16, at British Honduras, of fever, Wm. Edgar Saunders, Barrister-at-Law, and Private Secretary to the Governor, and son of the late T. W. Saunders, Metropolitan Police Magistrate, in his 35th year.

On Sept. 30, at 54 Sydney Street, S.W., Charles Stookley, aged 61, for many years the faithful clerk and valued friend of Marston C. Bussard, Q.C.

On Sept. 30, Francklyn Brodie, twin daughter of the late Henry Nichols, Barrister-at-Law, of the Middle Temple.

On Sept. 30, at Burgos, Spain, William Cotton, Solicitor, son of the late Francis Josias Cotton, Solicitor, both late of the firm of Coode, Kingdon & Cotton, 34 Bedford Row, London.

On Oct. 2, at 68 Cornwall Gardens, W., Mary, widow of the late John Billingsley Parry, Q.C., aged 78.

On Oct. 2, Elizabeth, widow of the late Joseph Billingsley Bulloch, of Berkhamsted, Herts, and 51 Lincoln's Inn Fields, Solicitor, aged 77.

On Oct. 4, at 33 Islip Street, Kentish Town, Thomas John Holmes, Solicitor, of 4 North Buildings, Eldon Street, Finsbury, E.C., aged 61 years.

On Oct. 5, at 65 Harcourt Terrace, South Kensington, John Iliffe, of 2 Bedford Row, Solicitor, aged 92.

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# The Law Journal.

*SATURDAY, OCTOBER* 17, 1891.


## 'OBITER DICTA.'

The four vacancies which have occurred upon the County Court bench during the Long Vacation have been filled by the appointment of Messrs. Cecil Beresford, Eardley Wilmot, D. F. Steavonson, and William Masterman. Whatever may be thought of these appointments individually, it is satisfactory to note that all the new judges are comparatively young men. The practice which formerly prevailed of appointing men advanced in years to these posts, the duties of which are often very arduous, was not calculated to inspire confidence in the administration of justice in the County Courts.

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The all-important question of abating the smoke nuisance in the metropolis has recently been engaging serious attention in the City, and is also being actively canvassed in Manchester and Glasgow. Seeing how serious is the evil, it is not a little surprising to observe the apathy which has hitherto existed in many quarters upon the subject. The Smoke Nuisance Removal Acts of 1853 and 1854 deal only with factories and steam-vessels, and have only been partially successful in achieving the object for which they were passed. The nuisance is, however, largely, if not chiefly, due to the smoke arising from domestic fires, as to which at present no legislation exists. The question of how to deal with domestic smoke so as to reduce its volume without unduly interfering with the liberty of the subject is, no doubt, an extremely difficult one, but it becomes more difficult, though more inevitable, every year.

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In connection with this subject a "Barrister," in a letter which appeared in the last issue of the *City Press*, calls attention to the bill, which has been read a second time on four occasions by the House of Lords, and has been approved by a select committee. The bill proposes a reasonable restraint upon householders pouring dense smoke from their chimneys, which, as is well known, can be prevented by additional care or by structural alterations. The bill, which was introduced by Lord Stratheden and Campbell, has not, however, as yet become law, although its provisions are far less drastic than many persons consider necessary. The Government have, it is true, during the past session passed the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), which, by sections 23 and 24, empowers the London County Council to administer the Acts already in force upon the subject, but which contains no provisions as to the smoke from domestic fires. Unless a remedy can be found for this ever-increasing evil in the bill to which we have referred, or in some analogous measure, it will probably soon be found necessary to enjoin the use of smokeless fuel, or smoke-consuming grates, in order to abate the nuisance. It is at all events time that public opinion should be aroused to the urgent necessity for some legislation on the subject.

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In the columns of the *Globe* on Tuesday last, headed 'Wig and Gown,' may be found an interesting account of an interview with Mr. Lockwood, Q.C., M.P., on 'breach of promise' actions. Mr. Lockwood was to have seconded Sir Roper Lethbridge's resolutions against these actions, but time did not permit of the resolution being brought on, and the Government did not see its way to setting apart any special day for the discussion of it. Next session, however, there will probably be a better opportunity for mooting the question in the House of Commons, while we presume that in the House of Lords it would meet with a supporter in Lord Herschell, who, as Mr. Herschell, Q.C., carried a resolution in the House of Commons to the effect that the damages to be recovered in this kind of action should be limited to the actual pecuniary loss which the plaintiff could prove, allowing nothing for so-called injury to the feelings or contingent loss, which is exactly the reform which Mr. Lockwood is in favour of. As we have already pointed out, such a reform would assimilate the law of England to the law of civilised countries generally, except the United States of America, where the law borrowed from this country has not yet been altered.

The Commissioners for Oaths Act, 1891 (54 & 55 Vict. c. 50), allows affidavits and declarations to be made before commissioners for oaths instead of before justices of the peace, as now required by law, under the Merchant Shipping Acts, the Patents Acts, and the Pawnbrokers Act, 1872 (see section 29 of that Act, and schedule 4, whereby a declaration may be made before a justice of the peace of the loss of a pawn ticket). So far so good. But how about the fee? The order as to Court fees of 1844 gives the well-known fee of eighteenpence to every commissioner for each affidavit, &c.; but we believe that we are correct in stating that the order applies to matters connected directly or indirectly with business in the Supreme Court only. To what fee would a commissioner for oaths be entitled for receiving an affidavit or declaration under the new Act? We believe that he would be entitled to a reasonable fee, and that the traditional and authorised eighteenpence would *primâ facie* be a reasonable fee. But it cannot be said that the point is free from doubt, and it must be borne in mind that justices of the peace take declarations gratuitously.

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The Penal Servitude Act, 1891 (54 & 55 Vict. c. 69) —one of the most important Acts of the late session— came into operation on the day of its passing (August 5), no other day being fixed anywhere in the Act for its commencement. What, then, is the meaning of subsection 3 of section 1, which enacts that 'section 2 of the Penal Servitude Act, 1864, is hereby repealed with respect to any sentence awarded *after the date at which the section comes into operation*?' The Act of 1864, as is well known, provided that no sentence of penal servitude should be for less than five years. The Act of 1891, by section 1, subsection 1, enacts that 'where under any enactment in force when this section comes into operation a Court has power to award a sentence of penal servitude, the sentence may, at the discretion of the Court, be for any period not less than three years.' Will the section come into operation with respect to a crime committed before, but for which a prisoner is tried after, the Act? We think on the whole that it will. But the point is one on which it would be well to be quite certain, looking to the common law rule that where the law prescribes a greater sentence than the Court awards the judgment cannot be amended, but must be reversed altogether, unless, indeed, the Court of Criminal Appeal has power to put matters straight under 11 & 12 Vict. c. 78, s. 5.

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If the reasoning of Lord Justice Kay, concurred in by Lord Justice Lopes, in the recent case of *Pelton Bros.* v. *Harrison*, is sound law, a curious anomaly results as to the liability to execution of property acquired by a woman in the interval between two covertures. Suppose that a married woman contracts during coverture; the contract will 'bind' all the separate property she acquires during coverture except such as is subject to a restraint on anticipation. If she becomes *discoverte*, the contract, or the judgment in which it is merged, will continue to bind all the property which was bound by it when the coverture ceased, though it is no longer 'separate' property; and the property which was free from the obligation by reason of the restraint on anticipation will remain free from it during discoverture, though the restraint on anticipation is then of no effect. This was the actual decision in *Pelton Bros.* v. *Harrison*. But in dealing with the case of *Jay* v. *Robinson*, 59 Law J. Rep. Q. B. 367, the Lords Justices gave expression to the further opinion that, if the woman while *discoverte* acquires other property, this will not be bound by the debt or judgment, because it is not separate property within the meaning of the statute. *Jay* v. *Robinson* already decides that in the event of re-marriage such property would become liable under the judgment. For a judgment relating to a debt contracted under a former coverture is for the purpose of the new coverture treated as an ante-nuptial debt; and on what Lord Justice Kay called a liberal construction of the words of the statute, the property acquired during discoverture is regarded as separate property acquired on the subsequent coverture. It is impossible to suppose that the Legislature intended to draw a distinction so arbitrary as this. It seems sufficiently clear that if, in the circumstances supposed, the property was intended to be made liable during the second coverture, there was no reason for exempting it from liability during discoverture; and, on the other hand, if it is right that it should be exempted during discoverture, there can be no reason why the exemption should not continue during any later coverture. Perhaps some of the robust lawyers of old, who, instead of criticising the law, were addicted to callous moralising on its merits, would have been content to say that it was the woman's own folly to marry again.

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In *Cox* v. *Bennett*, 60 Law J. Rep. Chanc. 651, a married woman, having separate estate, with a restraint upon anticipation, took certain proceedings in her own name without a next friend under the provisions of the Married Women's Property Act, 1882, and in the result was ordered to pay the costs, with the usual provision limiting execution to separate estate not subject to any restraint on anticipation. At the date when the order for payment of costs was made the trustees had in hand certain arrears of the settled income, but it did not appear that there were any such arrears at the time when the legal proceedings were instituted by the married woman. The question, which was carried to the Court of Appeal, was whether in this case the arrears, which did not exist when the proceedings were begun, could be retained in payment of the costs of those proceedings. The Court of Appeal, affirming Mr. Justice Kekewich, answered this question in the affirmative. The difficulty arose chiefly from the previous decision of the Court of Appeal in *In re Glanvill*, 55 Law J. Rep. Chanc. 325; L. R. 31 Chanc. Div. 532, where, prior to the Married Women's Property Act, 1882, a married woman, also restrained from anticipation, sued in the name of her next friend, and an order was made for payment of costs primarily against the next friend, but with liberty to apply against the married woman, under which an application was made for payment in part out of arrears of her income which had accrued at the date of the order for payment, but not at the date when the action was begun, and the Court there held that the arrears not having accrued at the latter date could not be attached to meet the costs. The decisions in the two cases, it will be seen, are entirely opposite, the ground of the distinction between them being that the one case arose under the Married Women's Property Act, 1882, while the other was under the old law.

The case of *Gough* v. *Gough*, decided by the Court of Appeal just before the conclusion of the last sittings, revealed a curious difference between the English and Scotch Agricultural Holdings Acts, 1883—two Acts which are to be found consecutively in the Statute-book and received the royal assent upon the same day. By the Act of 1875, dealing with the same subject-matter, and applying to England only, the terms 'landlord' and 'tenant' included the executors, administrators, assignees, husband, guardian, committee of the estate, or trustees in bankruptcy of a landlord or tenant. But when, in 1883, the Legislature proceeded to frame a new enactment, or rather two enactments, the one for England and the other for Scotland, while the definition of 'landlord' in the Scotch Act was left as before, in the English Act the meaning of the term was strictly limited, and was no longer allowed to include executors, administrators, or other representatives of a landlord. Why should such a difference exist between the law of the two countries? 'It is difficult,' as was remarked by Mr. Justice Williams, who, with Mr. Justice Cave, decided *Gough* v. *Gough* in the Court below, 'to conceive any reason why it should be just in Scotland that the executors of a landlord should have the power of charging lands with money which they are compelled to pay out of their testator's estate for the benefit of the land, and not just that they should have the same power in England.' The most probable explanation, namely, that it occurred *per incuriam*, is inadmissible, and contrary to all the canons of construction. But it is inconceivable that the Legislature intended that in England the whole of the machinery of the Act was to be suspended and become useless if the landlord happens to die. The solution of the matter was found in a proviso, by which it is enacted that the designations of landlord and tenant shall continue to apply to the parties until the conclusion of any proceedings taken under the Act. The intention of this proviso was to prevent a landlord or tenant from saying upon the day of the determination of a lease or other contract of tenancy that he was no longer a landlord or tenant, and that, therefore, the Act did not apply to him. But, fortunately, the word 'parties' is used. It was argued that it meant 'parties to the contract of tenancy,' which is the phrase used in the Act of 1875. But the Court of Appeal held otherwise. On the decease of the landlord his executors are liable to pay any compensation which their testator was liable to pay; they, therefore, become parties to the proceedings under the Act. Consequently, notwithstanding the exclusive definition of the term 'landlord,' that term applies to the executors, and they are entitled to obtain a charge on the land to the amount of any compensation they may be compelled to pay for unexhausted improvements. The result of the whole matter is, therefore, much the same as if the Legislature had not, whether by accident or intention we know not, excluded the executors and other representatives of a landlord from the meaning of that term in the Act.

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The letter which was recently addressed to the daily press by the Chairman of the Fire Brigade Committee (London County Council) discloses a novel and peculiarly mischievous offence. Fire, especially in a large town, is so terrible an enemy to all classes of the community that it is marvellous how men, or even boys, can be found so destitute of common sense or decency as to tamper with the fire-alarm posts which have been fixed in the streets for the convenience of the public. The effect of these practical jokes is to harass the men of the Fire Brigade, and to cause such delay and confusion as may one day lead to a serious catastrophe. If the punishments inflicted by the magistrates have not proved sufficient to deter the offenders, who, it seems, are on the increase, special and drastic legislation must be invoked to stamp out so dangerous and diabolical a practice.

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Employing 'touts' to bring business to solicitors is so derogatory to the dignity of the profession that the publicity recently given to a case heard at the Brompton County Court, and reported in our last issue, will, we trust, have the effect of checking, if not stamping out, this objectionable practice. Ignorant persons who sustain, or claim to have sustained, injuries in railway or omnibus accidents are the most common victims of the system; and many cases which would probably be settled out of Court, if in other hands, result in costly and vexatious litigation. The most effective remedy is, after all, a sound and healthy professional opinion, and the Incorporated Law Society have a great responsibility in seeing that this is cultivated.

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Some country magistrates are, it would appear, doing their best to deserve the censure so frequently bestowed on them as a class. It is impossible to read the account of a conviction for assault at the Malling (Kent) Petty Sessions on Tuesday last without indignation at the brutality of the defendant and the half-hearted leniency of the bench. Previous 'good character' on the part of the farmer was really no better justification for his being let off with a fine of 5*l.* than it would be in the case of a burglar or a murderer. A man who so completely lost his self-control as to punish a little girl of seven, whose offence was stealing a few plums in his orchard, by tying her to a tree, and, notwithstanding her terror and her mother's entreaties, allowing his dog to worry her for nearly half-an-hour, deserved condign punishment, and would certainly have received it had Mr. Montagu Williams, for instance, been the magistrate who heard the case. We trust that the facts of the case have been exaggerated, but the episode as reported may be commended to the consideration of the Home Secretary and the Lord Chancellor.

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The account in last Tuesday's *Daily News* of the headquarters' Salvationist views on the Eastbourne riots was not edifying reading. Unlimited abuse was heaped on the public officials and the police at Eastbourne, and 'weak-kneed brethren' who hesitated to break the law because it *was* the law were urged to follow the example of Daniel and other Old Testament heroes, and even our Saviour Himself, who, said Mr. Bramwell Booth, refused to obey an unjust law! Sir Wm. Harcourt, M.P., was quoted as a supporter, though it would be difficult to find anything in the letter of the ex-Home Secretary which would justify the lawlessness so freely invoked. To patiently wait until the House of Commons is satisfied to repeal the local Act would not suit the advocates of 'blood and fire,' and the disgraceful scenes which are giving Eastbourne an un-

happy notoriety are evidently intended to become a permanent institution. Last, but not least, the Salvationist leaders intimated in plain language that candidates for Parliamentary honours who did not promise support to the Salvationist cause would have to reckon with the Army at the day of election. It is high time that the lovers of religion should endeavour to rescue it from such unfortunate associations.

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Section 47 of the Public Health (London) Act, 1891, contains a very stringent provision for the protection of the public from dangers likely to arise from the consumption of any kind of unsound food. It is enacted by subsection 4 that where a person convicted of selling unsound food has been, within twelve months, convicted of a similar offence, the convicting justices may, if they think fit, and find that he 'knowingly and wilfully committed' both such offences, 'order that a notice of the facts be affixed in such form and manner, and for such period not exceeding twenty-one days, as the Court may order, to any premises occupied by that person, and that the person do pay the costs of such affixing;' and, further, that if any person obstructs the affixing of such notice, or removes, defaces, or conceals the notice while affixed during the said period, he shall for each offence be liable to a fine not exceeding 5*l.*' This severe punishment is not quite new to the Statute-book. Very similar provisions found their way into the adulteration clauses (ss. 19–22) of the Licensing Act, 1872, but only to be very quickly repealed by the Licensing Act, 1874. In like manner, clauses of the Adulteration Act, 1872, which pointed in the same direction, were repealed by the Sale of Food and Drugs Act, 1875. The Sale of Bread Act, 1836, however, and the Adulteration of Seeds Act, 1869, and, what is of more importance, the very recent Weights and Measures Act, 1889, still authorise the publication of convictions, section 14 of the last-mentioned Act providing that 'where a person is convicted before any Court of any offence under this Act or the principal Act' [of 1878], 'the Court may, if it thinks fit, cause the conviction to be published in such manner as it thinks desirable.'

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*Truth* complains that 'a farmer has just been heavily fined (in the person of his son) for using a gun to scare birds without having a gun license,' as required by the Gun License Act, 1870. 'The farmer in question contended strenuously that the law did not require him to take out a license,' and appears to have relied on a paragraph in a 'reference-book compiled with exemplary care,' which 'states that a tenant-farmer need not take out a license for a gun merely used for the purpose of scaring birds.' The proceedings of the Inland Revenue officers in the matter are condemned by *Truth* as 'shabby enough,' but said to be eclipsed by the conduct of the bench, 'who, notwithstanding his honest doubt about the law,' fined the farmer 5*l.* and costs. *Truth* recommends farmers 'to take further steps to ascertain whether this is good law, and if it is to get such "good law" altered for the future.' For ourselves, we cannot see any doubt about the matter. Section 7 of the Gun License Act, 1870 (33 & 34 Vict. c. 57), enacts that 'every person who shall use or carry a gun elsewhere than in a dwelling-house or the curtilage thereof, without having in force a license duly granted to him under this Act, shall forfeit the sum of ten pounds.' Then follow six exceptions, it being 'provided always that the said penalty shall not be incurred by the following persons,' *inter alia*, 'by the occupier of any lands using or carrying a gun for the purpose only of scaring birds or of killing vermin on such lands, or by any person using or carrying a gun for the purpose only of scaring birds or of killing vermin on any lands by order of the occupier thereof, who shall have in force a license or certificate to kill game, or a license under this Act.' It is added that 'it shall lie upon the defendant to prove that he is a person not incurring the penalty by virtue of the proviso.' Inasmuch as the farmer's son, and not the farmer himself, appears to have been carrying the gun, the decision appears to be perfectly good law, honest belief, of course, though founded on the perusal of a book, however carefully compiled, forming no excuse.

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## THE LEGISLATION OF THE SESSION.

At the opening of the Parliamentary year we gave a brief *résumé* of legislative promise as disclosed in the bills introduced by the Government and by private members. It needs scarcely to be said that the fulfilment in the seventy-six public Acts which have received the royal assent must have disappointed the ambition of many members who desired to be associated with the authorship of an Act of Parliament. Last year was distinguished by the achievements of private members. The present marks an epoch of constructive work by the Government, which has carried several measures of first-class importance. The coping-stone to the educational legislation which began with Mr. Forster's great Act of 1870 has been placed on the structure in the form of the Free Education Act, which unites, like the first of the series, the best elements of progress and conservatism. The zeal and energy of religious bodies will be stimulated by the clause which provides that 'nothing in this Act shall give any preference or advantage to any school on the ground that it is or is not provided by a School Board.' Some doubts have been expressed whether the benefit of the Act will extend to children in Standard VII., but the only limit appears to be that of age, which is from three to fifteen. As was pointed out the other day in this journal, four other useful measures on education have also been passed—viz. the Technical Instruction Act, the Army Schools Act, the Reformatory and Industrial Schools Act, and the Schools for Science and Art Act. Another measure of an educational character enables local authorities to establish museums and gymnasiums. Sir W. Hart Dyke may thus claim to share the honours of the session with his brilliant colleague Mr. Balfour.

Ireland has, as usual, received at least its share of legislative attention, and, in addition to the Purchase of Land Act, four or five other Irish bills have become law. Two deal with the Supply of Seed Potatoes, another with the Transfer of Railways. Pollen Fisheries, Tramways, Turbary, the Redemption of Long Leases, Land Registration, and Loans for Public Works also constitute the subjects of Acts recently passed. There are also various measures connected with Scotland, and the crofters and fishermen of that country will, it is hoped, be benefited by the Crofters Common

Grazings Regulation Act and the Western Highlands and Islands Works Act.

We have already noticed the inadequate treatment of the pressing question of judicial reform in the Lord Chancellor's Jurisdiction Act, which enables an ex-Lord-Chancellor to sit in the Court of Appeal or the High Court. It is, in fact, an Act to utilise the superfluous energy of Lord Herschell. The Stamp Act and the Stamp Management Act are measures of administrative detail which require careful attention, and have already called at least one treatise into existence. We have also noticed Mr. Cozens-Hardy's Mortmain Act, which will probably have the effect of relieving the Courts of a troublesome class of cases. Lord Herschell's Bill of Sale Act exempts securities on imported goods from the necessity of registration. The Electoral Disabilities Removal Act will save revising barristers from the painful duty of striking off the register persons whose duties have taken them from home, provided the absence be not greater than four months. The Charity Trusts Recovery Act gives the initiative to the Charity Commissioners in taking proceedings to preserve charities of less than 20*l.* a year. The Lord Chancellor was jubilant over the City Causes Act, which authorises the trial of civil causes in the City of London; and Mr. Milvain has established a reputation for gallantry by the Slander of Women Act, which, even in the absence of special damage, makes an imputation of unchastity actionable. With admirable humour Captain Verney desired to extend the benefit of the enactment to men. Various measures affecting foreign countries have also been passed, including one with respect to the North Sea Fisheries, which chiefly concerns Belgium and the Sea Fisheries (Behring Sea) Act, which brought over the Newfoundland delegates to plead the cause of the colony at the bar of the House of Lords. To the same category belong the Russian Dutch Loan Act and the Foreign Marriages Act. The Tithes Act will, of course, be claimed as a palmary achievement of the session. The Forged Transfers Act was suggested, doubtless, by *Barton* v. *The London and North-Western Railway Company*, 57 Law J. Rep. Chanc. 676, and other cases, and gives power to companies to make good losses caused by forged transfers of securities. The rating of allotments and the remuneration of taxation officials are also the subjects of legislation. The London County Council, of course, makes its appearance with a Money Act, and also with a measure which evoked animated debate by appointing March as the time of election instead of November. The Custody of Children and Lunacy also form the titles of statutes. The Land Registry (Middlesex Deeds) Act amalgamates two offices which certainly were not overworked—viz. the Middlesex Registry and that which was created under Lord Cairns's Act, 1875. An Expiring Laws Continuance Act is an annual exhibitor, and we have repeatedly in these columns dealt with the work of statute law revision. The Penal Servitude Act will enable judges to pass a sentence of three years' penal servitude. The Factory and Workshops Act and the Public Health (London) Act, which forms the last and bulkiest chapters (142 sections) of this year's Statute-book, are sure to call forth numerous treatises. Statutes have also been passed with respect to the Coinage, the Post Office, Returning Officers (Scotland), and other subjects.

## ENGLISH *CAUSES CÉLÈBRES*.—IX.

### The Matlock Will Case.

This suit related to the validity of certain alleged codicils to the will of one George Nuttall, who died at Matlock, in Derbyshire, on March 7, 1856. Nuttall, who was a land surveyor, had considerable property, both real and personal. He was a bachelor, had few relations, and was not on intimate terms with any of them except two cousins—of whom one, John Nuttall, was foreman to a London contractor, and the other, Catherine Marsden, had been his housekeeper for many years, and was living with him in that capacity at the time of his death. Nuttall had, however, some friendly neighbours, notably Job Knowles, a farmer, who rented a quarry from him; Mr. Adams, a surgeon; and John Else, the assistant-overseer of Matlock and also the bailiff of the County Court. Else was occasionally employed by Nuttall in collecting rents and in copying accounts, and wrote a hand not unlike his, though distinguishable. The testator made his own will on September 15, 1854, leaving thereby the bulk of his real property to his cousin John, an annuity of 200*l.* together with all his furniture and other household effects to Catherine Marsden, and an interest in tithes worth 140*l.* a year to Else, and died, as we have said, on March 7, 1856. Between that date and the day of the funeral a duplicate of the will was found in which there was an interlineation written in a hand like that of the testator, but not so running and free. This interlineation gave Else an annuity of 100*l.*, and increased the annuity of Catherine Marsden from 200*l.* to 250*l.* On April 12, 1856, about a month after the testator's death, John Nuttall died also, leaving the property upon trust for his infant children. Then a remarkable series of events occurred. On April 21, 1856, Else found among some of the testator's papers, which had been taken to his house, a holograph codicil. This document purported to be attested by two labourers, Buxton and Gregory, and it was mainly in favour of Catherine Marsden and Else himself. Eight months later, on December 16, 1856, pinned on to one of the leaves of a little penny account-book belonging to Mr. Nuttall, Else found a second codicil of a similar tenor. But the crowning discovery was yet to come. On October 9, 1857, Else, who soon after the testator's death had taken up his residence at the testator's house, ordered a boy named Champion to clean the windows in the lumber-room. The boy being short and the window high, Else laid hold of the sill to raise himself up so as to open the window. The sill gave way and disclosed a small hole in the wall, in which was a common jar of brown earthenware. The boy called his attention to the jar, and, on looking into it, he found a bag of sovereigns and a third codicil, dated January 12, 1856, attested by Knowles and Adams, and appointing Else as the testator's residuary legatee. The suspicions of John Nuttall's trustees were now thoroughly aroused. They disputed all three codicils, and in July, 1859, the Master of the Rolls directed an issue to try their validity before a jury. That issue was tried before Sir William Erle, then Lord Chief Justice, at Derby, in August, 1859, and the jury found that the codicils were valid. The Master of the Rolls granted a new trial, which took place before the Lord Chief Baron at the Derby Spring Assizes, 1860, and resulted in a directly contrary verdict being returned. The Master of the Rolls and the Lord Chief

Baron were satisfied with their verdict and refused a new trial. On appeal to the Lords Justices, Lord Justice Knight Bruce was against a new trial, Lord Justice Turner in favour of it. The House of Lords adopted the opinion of the latter, and on February 22, 1864, the great Matlock will case (or *Cresswell* v. *Jackson*) came on for trial at the Guildhall before Sir Alexander Cockburn, the Lord Chief Justice, and a special jury of the city of London. Mr. Karslake, Q.C., Mr. Field, Q.C., and Mr. Hannen were for the plaintiffs; Mr. Serjeant Hayes, Mr. Serjeant Ballantine, and Mr. Wills were for the defendants. After an eight days' trial the jury found that all three codicils were a fabrication.

The Matlock will case is replete with interest. (1) The first point that strikes the legal reader is the admirable and determined advocacy of Mr. Karslake. His case was thoroughly bad. He could not venture to call Catherine Marsden as a witness. Gregory, Buxton, and Knowles gave him little help. Else contradicted his former evidence in several important particulars, and Chabot, the expert, of whom we shall have more to say immediately, convinced even the Lord Chief Justice that the codicils were forgeries. But Karslake stood manfully by his brief to the last. It reminds one of the gallantry and the resource displayed by 'the Corsican *parvenu*' in the campaign of 1814. (2) Again, the speech of Mr. Serjeant Hayes for the defence contains a passage of unique merit. It is that in which he describes the discovery of the third codicil. 'What could be more utterly incredible,' said the witty advocate, 'than the whole story? "What's that?" said Else. "What's that in the jar?" Why, a codicil to be sure! What else could it be? In a jar, in a hole in the wall, covered with cobwebs. What could it be but a codicil! This finder of codicils, who found nothing but codicils—what should it be but a codicil, and a codicil in his favour! In a hole in the wall! Why, it might not but for this miraculous discovery have ever been discovered at all! What a place for a man of business to put his last will in! But what would the jury say when he told them that he would prove that an iron vice weighing about 60 lb. was in the testator's lifetime screwed over the window-board under which the hole was found, so that the testator two months before his death, labouring under an abscess in his back (which he described in one of his letters as five inches long, three inches broad, and one-and-a-half inch deep), must have gone up to that loft, unscrewed the vice, lifted it up, made the hole in the wall, deposited the jar with the twenty sovereigns and the codicil, then covered it up, and screwed the vice over it again, and all this to prevent anyone from ever finding it? The hole in the wall! Why, imagination could hardly go beyond it! No more codicils had been found since, and one great blessing of these Chancery proceedings had been that they had stopped the finding of codicils. But for them a fourth codicil must have been found. It must have come. The second and third had each been found after nine months—the usual period of gestation—but, perhaps, as there was so little of the property still left to be disposed of, this might have been only a "seven months'" codicil. It was certainly difficult to conceive where it could have been found. One could hardly imagine any more obscure place for secreting another codicil. Perhaps, however, in Job Knowles's quarry, while his men were blasting the rock . . . In some fissure Else might have seen an antediluvian toad sitting on something and said, "Bless me, what is that?" Why what could it be but a codicil?' (3) Equally admirable in its way was Sir Alexander Cockburn's charge to the jury, with which we have left ourselves no space to deal. (4) The most curious incident in the trial was the evidence of the expert Chabot, a Huguenot by descent and a lithographer by trade. Chabot raised the study of disputed handwritings from a discredited art to the dignity of a science. His life achievement was the conversion of the *Quarterly Review* to the conclusion that Sir Philip Francis was the author of 'Junius.' But in the *Matlock Will Case* he rendered important service to the cause of truth. He showed that Nuttall and Else had each characteristic *habits* of handwriting, and that, judged by these, the will was the work of Nuttall, while the codicils were forged by the rascal that found them.

*(To be concluded.)*

# Reviews.

## MACDONNELL'S STATE TRIALS.

*Reports of State Trials.* New Series. Vol. III. 1831 to 1840. Edited by John Macdonnell, M.A. Pp. 1363. Price 10*s*. London: Eyre & Spottiswoode. 1891.

The third volume of this excellent series contains reports of the following trials *inter alia*: The Bristol Riots, *Dicas* v. *Lord Brougham*, *The Mayor of Lyons* v. *The East India Company*, and *Stockdale* v. *Hansard*. An admirable portrait of Chief Justice Denman, taken from a picture in the possession of the Hon. Mr. Justice Denman, forms the frontispiece of the work. The appendices are full of valuable matter, and the index of subjects is constructed on an excellent plan. Master Macdonnell and his *collaborateur* deserve the highest credit for the accuracy and the judgment with which they are carrying out this important undertaking. We trust that a general index to the whole series will be kept steadily in view.

# Correspondence.

## MINORS AS HOLDERS OF BUILDING SOCIETY SHARES.

Sir,—I should be glad to receive, if possible, a definite authority on the following point:—

A member of a Starr-Bowkett Building Society obtained an appropriation a few weeks back, and submitted a security which was accepted by the directors. It appears, however, that the member is a minor, and cannot therefore execute a mortgage of the property. He now proposes to transfer his shares to his father, but he, being a minor, it would appear that he could *not* execute a transfer unless he is impliedly authorised to do so under the Building Societies Act.

The exact wording of one of the rules of the society is: 'Minors may take shares and may transfer the same, but cannot hold office or vote.'

These rules have been certified by the Registrar of Friendly Societies, and the question is whether the society can accept a transfer of the appropriated shares

from the member to his father under the provisions of the Building Societies Act and the rules, or whether the rules are *ultra vires* as to the power of a minor to transfer his shares.

A DIRECTOR.

# Unreported Cases.

## CITY OF LONDON COURT.

### TRUSTEES' COSTS.

IN the City of London Court on October 13, before Mr. Commissioner Kerr, Mr. J. W. M'Carthy applied for the payment to the executors of one Emma Newman of about 78*l.*, which had been deposited in Court under the following circumstances: In October, 1878, Mrs. Newman, a laundress in Battersea, whose husbandhad previously been placed in the Caterham Lunatic Asylum, where he still remains, purchased through a building society the premises in which she carried on her business. She died in 1883, leaving all her property to her children. The instalments of the loan falling into arrear, the building society, as mortgagees, sold the property, which realised 78*l.* more than the debt due, and having doubts whether, under the Married Women's Property Act (the marriage having taken place in 1853), Mrs. Newman had the power to treat her property as separate estate and to dispose of it by will, the society deposited the balance in Court under the Trustee Relief Act.—Mr. Kisch appeared for the guardians of the Wandsworth Union, who claimed to be entitled, in respect of the maintenance of the lunatic, to the sum in Court. A curious feature of the case was that the lunatic, when visited by his wife shortly before her death, and thirty years after the marriage, for the first time told her that he had previously been married to another woman, who was alive when the ceremony of 1853 was performed; but there was no truth of the proof of that statement. Ultimately it was arranged that an inquiry into the facts should be held by the registrar of the Court, who was to report the result. On an application by the solicitor of the building society, who was present as representing the trustees, for the costs of his attendance, the learned Commissioner said that ever since 1864 he had refused to allow costs to trustees or other merely formal parties in such cases. They were under no necessity to appear, and they must trust to the Court doing its duty without their attendance. In reply to an observation that in the High Court costs were usually allowed under similar circumstances, the Commissioner said that his was a County Court, and that he would not be a party to the wasting of small estates by the employment of professional men to represent formal parties to a proceeding who incurred needless cost in the belief that it would fall on the estate. He had, he said, frequently seen a number of barristers and solicitors representing persons who had no real interest in the proceedings, and in such cases he would always refuse to allow costs.

## THE LONG VACATION PROLONGED.

'A SOLICITOR' writes to the *Times* as follows:—

In the issue of the *Times* of the 8th inst. it is stated that the Law Courts will not be reopened until the 26th inst., instead of the 24th inst., on which day the sittings should in fact commence.

This announcement must be a matter of regret to all interested in the administration of the law, to litigants as well as to barristers and solicitors, for most true is it that 'delay of justice is denial of justice;' and in view of the congested state of the cause lists of all the superior Courts of Chancery and common law, every day's delay in proceeding with the trial of causes involves an accumulated amount of loss and inconvenience, the extent of which can hardly be realised.

The Long Vacation, as by law established, extends from August 13 to October 23, both dates inclusive, thus covering a period of over ten weeks, but in practice it not unfrequently happens that this period is still further lengthened at each end by Courts ceasing to sit before the close of the Trinity Sittings, and, as now, by delaying to recommence the Michaelmas Sittings until after the date fixed.

The view is now very generally entertained that the Long Vacation should be materially shortened, and in considering the question it is to be borne in mind that there are three other vacations in the course of the year, covering twelve days at Easter, ten days at Whitsuntide, and twenty-one days at Christmas. The days during which the Courts are closed, owing to the four vacations, thus amount to a total number of 115.

For the purposes of this letter I have not dealt with the additional number of days during which the Royal Courts of Justice in London are practically closed owing to the absence of the judges on circuit. This is a separate question, and one that urgently demands consideration and amendment. It has been apparent for years past to practical men that additional judges are imperatively required to enable the superior Courts to dispose of the business with reasonable expedition; but it is difficult to enlist attention for such matters in the din of political warfare and party strife.

## LAW AND PROFESSIONAL NOTES.

By T. F. UTTLEY, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### EMPLOYERS' LIABILITY.

TWO cases tried recently in the Manchester and Salford County Courts respectively are of interest. In both instances it was sought to recover compensation under the Employers' Liability Act. In the first case, *Dearn* v. *The Corporation of Manchester*, the plaintiff stated that he was a driver in the employ of the corporation, and was engaged at night with a horse and van to collect refuse. In the earlier part of the particular night on which the accident happened he had employed his own horse, but, it casting a shoe, he took another horse—a strange one—out by direction of the assistant-horsekeeper. It was restive, but plaintiff collected several loads with it. Subsequently the horse commenced to rear and kick, and plaintiff was struck violently and injured. He was unable to work for ten weeks. Plaintiff's counsel then explained that the action was brought under subsection 1 of the Employers' Liability Act, and it was claimed that the injuries were caused in consequence of defective plant. The 'defective plant' in this case was a vicious horse, a horse having been held in the Superior Courts to be 'plant' within the meaning of the section. Defendants' counsel said that the corporation paid the wages of servants who were injured while at work. There was no warranty as to freedom from vice, but a horse was returned at the end of twenty-eight days if he showed vice. Ultimately the plaintiff obtained judgment; therefore it may be taken that a vicious horse is 'defective plant.' In the other case to which allusion has been made (*Walker* v. *Dewhurst & Co.*) a widow sought damages owing to her husband, who was attending to a boiler at the works, being, in consequence of the shifting of weights on a lever, fatally scalded. It was alleged that the boiler was defective

inasmuch as the weights were able to slide along the lever, and that its defective condition was known to the defendants and to their foreman. Counsel for plaintiff remarked that he was in a difficulty to some extent, because nobody was present at the time of the accident, and therefore no direct evidence could be given. Still proof would be given of the removal of the weight, and that no precaution was taken to fix it or to prevent it from slipping along the top. This was done, and the judge suggested an arrangement should be come to, and a verdict was subsequently entered for plaintiff. It is not often that a case where no direct evidence can be given is so suitably terminated. Discussing the question of evidence, one of the text-book writers points out that in criminal cases, when the evidence, whether direct or circumstantial, fails to produce in the minds of the jury or magistrates a degree of conviction equivalent to moral certainty, the accused is entitled to the benefit of the doubt, whereas in civil cases no presumption exists. The plaintiff and defendant meet upon level ground. The plaintiff, it is true, is bound to set the scales in motion, but the decision must be according to the ultimate rest of the balance as determined by the weight of evidence thrown upon either side.

### LABOUR AND CAPITAL.

Labour seems to be looking keenly after its own interests, if one is to judge by the activity of its members in bringing actions in the Police Courts and elsewhere, and obtaining recognition of its statutory rights. In one instance a firm of colliery owners were summoned for committing a breach of the Coal Mines Regulation Act, 1887, by having an insufficient supply of air going through the down-brow working. It was contended, however, that the firm were not liable under that Act, which compelled the owners of mines to have a registered manager; therefore, under section 50, the manager, and not the owners, was liable. This case, it was urged, would never have been heard of had the colliery firm prosecuted their men, which they refused to do, considering there was no ground for complaint. Nevertheless labour won, and a fine and costs were imposed. In another case the Worcestershire harvest men and the Truck Acts came up for an innings, when three large employers of labour were summoned for giving away cider to their men. In one case six quarts of cider had been given during harvesting, in another one gallon of cider to men cutting barley, and in the third instance a quart of cider was handed daily to regular farm hands. Such actions were contrary to the Truck Acts, and it was in the interests of working men that these proceedings were taken. Labour, again, came off victorious, several fines being inflicted with an intimation of heavier fines in future. The Cotton Cloth Factory Act of 1890 seems to afford frequent opportunity for capital being summoned. The inspector, in prosecuting in one case, stated that he visited the defendant's mills, after the record had been taken, and found that the temperature was 83 degrees, and the wet bulb showed 78, being half a degree in excess of what was allowed under the Act. The defendants had had notice of offences on five previous occasions. The Act provided that a summons should not be taken out on the first occasion, and now, when the firm had had five notices, he felt compelled to institute proceedings. Another firm were also summoned for a similar offence; the record sent in showed that the temperature was 82 degrees, and the wet bulb 78 degrees, so that the humidity was $1\frac{1}{2}$ degree over that allowed by the Act. The inspector admitted, however, the honourable way in which the records were kept, and added that he had no ground for supposing that the records were not properly taken. By the records the manufacturers furnished the grounds for their own conviction. Though this admission was something in favour of capital, the bench propitiated labour by inflicting in each of these cases the minimum penalty, with costs.

### QUARTER SESSIONS AND ELECTIONS.

In view of a general election next year, some remarks which fell from the learned recorder of the Manchester Quarter Sessions are worth notice. The recorder, in charging the grand jury, expressed his regret that the first day of the sessions should fall upon the day when an election was taking place in Manchester. The grand jury were doubtless aware that the sessions were fixed and the necessary notices given before the day of the election was determined upon, and therefore the sitting of the Court could not have been altered. The grand jury, amongst themselves, could make arrangements which would prevent any persons taking part in the election from being absent from the performance of their duty in connection therewith. So far as the common jury were concerned, too, the Court would take care that no persons were inconvenienced in regard to the election by their attendance at that Court. With regard to the cases, the number of prisoners to be tried was small, and there were no offences of a serious character. The number of cases had not apparently increased, although the jurisdiction of the sessions had increased very largely owing to the recent extension of the city. The grand jury and the citizens of Manchester should be congratulated upon the diminution of crime in the city. It may be added that, during the hearing of criminal charges in some of the cases of conviction, the recorder took advantage of the new Act, 54 & 55 Vict. c. 69 (Penal Servitude Act, 1891), with regard to the length of the sentences, which permits of a sentence of three years' penal servitude.

### TRAMWAY LAW.

A remarkably interesting paper on 'The Rating of Tramways' was lately read by Mr. Humphrey Davis, of London, at the meeting of the Tramway Institute at Southport. It was pointed out that the Queen's Bench had decided, in the case of *The Pimlico, Peckham, and Greenwich Tramway Company* v. *Lambeth*, that the occupation 'which created the liability of tramway companies to be rated by the local authorities was due entirely to the groove in the rail on which the cars ran, and of which groove the companies had the exclusive use.' But the art of road-making had been brought to such a state of perfection that the surfaces of the streets in many of their great cities gave nearly all the facilities for easy traction to the omnibus that a tramway offered, and that fact emphasised the unfairness of rating the tramway owner, who already maintained a large portion of the road surface, to further aid the omnibus owner, who was free of all such imposts, to carry on his competition. The standard of value for rating purposes was the same for all classes of property (with one or two trifling exceptions), and the cottage, the mansion, the railway, or a tramway had all to be assessed at the sum at which they might reasonably be expected to let on a yearly tenancy, the tenant paying rates and taxes, the landlord paying for all repairs and renewals. The legal decisions which had been given as to the correct application of the principles to be adopted on arriving at the supposed letting value were almost innumerable. The whole question was highly technical, and the principle of valuation very artificial, and this was the case not only with the mode of calculating the value, but in the manner of making and levying the rate itself, which was quite a distinct thing from the making of the valuation list. It was argued that, as a rule, it is not worth the while of small ratepayers to contest the fairness of a rate, but tramway companies were usually such large contributors to the local burdens that they should scrutinise most carefully all the demands made upon them.

### WHAT IS AN INSURABLE INTEREST?

Two cases at Bolton have drawn attention to the peculiarities of insurance law. The landlord of an hotel in Bolton upon taking it over undertook to also take over and keep a man who was a general hanger-on about the premises. Subsequently an agent of an insurance company called upon the landlord and hinted that the hanger-on's life might be insured in his company. The landlord assented, the policy was granted, and all premiums regularly paid. Two years after the hanger-on died. The landlord now desired to obtain the value of the policy. The company offered 5*l.* in settlement, but this was refused, and thereupon the landlord instituted proceedings against the company. The magistrates held, however, that he had no insurable interest in the deceased, and, though the company had profited by the premiums paid, they could not be made to pay the amount of the policy. The company claimed that they endeavoured to conform to the law; but, looking at the fact that it had received these premiums, this seems hardly creditable. In another insurance case tried in the same place, where a man had insured his brother without his knowledge, and the executors sued for the amount of the policy, they were more successful, and the insurance society had to pay.

### TITHES.

At the recent meeting of the Church Congress at Rhyl, the Bishop of Manchester made some pertinent references to the subject of tithes. Every one knew that the tithes now paid to the ministers of the National Church did not belong to any private person. They were given to the Church before the era of what was called historic memory; no owner or occupier of land had ever bought them. They belonged neither to the landlord nor to the farmer; and, therefore, the claim on the part of either to influence their destination was plainly a baseless claim. If they were to be diverted from their present purpose that could only be done by a solemn act of the nation. No doubt the nation was now being urged to do that act, so far, at least, as regarded a portion of the revenues of the National Church. While the matter was still in agitation, they should ask themselves to what better purpose could the nation in its own interest devote the present endowments of the Church? Could any man believe that it would be for the good of the nation to devote them to the teaching of the three R's, even if supplemented by some smattering of secular knowledge—literary or scientific? In new countries it might be possible to provide for the spiritual wants of the people by the voluntary gifts of Christians, but in an old country like England disendowment meant serious diminution of practical help. In connection with this special pleading of the bishop, it may be interesting to note the difference between Christians and Jews in the matter of tithes. It is said of the Jews that those among them who were reputed religious distributed in lieu of tithes the tenth of their increase unto the poor, as they were persuaded they would be blessed the more for it. In this they acted on their proverb, 'Thegmasher; bischbilsche thegmasher'—that is, 'Pay tithes that thou mayest be rich.'

## *DONATIO MORTIS CAUSA.*

An interesting and novel point in the law of gifts *causa mortis* was recently decided by the Court of Appeals of New York in the case of *Redden* v. *Thrall*. The donor, who was suffering from hernia, was about to undergo an operation for its cure. The evening before going to the hospital, where the operation was to be performed, he delivered to the donee a tin box with the declaration that if he did not return the box and its contents were to belong to the donee. While undergoing the operation the donor died of heart disease, the shock from the operation being the immediate cause of the fatal result. On these facts it was contended that, inasmuch as the donor died of a different disease from that from which he apprehended death at the time when the gift was made, the gift could not take effect. But Mr. Justice Earle, delivering the opinion of the Court, said: 'I am quite sure that no case can be found in which it was decided that death must ensue from the same disease, and not from some other disease existing at the same time, but not known. There is no reason for this additional pre-requisite. The rule is that the donor must not recover from the disease from which he then apprehended death. If he recovers, the gift is void; if he does not recover and the gift is not revoked, it becomes effectual. In this case the condition was that if he did not recover from the consequences of the operation and return from the hospital, the gift should take effect. That was a perfectly lawful condition for him as the owner of the property to impose, and no reason can be perceived for refusing to uphold a gift made under such circumstances. A donor may have several diseases, and may, in making a gift, apprehend death from one and not from the others, and shall the gift be invalid if, before he recovers from the disease feared, he die from one of the other diseases? In such a case it might be, and generally would be, difficult, if not impossible, to tell what share any of the diseases had in causing the death. No medical skill could ordinarily tell that the donor would have succumbed to the disease feared, if the other diseases had not been present. Here the immediate cause of death appeared to be heart disease, and the autopsy did not disclose that there was any connection between the hernia or the operation and the heart disease. But who could tell that the death would have ensued from the heart disease at that particular time but for the operation? No medical skill can tell that the shock from the operation, and the debility and disturbance caused thereby, did not hasten death; and the death, therefore, in a proper sense may have ensued, and probably did ensue, from both causes. Sound policy requires that the laws regulating gifts *causa mortis* should not be extended, and that the range of such gifts should not be enlarged. We therefore confine our decision to the precise facts of this case, and we go no further than to hold that when a gift is made in the apprehension of death from some disease from which the donor did not recover, and the apparent immediate cause of death was some other disease with which he was afflicted at the same time, the gift becomes effectual. *Washington Law Reporter.*

The New County Court Judge at Lambeth.—Judge Bristowe, Q.C., who has been transferred from Circuit No. 18 (Nottinghamshire) to succeed the late Judge Powell in the Lambeth and Greenwich district, on taking his seat for the first time at Woolwich on Wednesday, October 7, was congratulated on behalf of the members of the legal profession on his appointment. Reference having been made to the attempt (which was nearly successful) of a disappointed litigant recently to assassinate the learned judge on the platform of Nottingham station, by which he was laid up for a long time, his Honour said that he would not have left his late circuit but that, because of the permanent injury which his health had suffered in consequence, his medical advisers had urged him to seek a circuit where there would be less constant travelling than was incident to a County Court judge's duties on a large country circuit. Judge Bristowe was called to the bar at the Inner Temple in 1848, and joined the Midland Circuit. He was appointed a County Court judge in 1880.

# SITTINGS PAPERS.

## SUPREME COURT OF JUDICATURE.

*Michaelmas Sittings*, 1891.

## COURT OF APPEAL.

### APPEAL COURT I.

FINAL AND INTERLOCUTORY APPEALS FROM THE QUEEN'S BENCH DIVISION, THE PROBATE, DIVORCE, AND ADMIRALTY DIVISION (ADMIRALTY), AND THE QUEEN'S BENCH DIVISION SITTING IN BANKRUPTCY.

| | | |
|---|---|---|
| | *Oct.* | |
| Saturday | 24 | Appeal Motions *ex parte*, Original Motions, and Appeals from Orders made on Interlocutory Motions. |
| Monday | 26 | Queen's Bench Final Appeals. |
| Tuesday | 27 | |
| Wednesday | 28 | |
| Thursday | 29 | |
| Friday | 30 | Bankruptcy Appeals and Queen's Bench Final Appeals. |
| Saturday | 31 | Queen's Bench Final Appeals. |
| | *Nov.* | |
| Monday | 2 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required. |
| Tuesday | 3 | Queen's Bench Final Appeals. |
| Wednesday | 4 | |
| Thursday | 5 | |
| Friday | 6 | Bankruptcy Appeals and Queen's Bench Final Appeals. |
| Saturday | 7 | Queen's Bench Final Appeals. |
| Monday | 9 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required. |
| Tuesday | 10 | Queen's Bench Final Appeals. |
| Wednesday | 11 | |
| Thursday | 12 | |
| Friday | 13 | Bankruptcy Appeals and Queen's Bench Final Appeals. |
| Saturday | 14 | Queen's Bench Final Appeals. |
| Monday | 16 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required. |
| Tuesday | 17 | Queen's Bench Final Appeals. |
| Wednesday | 18 | |
| Thursday | 19 | |
| Friday | 20 | Bankruptcy Appeals and Queen's Bench Final Appeals. |
| Saturday | 21 | Queen's Bench Final Appeals. |
| Monday | 23 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required. |
| Tuesday | 24 | Queen's Bench Final Appeals. |
| Wednesday | 25 | |
| Thursday | 26 | |
| Friday | 27 | Bankruptcy Appeals and Queen's Bench Final Appeals. |
| Saturday | 28 | Queen's Bench Final Appeals. |
| Monday | 30 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required. |
| | *Dec.* | |
| Tuesday | 1 | Queen's Bench Final Appeals. |
| Wednesday | 2 | |
| Thursday | 3 | |
| Friday | 4 | Bankruptcy Appeals and Queen's Bench Final Appeals. |
| Saturday | 5 | Queen's Bench Final Appeals. |
| Monday | 7 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required. |
| Tuesday | 8 | Queen's Bench Final Appeals. |
| Wednesday | 9 | |
| Thursday | 10 | |
| Friday | 11 | Bankruptcy Appeals and Queen's Bench Final Appeals. |
| Saturday | 12 | Queen's Bench Final Appeals. |
| Monday | 14 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required. |
| Tuesday | 15 | Queen's Bench Final Appeals. |
| Wednesday | 16 | |
| Thursday | 17 | |
| Friday | 18 | Bankruptcy Appeals and Queen's Bench Final Appeals. |
| Saturday | 19 | Queen's Bench Final Appeals. |
| Monday | 21 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions, and Queen's Bench Final Appeals if required. |

N.B.—Admiralty Appeals (with Assessors) will be taken on days to be appointed by the Court.

SPECIAL NOTICE.—The Queen's Bench Final Appeals will be taken as stated in the above order of business, but subject to the New Trial Paper, which will be taken on days to be appointed by the Court, notice of which will be published on the Daily Cause List.

### APPEAL COURT II.

FINAL AND INTERLOCUTORY APPEALS FROM THE CHANCERY, AND PROBATE, DIVORCE, AND ADMIRALTY DIVISIONS (PROBATE AND DIVORCE), AND THE COUNTY PALATINE AND STANNARIES COURTS.

| | | |
|---|---|---|
| | *Oct.* | |
| Saturday | 24 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List). |
| Monday | 26 | Chancery Final Appeals. |
| Tuesday | 27 | |
| Wednesday | 28 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required. |
| Thursday | 29 | County Palatine Appeals (if any) and Chancery Final Appeals. |
| Friday | 30 | Chancery Final Appeals. |
| Saturday | 31 | |
| | *Nov.* | |
| Monday | 2 | |
| Tuesday | 3 | |
| Wednesday | 4 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required. |
| Thursday | 5 | County Palatine Appeals (if any) and Chancery Final Appeals. |
| Friday | 6 | Chancery Final Appeals. |
| Saturday | 7 | |
| Monday | 9 | |
| Tuesday | 10 | |
| Wednesday | 11 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required. |
| Thursday | 12 | Chancery Final Appeals. |
| Friday | 13 | |
| Saturday | 14 | |
| Monday | 16 | |
| Tuesday | 17 | |
| Wednesday | 18 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required. |
| Thursday | 19 | Chancery Final Appeals. |
| Friday | 20 | |
| Saturday | 21 | |
| Monday | 23 | |
| Tuesday | 24 | |
| Wednesday | 25 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required. |
| Thursday | 26 | Chancery Final Appeals. |
| Friday | 27 | |
| Saturday | 28 | |
| Monday | 30 | |
| | *Dec.* | |
| Tuesday | 1 | |
| Wednesday | 2 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required. |
| Thursday | 3 | County Palatine Appeals (if any) and Chancery Final Appeals. |
| Friday | 4 | Chancery Final Appeals. |
| Saturday | 5 | |
| Monday | 7 | |
| Tuesday | 8 | |
| Wednesday | 9 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required. |
| Thursday | 10 | Chancery Final Appeals. |
| Friday | 11 | |
| Saturday | 12 | |
| Monday | 14 | |
| Tuesday | 15 | |
| Wednesday | 16 | Appeal Motions *ex parte*, Original Motions, Appeals from Orders made on Interlocutory Motions (sep. List), and Chancery Final Appeals if required. |
| Thursday | 17 | Chancery Final Appeals. |
| Friday | 18 | |
| Saturday | 19 | |
| Monday | 21 | |

N.B.—Lunacy Petitions (if any) are taken in Appeal Court II. on every Monday, at Eleven, until further notice.

# HIGH COURT OF JUSTICE.

## CHANCERY DIVISION.

### CHANCERY COURT I.

#### Before Mr. Justice Chitty.

| | | |
|---|---|---|
| | *Oct.* | |
| Saturday | 24 | Motions. |
| Monday | 26 | Sitting in Chambers. |
| Tuesday | 27 | Non-Witness List. |
| Wednesday | 28 | |
| Thursday | 29 | |
| Friday | 30 | Motions and Non-Witness List. |
| Saturday | 31 | Petitions, Short Causes, Procedure Summonses, Opposed Petitions, and Non-Witness List. |
| | *Nov.* | |
| Monday | 2 | Sitting in Chambers. |
| Tuesday | 3 | Non-Witness List. |
| Wednesday | 4 | |
| Thursday | 5 | |
| Friday | 6 | Motions and Non-Witness List. |
| Saturday | 7 | Petitions, Short Causes, Opposed Petitions, Procedure Summonses, and Non-Witness List. |
| Monday | 9 | Sitting in Chambers. |
| Tuesday | 10 | Causes with Witnesses. |
| Wednesday | 11 | |
| Thursday | 12 | |
| Friday | 13 | Motions and Non-Witness List. |
| Saturday | 14 | Petitions, Short Causes, Procedure Summonses, Opposed Petitions, and Non-Witness List. |
| Monday | 16 | Sitting in Chambers. |
| Tuesday | 17 | Causes with Witnesses. |
| Wednesday | 18 | |
| Thursday | 19 | |
| Friday | 20 | Motions and Non-Witness List. |
| Saturday | 21 | Petitions, Short Causes, Opposed Petitions, Procedure Summonses, and Non-Witness List. |
| Monday | 23 | Sitting in Chambers. |
| Tuesday | 24 | Causes with Witnesses. |
| Wednesday | 25 | |
| Thursday | 26 | |
| Friday | 27 | Motions and Non-Witness List. |
| Saturday | 28 | Petitions, Short Causes, Procedure Summonses, Opposed Petitions, and Non-Witness List. |
| Monday | 30 | Sitting in Chambers. |
| | *Dec.* | |
| Tuesday | 1 | Non-Witness List. |
| Wednesday | 2 | |
| Thursday | 3 | |
| Friday | 4 | Motions and Non-Witness List. |
| Saturday | 5 | Petitions, Short Causes, Opposed Petitions, Procedure Summonses, and Non-Witness List. |
| Monday | 7 | Sitting in Chambers. |
| Tuesday | 8 | Non-Witness List. |
| Wednesday | 9 | |
| Thursday | 10 | |
| Friday | 11 | Motions and Non-Witness List. |
| Saturday | 12 | Petitions, Short Causes, Procedure Summonses, Opposed Petitions, and Non-Witness List. |
| Monday | 14 | Sitting in Chambers. |
| Tuesday | 15 | Non-Witness List. |
| Wednesday | 16 | |
| Thursday | 17 | |
| Friday | 18 | Motions and Non-Witness List. |
| Saturday | 19 | Petitions, Short Causes, Opposed Petitions, Procedure Summonses, and Non-Witness List. |
| Monday | 21 | Sitting in Chambers. |

Any Cause intended to be heard as a Short Cause must be so marked in the Cause Book at least one clear day before the same can be put in the Paper to be so heard. Two copies of minutes of the proposed Judgment or Order must be left in Court with the Judge's Clerk one clear day before the Cause is to be put in the Paper.

N.B.—In the weeks when Non-Witness Actions are taken, Further Considerations will be taken on Tuesdays. In the weeks when Witness Actions are taken, Further Considerations will not be taken on Tuesdays, but may be taken on Saturdays.

N.B.—The following papers on Further Consideration are required for the use of the Judge—viz. Two copies of Minutes of the proposed Judgment or Order, one copy Pleadings, and one copy Chief Clerk's Certificate, which must be left in Court with the Judge's Clerk one clear day before the Further Consideration is ready to come into the Paper.

### CHANCERY COURT II.

#### Before Mr. Justice North.

| | | |
|---|---|---|
| | *Oct.* | |
| Monday | 26 | Sitting in Chambers. |
| Tuesday | 27 | Motions and Adjourned Summonses. |
| Wednesday | 28 | Adjourned Summonses and General Paper. |
| Thursday | 29 | |
| Friday | 30 | Motions and Adjourned Summonses. |
| Saturday | 31 | Short Causes, Petitions, and Adjourned Summonses. |
| | *Nov.* | |
| Monday | 2 | Sitting in Chambers. |
| Tuesday | 3 | General Paper. |
| Wednesday | 4 | |
| Thursday | 5 | |
| Friday | 6 | Motions and Adjourned Summonses. |
| Saturday | 7 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 9 | Sitting in Chambers. |
| Tuesday | 10 | General Paper. |
| Wednesday | 11 | |
| Thursday | 12 | |
| Friday | 13 | Motions and Adjourned Summonses. |
| Saturday | 14 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 16 | Sitting in Chambers. |
| Tuesday | 17 | General Paper. |
| Wednesday | 18 | |
| Thursday | 19 | |
| Friday | 20 | Motions and Adjourned Summonses. |
| Saturday | 21 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 23 | Sitting in Chambers. |
| Tuesday | 24 | General Paper. |
| Wednesday | 25 | |
| Thursday | 26 | |
| Friday | 27 | Motions and Adjourned Summonses. |
| Saturday | 28 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 30 | Sitting in Chambers. |
| | *Dec.* | |
| Tuesday | 1 | General Paper. |
| Wednesday | 2 | |
| Thursday | 3 | |
| Friday | 4 | Motions and Adjourned Summonses. |
| Saturday | 5 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 7 | Sitting in Chambers. |
| Tuesday | 8 | General Paper. |
| Wednesday | 9 | |
| Thursday | 10 | |
| Friday | 11 | Motions and Adjourned Summonses. |
| Saturday | 12 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 14 | Sitting in Chambers. |
| Tuesday | 15 | General Paper. |
| Wednesday | 16 | |
| Thursday | 17 | |
| Friday | 18 | Motions and Adjourned Summonses. |
| Saturday | 19 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 21 | Sitting in Chambers. |

Any Cause intended to be heard as a Short Cause must be so marked in the Cause Book at least one clear day before the same can be put in the Paper to be so heard. Two Copies of Minutes of the proposed Judgment or Order must be left in Court with the Judge's Clerk the day before the Cause is to be put in the Paper.

### LORD CHANCELLOR'S COURT.

#### Before Mr. Justice Stirling.

| | | |
|---|---|---|
| | *Oct.* | |
| Saturday | 24 | Motions. |
| Monday | 26 | Motions continued and General Paper. |
| Tuesday | 27 | General Paper. |
| Wednesday | 28 | |
| Thursday | 29 | |
| Friday | 30 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 31 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| | *Nov.* | |
| Monday | 2 | Sitting in Chambers. |
| Tuesday | 3 | General Paper. |
| Wednesday | 4 | |
| Thursday | 5 | |
| Friday | 6 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 7 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 9 | Sitting in Chambers. |
| Tuesday | 10 | General Paper. |
| Wednesday | 11 | |
| Thursday | 12 | |
| Friday | 13 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 14 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |

| | | |
|---|---|---|
| | *Nov.* | |
| Monday | 16 | Sitting in Chambers. |
| Tuesday | 17 | General Paper. |
| Wednesday | 18 | |
| Thursday | 19 | |
| Friday | 20 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 21 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 23 | Sitting in Chambers. |
| Tuesday | 24 | General Paper. |
| Wednesday | 25 | |
| Thursday | 26 | |
| Friday | 27 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 28 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 30 | Sitting in Chambers. |
| | *Dec.* | |
| Tuesday | 1 | General Paper. |
| Wednesday | 2 | |
| Thursday | 3 | |
| Friday | 4 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 5 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 7 | Sitting in Chambers. |
| Tuesday | 8 | General Paper. |
| Wednesday | 9 | |
| Thursday | 10 | |
| Friday | 11 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 12 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 14 | Sitting in Chambers. |
| Tuesday | 15 | General Paper. |
| Wednesday | 16 | |
| Thursday | 17 | |
| Friday | 18 | Motions, Adjourned Summonses, and General Paper. |
| Saturday | 19 | Short Causes, Petitions, Adjourned Summonses, and General Paper. |
| Monday | 21 | Sitting in Chambers. |

Any Cause intended to be heard as a short Cause must be so marked in the Cause Book at least one clear day before the same can be put in the Paper to be so heard, and the necessary Papers, including Minutes of the proposed Judgment or Order, must be left with the Judge's Clerk one clear day before the Cause is to be put into the Paper.

## CHANCERY COURT IV.

### Before Mr. Justice Kekewich.

| | | |
|---|---|---|
| | *Oct.* | |
| Saturday | 24 | Motions. |
| Monday | 26 | General Paper. |
| Tuesday | 27 | |
| Wednesday | 28 | |
| Thursday | 29 | |
| Friday | 30 | Motions and Adjourned Summonses. |
| Saturday | 31 | Short Causes, Petitions, and Adjourned Summonses. |
| | *Nov.* | |
| Monday | 2 | Sitting in Chambers. |
| Tuesday | 3 | General Paper. |
| Wednesday | 4 | |
| Thursday | 5 | |
| Friday | 6 | Motions and Adjourned Summonses. |
| Saturday | 7 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 9 | Sitting in Chambers. |
| Tuesday | 10 | General Paper. |
| Wednesday | 11 | |
| Thursday | 12 | |
| Friday | 13 | Motions and Adjourned Summonses. |
| Saturday | 14 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 16 | Sitting in Chambers. |
| Tuesday | 17 | General Paper. |
| Wednesday | 18 | |
| Thursday | 19 | |
| Friday | 20 | Motions and Adjourned Summonses. |
| Saturday | 21 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 23 | Sitting in Chambers. |
| Tuesday | 24 | General Paper. |
| Wednesday | 25 | |
| Thursday | 26 | |
| Friday | 27 | Motions and Adjourned Summonses. |
| Saturday | 28 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 30 | Sitting in Chambers. |
| | *Dec.* | |
| Tuesday | 1 | General Paper. |
| Wednesday | 2 | |
| Thursday | 3 | |
| Friday | 4 | Motions and Adjourned Summonses. |
| Saturday | 5 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 7 | Sitting in Chambers. |
| Tuesday | 8 | General Paper. |
| Wednesday | 9 | |
| Thursday | 10 | |
| Friday | 11 | Motions and Adjourned Summonses. |
| Saturday | 12 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 14 | Sitting in Chambers. |
| Tuesday | 15 | General Paper. |
| Wednesday | 16 | |
| Thursday | 17 | |
| Friday | 18 | Motions and Adjourned Summonses. |
| Saturday | 19 | Short Causes, Petitions, and Adjourned Summonses. |
| Monday | 21 | Sitting in Chambers. |

Liverpool and Manchester Business will be taken as follows: Motions on days appointed for Motions. Short Causes, Petitions, and Adjourned Summonses on Saturdays. Summonses in Chambers on Friday afternoons, Liverpool and Manchester Summonses being taken on alternate Fridays, commencing with Manchester Summonses on Friday, Oct. 30.

## CHANCERY COURT III.

### Before Mr. Justice Romer.

Actions transferred for Trial or Hearing only will be taken in the order in the Cause List on every day of the Sittings from Oct. 24 to Dec. 21, both inclusive.

## BANKRUPTCY COSTS AND CHARGES.

We are obliged to our correspondents for the trustee's realisation account, which we print below, and which, as they say, shows what creditors get out of bankruptcy in some cases. Here, by a curious result, the exact sum realised was expended, to the last penny, in so doing. It may be a satisfaction to the creditors to see that the petitioning solicitor only had 4*l.* 4*s.*, and that 27*l.* went to the Board of Trade and those 'other law costs' which are always so mysterious. But then, no doubt, there was a good deal of official inquiry.

### Statement Showing Position of Estate at Date of Application for Release.

*Receipts.*

| | | | |
|---|---|---|---|
| To total receipts from date of receiving order, viz.:— | | | |
| Stock-in-trade | | £14 | 14 6 |
| Trade fixtures, fittings, utensils, &c. | | 1 | 16 6 |
| Furniture | | 11 | 4 0 |
| Book debts | | 8 | 7 7 |
| Other receipts—Deposit | | 5 | 0 0 |
| Sale of watch | | 1 | 15 0 |
| Total | | £42 | 17 7 |
| Less deposit returned to solicitor | | 5 | 0 0 |
| Net realisations | | £37 | 17 7 |

*Payments.*

| | | | |
|---|---|---|---|
| By Board of Trade and Court fees (including stamp of 5*l.* on petition) | | £15 | 12 11 |
| Law costs of petition | £4 4 0 | | |
| Other law costs | 11 7 6 | | |
| | | 15 | 11 6 |
| Auctioneer's charges as taxed | | 4 | 14 10 |
| Other taxed costs, shorthand writer | | 0 | 3 10 |
| Costs of notices in *Gazette* and local papers | | 1 | 10 0 |
| Incidental outlay | | 0 | 4 6 |
| Total cost of realisation | | £37 | 17 7 |

*Kemp's Mercantile Gazette.*

Home Cure for Deafness.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the utmost service to me.' Post free, 4d. De Vere & Co., Publishers, 22 Warwick Lane, London, E.C.—Advt.

## CALENDAR OF THE COUNTY COURTS.

FROM OCTOBER 19 TO OCTOBER 24.

| No. of Circuit | His Honour | Oct. 19 | Oct. 20 | Oct. 21 | Oct. 22 | Oct. 23 | Oct. 24 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Birkenhead | Altrincham | — | Leigh | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | Middlesbrough | Stockton-on-Tees | Darlington | Leyburn | Stokesley | Northallerton |
| 16 | Judge Bedwell | Hull | — | — | — | — | — |
| 22 | Judge Harington | Hereford | Hereford | — | — | — | — |
| 26 | Judge Jordan | Tamworth | — | — | — | — | — |
| 47 | Judge Bristowe | — | Lambeth | Woolwich | Lambeth | Greenwich | — |
| 55 | Judge Machonochie | Poole | Lymington | Bournemouth | Wimborne | Wareham | — |
| 57 | Judge Paterson | — | Torrington | Honiton | Axminster | Chard | — |
| 58 | Judge Edge | Totnes | Kingsbridge | Crediton | — | — | — |

## LAW STUDENTS' SOCIETIES.

DEBATING.—The ordinary weekly meeting of the society was held at the Law Institution, Chancery Lane, on Tuesday, October 13, Mr. Crawford in the chair. The subject for discussion, 'That the case of *The Coupé Company* v. *Maddick*, L. R. (1891) 2 Q. B. Div. 413, was wrongly decided,' was opened by Mr. Pattinson.—Mr. Parker opposed, Mr. Stringer followed in the affirmative and Mr. Thirlby in the negative. The debate having been declared open, the following gentlemen spoke: in the affirmative—Messrs. Walton, Stevens, Watson, and Wilson; in the negative—Messrs. Alder, Herbert Smith, Watkins, Bower, and Simon. Mr. Stringer replied for Mr. Pattinson. The chairman, having summed up, put the motion to the meeting, when it was lost by a majority of two.—The subject for discussion at the next meeting of the society on Tuesday, October 20, is: 'That it is inexpedient to extend Local Government to Ireland.'

LIVERPOOL.—At a meeting of this association on Monday, October 5—Mr. F. J. Hawkins in the chair—a debate was held on the following subject for discussion: 'A. lends a sum of money upon such a contract as is the subject of section 2 of the Partnership Act, 1890. B. dies without having repaid the loan, having by his will appointed A. his executor. A. proves the will, and the estate turns out to be insolvent, and is administered in bankruptcy. Can A. out of the assets of the deceased in his hands, as executor, exercise his common law right of retainer in respect of the loan?'—Mr. H. Glover opened in the affirmative, which was also supported by Messrs. Brown and Rutherford.—Mr. F. W. Archer opened in the negative, which was also supported by Mr. Barnes.—The question was decided in the negative by a majority of one.

THE HEREDITARY POSSESSIONS OF THE CROWN.—The commissioners in charge of the hereditary possessions of the Crown have issued their joint and separate reports for the year ending March 31, 1891. They refer to the report of the select committee of the House of Commons which last year recorded the opinion that the Crown estates have been, on the whole, carefully and successfully administered. The select committee made certain recommendations involving legislation, which it is hoped may be given effect to during the next session. Mr. Culley's report deals with the woods, forests, Crown and other allotments in England, the land revenue of the Crown in Scotland, Ireland, Wales, and the islands, and with the fee farms and other unimprovable rents of the Crown in England and Wales; while Sir Nigel Kingscote has in charge the land revenues of the Crown in England. The total income receipt for woods, forests, and land revenues for the year was 515,737*l.* 3*s.* 10*d.* and the total expenditure 87,121*l.* 19*s.* 6*d.* This leaves nearly 430,000*l.* for the revenue, at which sum the Crown lands are reckoned in the revenue accounts.

NEW COUNTY COURT JUDGE.—Mr. Hugh Eardley Wilmot, of Lincoln's Inn, has been appointed by the Lord Chancellor Judge of the County Court of Suffolk.

SIR HENRY HAWKINS.—Sir Henry Hawkins is very much improved in health, and will shortly return from the Continent. His lordship will, it is expected, resume his seat in Court during the early part of the ensuing Michaelmas sittings.

CORONERS' INQUESTS.—Mr. T. B. Diplock writes to the *Times* as follows: 'I am informed that it has been stated in the *Times* that Mr. Troutbeck, coroner for Westminster, gives no information to the reporters, and that all other coroners supply it. For the sake of the truth I shall be obliged if you will allow me to state that I give only the date, hour, and place of every inquest held by me, which list is free to the inspection of any reporter who calls any morning at my office. This has been my practice for nearly twenty-four years, and I have never heard any complaint of it nor any demand for detailed information.'

CHRYSANTHEMUM SHOW IN THE TEMPLE GARDENS.—The annual show of chrysanthemums in the Inner Temple Gardens will be open to the public, by permission of the Benchers, on Monday next, October 19. The exhibition this year will be held in two new and commodious greenhouses, situate at the bottom of King's Bench Walk, and Mr. John Newton, the head gardener, will have on view a collection of upwards of 700 plants. Of this number several of the Japanese varieties are quite new specimens. The plants generally are well advanced, and the present exhibition promises to be well up to the average, if not to excel those of previous years. The entrance for the public will be from the Thames Embankment.

DIVORCE IN FRANCE AND THE UNITED STATES.—The *Economiste Français* publishes an interesting article comparing the recently compiled tables showing the number of divorces granted in France since the new law came into force, and in the United States and other countries during the same period. The French law of divorce came into force on August 1, 1884, and in the five months of that year 1,657 divorces were granted, the figures for the four following years being 4,227, 2,949, 3,636, and 4,708. The statistics which have been published in France do not come down later than 1888, and in that year, according to the writer in the *Economiste Français*, there were 23,472 divorces in the United States, this being nearly 4,000 more than were granted in France, England, Italy, Germany, Holland, Sweden, Norway, Austria, Roumania, and Canada put together. Comparing the divorces in France and the United States with those of other countries, the following figures are given: Germany, 6,161; Russia, 1,789; Austria, 1,718; Switzerland, 920; Denmark, 635; Italy, 556; Great Britain and Ireland, 506; Holland, 339; Belgium, 290; Sweden, 229; Australia, 100; Norway, 68; and Canada, 12.

Ladies in Court.—It is difficult for an Englishman to tell a story without spoiling it. So Mr. Percy Fitzgerald, quoted by Mr. Clark Bell, in the August *Green Bag*, contrives to spoil a time-honoured 'chestnut,' which he attributes to Baron Maule, when he says: 'In an unsavoury case warning had been given, and all the women retired save a few strong-minded ones, who kept ther places. "You may go on now," said the judge, "as all the ladies have withdrawn."' What the judge really said was: 'The decent women having withdrawn, Mr. Sheriff, you may turn the rest out.'—*Albany Law Journal.*

Opening of New Law Courts at Birmingham.—At the first quarter sessions held in the new Victoria Law Courts, Birmingham, on October 12, the mayor, attended by a number of city justices, was present, and spoke a few appropriate words to mark the occasion.—The recorder (Mr. Dugdale, Q.C., M.P.), in charging the grand jury, delivered an address reviewing the statistics of the Birmingham Quarter Sessions since their establishment in 1839. He said that with the close of these sessions he would have finished his fourteenth year of office, and he believed that all judicial positions were closed with a pension at the end of fifteen years.

Hampstead Vestry.—At the fortnightly meeting of the Hampstead Vestry on Thursday, October 8, the question of the appointment of a solicitor to that body was considered. Six candidates had been selected to attend, these being Mr. Percival Birkett (Horne & Birkett, 4 Lincoln's Inn Fields), Mr. E. K. Blyth (112 Gresham House, Old Broad Street), Mr. R. Fraser (Fraser & Christian, 4 Finsbury Circus), Mr. T. S. Preston (Robinson, Preston & Stow, 35 Lincoln's Inn Fields), Mr. F. S. Chaplin (Proudfoot & Chaplin, 24 John Street, Bedford Row), and Mr. A. J. Shepheard (Messrs. Shepheard, 31 and 32 Finsbury Circus). As a result of the voting Mr. Blyth and Mr. Shepheard were the last two left to decide between, and on the final show of hands being taken it was found that the former received thirty-eight votes and the latter twenty-six. Mr. Blyth was thereupon declared elected. Mr. King, jun., raised an objection and demanded a poll, but as he was not supported by five other members of the vestry his application fell through.

The Sanad of the New Ruler of Manipur.—The official *Gazette of India*, just received in this country, contains a notification that the Governor-General in Council has selected Chura Chand, son of Chowbi Yaima, and great-grandson of Rajah Nar Singh, of Manipur, to be Rajah of Manipur. The *Sanad* given to Chura Chand is also published. It is as follows: 'The Governor-General in Council has been pleased to select you, Chura Chand, son of Chowbi Yaima, to be chief of the Manipur State, and you are hereby granted the title of Rajah of Manipur, and a salute of eleven guns. The chiefship of the Manipur State and the title and salute will be hereditary in your family, and will descend in the direct line by primogeniture, provided that in each case the succession is approved by the Government of India. An annual tribute, the amount of which will be determined hereafter, will be paid by you and your successors to the British Government. Further, you are informed that the permanence of the grant conveyed by this *Sanad* will depend upon the ready fulfilment by you and your successors of all orders given by the British Government with regard to the administration of your territories, the control of the hill tribes dependent upon Manipur, the composition of the armed forces of the State, and any other matters in which the British Government may be pleased to intervene. Be assured that so long as your house is loyal to the Crown and faithful to the conditions of this *Sanad* you and your successors will enjoy the favour and protection of the British Government.'

Sir Charles Butt.—Sir Charles Butt, President of the Probate, Divorce, and Admiralty Division, who has been staying at Wiesbaden during the Long Vacation for the benefit of his health, is much better, and it is expected that he will be able to resume his duties at the beginning of the ensuing Michaelmas sittings.

The Westmoreland Licensing Justices.—The Westmoreland justices, who refused to renew a public-house license in the well-known case of *Sharpe* v. *Wakefield*, are again the respondents in a similar appeal set down for hearing at the Westmoreland Quarter Sessions to be held at Kendal on the 23rd inst. The house for which a license has been refused in this instance is the Coach and Horses, near Appleby, the ground of refusal being the same as in the case above mentioned—namely, that it was not necessary for the wants of the locality. This appeal raises the question whether or not the justices have exercised their function judicially.

Sanitary Inspection of Crown Property.—The question of the right of medical officers to inspect Crown property in case of an outbreak of infectious disease was brought up again at the meeting of the Hampton Local Board on October 15. The point arose owing to the occupier of apartments at Hampton Court Palace having disputed the right of the medical officer to inspect a place in which a case of diphtheria occurred. The clerk to the board, Mr. F. Addenbrooke Kent, said he had seen counsel on the matter and ascertained that the board's officer had no right whatever to enter the palace or any other Crown property. Even the barracks, the park-keepers' cottages, and such residences as that of the Comte de Paris in Bushey Park were exempt. The Crown had their own sanitary inspector, who inquired into every case of infectious disease which occurred.

## BIRTHS.

On Oct. 10, at 16 Campden Hill Gardens, the wife of Charles Scott-Chad, Barrister-at-Law, of a daughter.

## MARRIAGES.

On Aug. 31, at St. John's Cathedral, Hongkong, Francis Heaty, fourth son of the Right Hon. G. A. C. May, formerly Lord Chief Justice of Ireland, Assistant-Colonial Secretary and Private Secretary to the Governor, to Helena Augusta Victoria, eldest daughter of his Excellency Major-General G. Digby Barker, C.B., commanding the troops in China, and Acting-Governor of Hongkong.

On Oct. 6, at St. Columb Minor Church, by the Rev. N. N. Lewarne (brother of the bride), assisted by the Rev. J. Broad Bade, vicar, Edgar Hosking, of Liverpool, Solicitor, to Louise Lewarne, of St. Columb Minor, Newquay, Cornwall.

On Oct. 7, at St. Augustine's, Highbury, George Herbert Naunton, Solicitor, eldest son of George Ward Naunton, of Highbury New Park and Cheapside, to Matilda Maud, youngest daughter of Parker Todd, of Mildmay Grove, Highbury.

On Oct. 7, at the Church of St. Malachy, Belfast, Arthur, eldest son of Sir Charles Russell, Q.C., M.P., to Florence, daughter of James Cuming, Esq., M.D., Belfast.

On Oct. 8, at the Church of St. John the Evangelist, Red Lion Square, Arthur Temple Westropp-Dawson, son of Captain Westropp-Dawson, late 19th Regiment, of Charlesfort, Ferns, county Wexford, to Agnes Mary Latham, daughter of William Latham, Esq., Q.C., of 16 Airlie Gardens, Campden Hill.

On Oct. 9, at the Parish Church, Chiswick, Henry Ward Oliver, Barrister-at-Law, youngest son of Arthur Robert Oliver, Esq., to Edith Augusta Beresford, only daughter of Colonel C. Tucker, C.B.

On Oct. 13, at Christ Church, Bath, Theophilus Maurice Reed, of Bridgwater, Solicitor, to Ethel Mary, youngest daughter of Colonel Sparkes, Deputy Commissary-General of Ordnance.

## DEATHS.

On Sept. 30, at Burgos, Spain, William Cotton, Solicitor, son of the late Francis Josias Cotton, Solicitor, both late of the firm of Coode, Kingdon & Cotton, 34 Bedford Row, London.

On Oct. 9, at Torquay, Boddam Castle, of Grove House, Clifton, Bristol, and of the Middle Temple, Barrister-at-Law, second son of the late M. Hinton Castle, J.P., of Stapleton Grove, Gloucestershire.

On Oct. 11, at 10 King's Gardens, Hove, Brighton, Thomas Chandless, of the Inner Temple, Barrister-at-Law, aged 65 years.

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# The Law Journal.

*SATURDAY, OCTOBER 24, 1891.*


## 'OBITER DICTA.'

The profession will be glad to learn that Mr. Justice Hawkins has now recovered from his recent severe illness. Mr. Justice Butt has also, we are happy to be able to say, much improved in health. There would seem to be a fair prospect that the commencement of the legal year will find the whole bench of judges available for work.

In the Wig and Gown column of the *Globe* regret is expressed at the reopening of the Royal Courts being postponed from October 24 to October 26 'simply because October 24 falls on a Saturday,' and we are bound to say that we share this regret. This error, however, if error it be, is not likely to be repeated in the time of any one now living, as it will be very long before October 24 falls on a Saturday again. It is to be hoped, however, that the comments which have been caused by this change of day will lead to a thorough discussion of what is the proper period of the summer and autumn for the Long Vacation generally. For ourselves, as we have already said, we strongly incline to the opinion that the Long Vacation at present commences too late, and that August 1 would be the proper day for its commencement. It will be remembered that Sir George Trevelyan found a large number of members of the House of Commons ready to support his motion for the termination of the Parliamentary session earlier than has been generally the case, and exactly the same reasons which may be urged for an earlier prorogation of Parliament may be urged for an earlier closing of the Courts. We hope that this important matter will receive the attention of the judges, of the bar committee, and of the law societies generally.

The *Manchester Guardian* has recently published some statistics showing the large amount of judicial patronage which has fallen to the lot of the present Lord Chancellor. The figures given are not, however, quite accurate, the writer having apparently lost sight of the fact that from February to July, 1886, Lord Halsbury was out of office. The Lord Chancellor has, however, appointed three Lords of Appeal in Ordinary, two Lords Justices, two judges of the Chancery Division, six judges of the Queen's Bench Division, the President of the Probate Division, and a judge of that division. As regards the smaller judicial offices, Lord Halsbury has had the appointment of seventeen County Court judges, two masters in lunacy, two official referees, and two registrars in Bankruptcy. These figures are exclusive of the Indian judicial appointments made by the present Government, and certainly form a remarkable record of legal patronage.

It is to be hoped that the vexed question of what is a final as distinguished from an interlocutory order has now been set at rest by the decision of the Court of Appeal in *Salaman* v. *Warner and others*, 60 Law J. Rep. Q. B. 624. In that case Lord Justice Fry, in giving judgment, said: 'I think that an order is final only where it is made upon an application or proceeding which must in any event, whether it succeeds or fails, determine the action; an order is interlocutory which is made on an application or proceeding of which it cannot be affirmed that in any event the whole action will be determined.' The Master of the Rolls and Lord Justice Lopes expressed themselves in similar terms, and the Court accordingly held that an order dismissing an action upon the hearing before trial of a point of law raised by the pleadings was not a final order within the meaning of Order LVIII., rule 3. The Court have thus adopted the test suggested by Lord Esher some years since in *The Standard Discount Company* v. *La Grange*, 47 Law J. Rep. C. P. 3; L. R. 3 C. P. Div. 67, where it was held that an order empowering a plaintiff to sign final judgment under Order XIV., rule 1, was an interlocutory order, and that an appeal from such order to the Court of Appeal must therefore be brought within twenty-one days.

In the case of *In re Smith's Settled Estates*, 60 Law J. Rep. Chanc. 613; L. R. (1891) 3 Chanc. 65, Mr

Justice Kekewich had no difficulty in holding that the costs of an attempted, but unsuccessful, sale by the tenant-for-life in the proper exercise of his power of sale under the Settled Land Act, 1882, were payable out of capital money arising under the Act. For this he relied on section 21, subsection x., and the decision of Mr. Justice Stirling in *In re Llewellyn; Llewellyn* v. *Williams*, 57 Law J. Rep. Chanc. 316; L. R. 37 Chanc. Div. 317. As, however, the capital money in hand was insufficient for the payment, the further and more novel question arose whether these costs could be made a charge on the land. Section 46, subsection 6 (to which section 47 is supplemental), seems the only express enactment on this point. Section 46 is headed with the title, 'Court; Land Commissioners; Procedure,' and gives the Court power to make such order as it thinks fit as to the 'costs, charges, or expenses' of the parties to any application, and to order that 'all or any of those costs, charges, or expenses' be paid out of the settled property. Mr. Justice Kekewich thought that the words 'charges or expenses' pointed to something beyond the ordinary liability to costs which is incurred by an application to the Court, and covered the costs and expenses incurred out of Court by the tenant-for-life in the attempted sale. He accordingly made an order that such costs or expenses be paid out of the property, subject to the settlement, and raised by a charge on the settled land.

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By the Appellate Jurisdiction Act, 1876, s. 3, it is enacted that 'an appeal shall lie to the House of Lords from any order or judgment' of the Court of Appeal; and by the Rules of Court, 1883, Order LVIII., rule 15, in the case of an action no appeal from the High Court may, except by special leave of the Court of Appeal, be brought after the expiration of one year. In *Payne* v. *Esdaile*, 60 Law J. Rep. Chanc. 644, the year had expired, and the Court of Appeal had refused to grant the special leave to the defendants, making no order on their application. From this refusal the defendants appealed to the House of Lords, which decided that no appeal lay, the refusal to grant special leave not being a 'judgment or order' within the Appellate Jurisdiction Act. The power given to the Court of Appeal was, said Lord Halsbury, 'obviously intended to prevent frivolous and unnecessary appeals,' and it has, as is well known, been exercised within very narrow limits in the way of granting special leave. At the same time the decision of the House of Lords, which recognises that power as final, is by no means adverse to *bonâ fide* appellants, where they can account for their delay to the satisfaction of the Court of Appeal, since, as Lord Halsbury points out, if the House of Lords could entertain an appeal from the refusal to grant special leave, it would follow that an appeal to the House would also lie by the person against whom special leave had been granted.

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The municipal elections are now fast approaching, 'the ordinary day of election of councillors' being by section 52 of the Consolidating Municipal Corporations Act, 1882, which re-enacts section 30 of the original Municipal Corporation Act, 1835, November 1. Perhaps the constituencies in the various boroughs may press their candidate with questions whether or not they will vote, when elected, for the adoption of the many 'adoptive' Acts which have been recently passed. In addition to the Public Libraries Acts and Baths and Washhouse Acts, which are now pretty generally known, during the last three years there have been produced no less than four Acts which do not come into force in a municipal borough unless they be adopted by the council thereof. In 1889 was passed the Infectious Diseases (Notification) Act, in 1890 the Infectious Diseases Prevention Act, and the Public Health Acts Amendment Act, and in 1891 the Museums and Gymnasiums Act, to enable urban authorities to 'provide and maintain museums for the reception of local antiquities or other objects of interest, and gymnasiums with all the apparatus ordinarily used therewith,' and to 'erect any buildings, and generally to do all things necessary for the provision and maintenance of such museums and gymnasiums.' Although by subsection 5 of section 10 of the Act, the rates which may be levied under this Act may not exceed ½*d.* in the pound for a museum, and ½*d.* for a gymnasium, it would be satisfactory, we should imagine, to candidates for corporate offices to know something of the opinion of their constituents on the desirability of adopting the Act before the municipal elections are actually held.

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We have before us the London and North-Western Railway Company (Rates and Charges) Order Confirmation Act, 1891 (54 & 55 Vict. c. ccxxi.), one of the set of special railway Acts passed, after careful consideration by a joint select committee of the two Houses, to carry out the comprehensive work first set on foot (after much protest from the railway magnates) by section 24 of the Railway and Canal Traffic Act, 1888. It may safely be said that there has been no legislation of so important a character to railway companies for the last thirty years. The provisional orders which the Acts confirm will not come into force until August 1, 1892, 'or such later date as the Board of Trade may by order direct.' Until that time the railway companies and their customers will have to rub on as best they can with the existing classifications and rates, which have long been protested against by all who have inquired into the subject as not only immeasurably perplexing and complicated, but in some cases very deficient, as many articles of commerce do not find a place in Acts passed so many years ago. The new classifications are also very elaborate, but they are exhaustive, and the articles are in all cases arranged in alphabetical order. The schedules, which contain the maximum rates, are divided into six parts, and include the rates for animals as well as goods, but passenger fares are left quite untouched. The new Acts, when they come into force, will, of course, be subject in the same manner as the existing Acts to the all-important section 186 of the Railway Clauses Act, 1845, by virtue of which the charges of railway companies must not only be within the maximum authorised by each special Act, but must also be reasonable.

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At what place in a statute ought the interpretation clause to come, at the beginning or the end? The Public Health Act, 1875, has its interpretation clause at the beginning, and so have the Companies, Lands, and Railways Clauses Consolidation Acts of 1845, and also the Municipal Corporations Act, 1882, but

the Local Government Act, 1888, the Lunacy Act, 1890, and the Public Health (London) Act, 1891, and, we believe, the great majority of modern statutes, have their interpretation clauses at the end. We have little doubt that the beginning is the proper place. The words 'owner,' 'street,' and many others which will readily occur to our readers, have so special a meaning given to them by modern interpretation clauses that it seems to be of importance that the meaning should be brought to the attention of the practitioner at the very threshold of his consultation of any particular statute. Moreover, it would be very convenient if, following the precedent set in the Lunacy Act, 1890, s. 341, interpretation clauses could be alphabetically arranged.

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In *Metcalfe* v. *Metcalfe*, 60 Law J. Rep. Chanc. 647; L. R. (1891) 3 Chanc. 1, some of the earlier cases upon 'forfeiture clauses' are considered and distinguished. A testator by his will gave to his trustees real and personal estate on trust to pay the rents and profits to his children as tenants in common during their respective lives, with benefit of survivorship. He then declared that if by any act or default or by operation of law any interests given by his will in trust for his children should be aliened, whereby the same should vest in any other person, then the trustees should apply the interest so aliened to and among the other persons entitled to the same by survivorship. One of the testator's children became a bankrupt between the date of the will and the testator's death. Within a year after the testator's death the bankrupt became entitled to property which when sold was sufficient to pay the debts and costs; but the bankruptcy was not annulled until more than two years after that date. Under these circumstances the question arose whether the life interest of the legatee in the rents and profits was forfeited by the bankruptcy. Mr. Justice Kekewich and the Court of Appeal have answered this question in the affirmative. The *ratio decidendi* is worth noting. In the first place, it has been laid down too long and too clearly to be disturbed except by a decision of the House of Lords that forfeiture clauses are to take effect in the case of bankruptcy commencing before the testator's death. *Trappes* v. *Meredith*, 41 Law J. Rep. Chanc. 237; L. R. (1871) 7 Chanc. 248, and *Ancona* v. *Waddell*, 48 Law J. Rep. Chanc. 115; L. R. (1878) 10 Chanc. 157, are conclusive on that point, and the reason assigned for the rule is that the Courts desire 'to prevent the property passing into hands other than those which the testator intended should receive it.' In *Metcalfe* v. *Metcalfe* the Court of Appeal intimate their strong disapproval of these authorities while bowing to them. In the second place, in determining whether a forfeiture clause takes effect, the crucial time in the case of a gift of income is the time when the right to have the first payment of income accrues. Now, in *Metcalfe* v. *Metcalfe*, not only was the bankrupt not annulled at the date, but the property of the bankrupt was not sufficient to secure its annulment. This case was, therefore, distinguished from *White* v. *Chitty*, 35 Law J. Rep. Chanc. 343; L. R. (1866) 1 Eq. 372, and *Lloyd* v. *Lloyd*, L. R. (1866) 2 Eq. 722, in which no right to have anything paid over but for the forfeiture clause had accrued to the trustee in bankruptcy.

So many vacancies in the House of Commons have been caused by death during the present recess that it is well to direct attention to the somewhat complicated procedure by which elections to fill recess vacancies are brought about. It is to be found in 24 Geo. III. c. 26, as amended by 21 & 22 Vict. c. 110 and 26 Vict. c. 20. By the first of these Acts the Speaker, on the death of any member during the recess, is bound to issue his warrant to the Clerk of the Crown to make out a new writ for electing a member to fill the vacancy 'as soon as he shall receive notice, by a certificate [which may be in the form scheduled to the Act], under the hands of two members of the House of Commons, of the death of such member;' but it is provided that the Speaker on receiving the certificate is to cause notice thereof to be inserted in the *London Gazette*, and 'shall not issue his warrant until *fourteen* days after the insertion of such notice in the *Gazette*.' By the second Act, after reciting that the first 'had been found advantageous to the public by causing speedy elections,' the machinery of the first Act is extended to cases of vacancy by acceptance of offices under the Crown other than the stewardship of the Chiltern Hundreds and similar offices without profit. By the third Act the fourteen days which were interposed between the receipt of the certificate and the issue of the warrant by the Speaker are cut down to six days. The first Act also makes provision for the absence of the Speaker from the realm during the recess, by empowering him to appoint before each recess a committee of seven members to act for him in such a case. The intention of the Legislature is, no doubt, to procure speedy elections, but without the setting on foot of the machinery by the two certifying members this object cannot be obtained. Perhaps it might be well expressly to throw the duty of certifying upon some public and paid officer.

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## TITLES UNDER VOLUNTARY SETTLEMENTS.

The attention of conveyancers must often have been directed in practice to the sweeping enactment contained in section 47 of the Bankruptcy Act, 1883, which avoids a bankrupt's voluntary settlements, the importance of which to vendors and purchasers is certainly not diminished by a recent decision of Mr. Justice Stirling on the subject. The section provides that 'any settlement of property'—with certain exceptions to which we need not refer—'shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee in bankruptcy, unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property had passed to the trustees of such settlement on the execution thereof.' It is true that a similar provision was contained in the Bankruptcy Act, 1869, but it was limited to the case of traders alone, whereas section 47 of the existing Act is universal. It is true also that, under 13 Eliz. c. 5, a voluntary settlement of real estate, by whomsoever made, will be presumed to be made with intent to defeat creditors if that will be its probable effect, having regard to the amount of property included in it and the

amount of the settlor's liabilities at the time (see *Jenkyn* v. *Vaughan*, 25 Law J. Rep. Chanc. 338; 3 Drew, 424; *Thompson* v. *Webster*, 28 Law J. Rep. Chanc. 700; 4 Drew, 632; 4 De G. & J. 600). But conveyancers have never felt much difficulty arising under this Act, and it has recently been expressly decided that section 5 of the Act protects the purchaser for value of a volunteer's interest under the settlement as well as a purchaser for value taking a direct interest under the settlement (*Halifax Joint Stock Banking Company* v. *Gledhill*, 60 Law J. Rep. Chanc. 181). There is also a frequent objection to the title of a grantee under a voluntary settlement, by reason of 27 Eliz. c. 4, since the settlement may have been avoided by a subsequent sale for value by the settlor, but a purchaser's requisition on this head may be answered by satisfactory evidence on the vendor's part, and, if the requisition is so answered, the title may be forced upon the purchaser (*per* Mr. Justice Fry in *In re Marsh and Granville*, L. R. 24 Chanc. Div. at p. 19). The Bankruptcy Act, 1883, for the first time makes universal an enactment which throws a new burthen on the purchaser and renders it almost impossible for a vendor under an open contract to make an enforceable title where a voluntary settlement forms a link in it during the period of ten years immediately preceding the sale. Such, at any rate, appears to be the effect of Mr. Justice Stirling's decision in *In re Briggs and Spicer*, 60 Law J. Rep. Chanc. 514. In that case it was contended, in the first place, that the words 'parties claiming under the settlement' in section 47 refer to the beneficiaries only, and not to a purchaser for value. Mr. Justice Stirling, however, held that a purchaser 'derives and, consequently, claims title under the settlement,' and is within the terms of the section. On this construction the next question was whether—the first two years having elapsed, during which, of course, no title could be made—satisfactory evidence had been furnished of the testator's ability to pay his debts at the date of the settlement, in the absence of which it was liable to be avoided during the remaining eight years from its execution, and, according to the report of the case, some very full and precise evidence by the settlor's bankers and solicitors seems to have been tendered, but Mr. Justice Stirling held that he had no right to force such a title on the purchaser. The rule as to the evidence of facts on which a purchaser will be impelled to complete was stated as follows in *Emery* v. *Grocock*, 6 Mad. 54, by Sir John Leach: 'If the case be such that, sitting before a jury, it would be the duty of a judge to give a clear direction in favour of the fact, then it is to be considered as without reasonable doubt; but if it would be the duty of a judge to leave it to the jury to pronounce upon the effect of the evidence, then it is to be considered as too doubtful to conclude a purchaser.' The precise line which divides the two classes of cases here referred to may sometimes be a difficult one to draw, but Mr. Justice Stirling gives forcible, and, to our mind, convincing reasons for including the case in the second class. 'The fact,' he says, 'on which the title depends cannot be proved merely by documentary evidence. When the attack comes the purchaser must produce witnesses, who will establish, *primâ facie* at all events, the ability of the settlor, at the time of making the settlement, to pay his debts. Those witnesses, however, are not under the purchaser's control; when they are wanted they may not be to be found, or they might be out of the jurisdiction, or possibly dead. Even if the purchaser should succeed in producing them, it is impossible to anticipate by what rebutting evidence the testimony may be met, or what may be the effect of cross-examination; and the result may be that, even when a *primâ facie* case is made out in the first instance, the balance of evidence on the whole may be so even that the purchaser may be held to have failed to discharge the onus of proof which lies on him.' It would appear, therefore, that the vendor's difficulty in making an enforceable title under these circumstances is removable only by the lapse of the critical ten years from the execution of the settlement; or, secondly, by the earlier death of the settlor, since it is clear that the provisions of section 47 are not to be applied in the event of his death and the administration of his estate under section 125 of the Bankruptcy Act (*In re Gould*, 56 Law J. Rep. Q. B. 333; L. R. 19 Q. B. Div. 92); or, lastly, by a special condition of sale. We are not, of course, considering the case of a willing purchaser, who in practice often takes the evidence in the vendor's possession, and who, as pointed out in *In re Briggs and Spicer*, can generally obtain a good title by virtue of 27 Eliz. c. 4, by taking his conveyance from the settlor and paying the purchase-money by his direction to the trustees; but a purchaser cannot, according to the well-settled rule, be forced to accept a title made in this way.

## ENGLISH *CAUSES CÉLÈBRES*.—X.

### Regina *v.* Lamson.*

The name of Lamson is associated with *aconitia* as closely as that of Palmer is associated with strychnine. Two scoundrels before the bankrupt Bournemouth doctor had made use of this deadly poison for criminal purposes. Dr. Pritchard in 1865 had administered it to his mother-in-law, Mrs. Taylor, in the form of tincture of aconite, and, as far back as 1841, an Irishman, M'Conkey, had used it as powdered aconite root. But the agent on which Dr. Pritchard principally relied, and which has gained him an infamous notoriety, was tartar emetic, and M'Conkey was, fortunately, hanged without having become notorious at all. It was left for Dr. Lamson to introduce this new alkaloid to the medico-legal world.

In the month of December, 1881, Mr. Bedbrook, the head-master of Blenheim House, Wimbledon, had among his pupils a boy called Percy Malcolm John, who suffered from paralysis of the lower limbs produced by curvature of the spine, but enjoyed fair general health. One of this lad's sisters was married to Dr. George Henry Lamson, a surgeon at Bournemouth, who took a great interest in him and was in the habit of sending him medicines. On December 1, 1881, Lamson wrote to Percy John that he was coming to see him on the following evening. He failed, however, to keep this appointment, but arrived at Blenheim House on the 3rd, with some sweets, a cake, and a box containing gelatine capsules which he told Mr. Bedbrook he had brought from America for the convenience of persons that had to take nauseous medicines. He induced Mr. Bedbrook to take one of these capsules in order that he might see how easily they were swallowed. While this experiment was being

* Browne and Stewart's 'Trials for Murder by Poisoning,' pp. 514–567.

made, Lamson filled another with some powdered sugar, for which he had sent on the pretext of destroying the alcohol in his wine, and turning to Percy John, who was present at the interview, said, 'You are good at taking medicines, take this.' The boy did so, and in a few minutes Lamson left, saying that he had to catch the tidal train to Paris. In about twenty minutes afterwards, the cripple lad was seized with a sudden pain which he attributed to heartburn. He was carried upstairs to bed, became gradually worse, and died in a few hours. The medical men who attended him, Dr. Berry and Dr. Little, were convinced that the symptoms were attributable to the action of some irritant poison. The *post-mortem* appearances confirmed this view, and the chemical analysis indirectly revealed the presence of aconitia.

On December 8, Lamson unexpectedly returned from Paris, presented himself at Scotland Yard to inquire, as he said, into what was being done about the alleged murder of his brother-in-law, and was promptly taken into custody. He was duly tried at the Central Criminal Court in March, 1882, before Mr. Justice Hawkins and a jury. Sir Farrer Herschell (then Solicitor-General), Mr. Poland, and Mr. (now Mr. Justice) A. L. Smith conducted the prosecution. Mr. Montagu Williams was leading counsel for the defence. After a careful trial Dr. Lamson was found guilty, was sentenced to death, and, after two reprieves, granted by the Home Secretary (Sir William Harcourt) in order to enable his friends in America to produce evidence of his insanity, was very properly hanged.

The evidence against Lamson was overwhelming. 1. Motive was clearly proved. He was, and had been for two years, in grave pecuniary difficulties, and, under the wills of Percy John's parents and the marriage settlement of his own wife, he had an interest in the death of his brother-in-law. 2. Again, he was proved not only to have been in possession of aconite at the time of Percy John's death, but to have purchased it so recently as November 24, 1881. 3. Aconite was shown with a fair degree of conclusiveness to have been the cause of death—(*a*) Suicide was out of the question. The murdered boy was in excellent spirits both before and immediately after * the administration of the fatal dose. (*b*) Accident—a more plausible theory—was disproved. There was some suggestion that Percy John posed in the school as 'the swell pill taker,' and that he might have been experimenting with some of the drugs in the chemistry lecture rooms. But unfortunately aconitia was not among the number of these drugs. (*c*) The hypothesis of death by disease was also disposed of. The deceased enjoyed good health, and there were no morbid appearances to account for his death. (*d*) The positive evidence of death by aconitia was strong. The symptoms spoke of aconite, the appearances indicated the presence of some irritant poison, and the chemical analysis all but identified it. Dr. Stevenson experimented with an extract from Percy John's stomach on several mice, and they died with all the symptoms and *post-mortem* results of poisoning by aconite. Similar evidence contributed to the conviction of Dove in 1855. 4. Lamson had assiduously surrounded himself with the murderer's tangled web of deceit. He told a friend that he had been at Blenheim House on the evening of December 2, and had seen his brother-in-law, who was very ill and would not live long. This statement, in so far as it consisted of assertion, was wholly false, and in so far as it consisted of prophecy was highly suspicious. Again, he informed the same friend that Mr. Bedbrook, who was the director of one of the continental lines, had advised him not to go to Paris on the night of the 2nd, as there was a bad boat on the service. Mr. Bedbrook had not seen Lamson on the 2nd, and had not, therefore, said anything of the kind. Nearly all the chief murderers of modern times—Palmer, Pritchard, Wainwright, Chantrelle, and a score of others—clinched their fate by similar falsehoods. 'Quem Deus vult perdere, prius dementat.'

The so-called 'evidence' of Lamson's insanity was both obnoxious to the criticism which *ex post facto* testimony of this description naturally arouses and contemptible in itself.

* On returning to the dining-room, after seeing Lamson depart, Mr. Bedbrook found him reading the papers.

# Reviews.

## STEVENS ON BANKRUPTCY.

*Bankruptcy.* By T. M. Stevens, M.A., B.C.L., Barrister-at-Law, Author of 'The Elements of Mercantile Law.' London: Gee & Co. 1891.

The present work proceeds upon a somewhat novel plan. The original idea, the author tells us, was to embrace the Bankruptcy Act of 1890 with the Rules and Forms of that year, and these alone. It was then suggested that it would be advantageous to combine a reprint of the sections of the Act of 1883, to which constant reference was required. Another change from the initial plan was made by dropping to a considerable extent the Rules and Forms. The consequence is that now we have a treatise designed to give the reader information on the elementary points of the law of bankruptcy as distinguished from its procedure. The work is, perhaps, too compendious, but we have no doubt it will be found useful. At p. 19 we find that section 28 of the Bankruptcy Act, 1883, is omitted as being repealed. This is no doubt true, but as discharges in cases where adjudication has taken under the old law will be subject to the provisions of this section, it would have been much better had it still been allowed a place. An interesting little sketch of the history of the Bankruptcy Act, 1890, is given in the introduction.

# Correspondence.

## MORTGAGOR AND MORTGAGEE.
### RECONVEYANCES.

Sir,—Who is the right person to determine how a mortgage shall be reconveyed, whether by independent deed or by indorsement? Mortgagor wants indorsement, alleging the possibility of loss of reconveyance if separated from original instrument. Mortgagee insists on independent deed, because of the possibility of loss of the original instrument if posted between the various mortgagees for the purpose of execution, and also the possibility that the transaction might not go through, and a reconveyance indorsed on the mortgage would look suspicious. The mortgagor replies that if the transaction failed, the detention by the mortgagee of the

mortgage would be ample guard against any inconvenience likely to be caused by the indorsement.

Some solicitors consulted were of opinion that the mortgagor has the right to elect, and not the mortgagee. What is your opinion? H. H. G.

Westminster, S.W.: Oct. 19.

[We think the mortgagor is entitled, wherever circumstances will permit, to have the reconveyance indorsed upon the mortgage, not merely for the sake of brevity, but because the mortgage-deed, whenever produced, will then bear upon it the evidence of the reconveyance, whereas if the reconveyance be made by separate deed it may be lost, and the mortgagor would then have difficulty in proving that the debt had ever been paid. The mortgagor is entitled to call for a reconveyance, the cost of which he must bear, and he surely has the right to elect in what form it shall be made.—Ed. L. J.]

# Unreported Cases.

## COUNTY COURTS.

### POLICE RESPONSIBILITY FOR ARRESTS.

A case of public interest occupied His Honour Judge Shand in the Liverpool County Court on October 19, when Mrs. Catherine Whittle sued Detective Jackson, of the Liverpool police force, for damages for false imprisonment. —Mr. Segar, who appeared for the plaintiff, said that on April 7 his client went with her sister to Bunney's shop, in Church Street. She returned by way of Richmond Row, and, after leaving her sister, she was proceeding homewards when she was stopped by Jackson, who asked her if she had been to Bunney's, and, upon her replying in the affirmative, he asked her to show him the contents of her basket and pockets, and she was compelled to allow him to search her. A crowd gathered round her and she felt keenly the indignity of her position. In fact, it gave her such a shock that her health, which was poor at the time, suffered considerably, and eventually a miscarriage was brought on.—Mr. Neale, for the defendant, said that he was prepared to acknowledge that there was no imputation against the plaintiff, the action of the defendant being the result of wrong information.—Mr. Segar said that if defendant would apologise and pay the costs the matter would end.—Mr. Neale said he was not in a position to pay the costs. It was a question of law whether the defendant, being a constable, was justified in the action which he had taken.—The jury found for the plaintiff, damages 20*l*., and costs were allowed.

### AN OMNIBUS CONDUCTOR'S LICENSE.

A curious action was heard in the Marylebone County Court on October 21, when an omnibus conductor named Macdonald sued the London General Omnibus Company for damages for making an illegal indorsement on his license. At the time of the recent omnibus strike the defendants advertised widely for relief men, and the plaintiff and about 300 others applied at one of the yards. They were told they would all be engaged, and would be given jobs in the order of their application. Their licenses were required from them, and the plaintiff gave his up to the manager, but after waiting ten days, and no work being given to him, he applied for his license back again. When he received it it had an indorsement to the effect that he had been ten days in the service of the company. He maintained that he was never in the service of the company, and he received no wages; but the defendants refused to alter the indorsement. The result was that he had since been unable to obtain employment, because an omnibus proprietor did not care to take on a man who had been in the service of a rival. This, it was stated on behalf of the plaintiff, was a general custom. The defendants denied any liability. They said they considered that the man had been in their employ, and consequently indorsed the license, as they were compelled to do by the Act of Parliament.—Judge Stonor said there could be no question that the defendants had acted illegally in indorsing the license, because the man clearly never was in their employ. It would, however, be very difficult for the plaintiff to prove recoverable damage, and he suggested that the plaintiff should obtain another license.—Mr. Baker said this could not be done, and the plaintiff could not get away from the effects of the indorsement.—The judge said he would give the plaintiff nominal damages (40*s*.), and would make certain representations with a view to get a new license for the man.—Mr. Baker for the plaintiff; Mr. Washington for the defendants.

## POLICE.

### MARGARINE.

The Danish Government brought an important case before the Hull stipendiary, on October 21, against a vendor of margarine, named Backwell, who had affixed a false trade description to a quantity of margarine he had sold. He had labelled it 'Danish,' well knowing it to be Dutch margarine. Mr. Faber, of Kent, the recently appointed agricultural commissioner of the Danish Government, resident in England, said it was his duty to protect the interests of Danish agriculturists, and to see that adulterated margarine was not sold as Danish butter. His Government had instructed him to that effect. Denmark did not export margarine on account of the colour. The law of Denmark was that margarine should be nearly white, in order to distinguish it from butter. It was unsalable in this country because of that fact. Defendant had during the last four months used the word 'Danish.' His Government did not press for the full punishment, which was four months' imprisonment, without the option of a fine, for the first offence. They would be satisfied with a nominal penalty. Defendant was fined 20*s*. and costs, with an instruction to strike 'Danish' from his labels.

## WHAT ARE LAW REPORTS?

As the minds of a good many barristers, and not a few judges, do not appear to be quite clear as to what constitutes a law report, it might not be out of place to consider what are entitled to be called such, and to be cited as such before a Court of law. As a matter of fact even in England there exists no set of reports which is entitled to be called 'official.' The nearest to it is a series of reports issued by the Incorporated Council of Law Reporting for England and Wales, but this cannot be called official in the true meaning of the term. A compromise is sometimes effected by calling them the 'authorised' reports, though it is not easy to see why they should be so called any more than 'official.' Wharton, in his 'Law Lexicon,' states that prior to 1865 law reports were all published as mere private speculations, and the best series of these, and that which retains a prestige far above all others, whether 'authorised' or 'official' or anything else, is yet known as the Law Journal Reports, dating away back to 1823. The 'Weekly Reporter' was first published in 1852, 'as a portion of, and in conjunction with, the *Legal Examiner*.'

The fine reports published as 'The Jurist' by the legal journal of that name cover the period between the years

1837-66. The *Law Times* began its series in 1843. The 'Irish Law Times Reports' are now in their twenty-fifth volume.

It will thus be seen that the best reports, and those of any antiquity yet in existence, are those published in connection with the various legal journals. Whenever these or any others are published by a barrister they are entitled to be received and cited as the findings of the Court by which the decision is given. In the words of Lord Westbury, 'As soon as a report of any case is published with the name of a barrister attached to it, the report is accredited, and may be cited as an authority before any tribunal,' and that learned Lord Chancellor effectually administered a rebuke to a bumptious judge who refused to act on the authority of a case cited from 'The Jurist' when he said, referring to this class of reports, 'It is of such materials that the law of England is made up, and I would be denying myself much valuable assistance in ascertaining what the law is, if I were to refuse to receive the citation of cases reported by barristers in these useful publications.'—*Western Law Times* (Canada).

## ARRANGEMENTS FOR QUEEN'S BENCH CHAMBERS.

*Michaelmas Sittings*, 1891.

A to F.

All applications by summons or otherwise in actions assigned to Master Kaye are to be made returnable before him in his own Room, No. 181, at 11.30 A.M., on Mondays, Wednesdays, and Fridays.

G to N.

All applications by summons or otherwise in actions assigned to Master Walton are to be made returnable before him in his own Room, No. 175, at 11.30 A.M., on Mondays, Wednesdays, and Fridays.

O to Z.

All applications by summons or otherwise in actions assigned to Master Archibald are to be made returnable before the masters in chambers in this division up to November 30, and after that date in his own Room, No. 109, at 11.30 A.M., on Tuesdays, Thursdays, and Saturdays.

The parties are to meet in the anteroom of Masters' Chambers, and the summonses will be inserted in the printed list for the day after the summonses to be heard before the master sitting in chambers, and will be called over by the attendant on the respective rooms for a first and second time at 11.30, and will be dealt with by the master in the same manner as if they were returnable at chambers.

BY ORDER OF THE MASTERS.

### MASTERS IN CHAMBERS.

A to F.

Mondays, Wednesdays, and Fridays: Master Johnson. Tuesdays, Thursdays, and Saturdays: Master Pollock.

G to N.

Mondays, Wednesdays, and Fridays: Master Macdonell. Tuesdays, Thursdays, and Saturdays: Master Butler.

O to Z.

Mondays, Wednesdays, and Fridays: Master Wilberforce. Tuesdays, Thursdays, and Saturdays: Master Manley Smith.

## OBITUARY.

THE death took place on Thursday, October 15, of Mr. GILBERT ARTHUR À BECKETT, eldest son of the late Gilbert Abbott à Beckett, who was well known early in the century as a metropolitan police-magistrate and for his contributions to literature. He was born in London in 1837, and was educated at Westminster School, where he took the prize for English verse at an exceptionally early age. Having gained a studentship to Christ Church he proceeded to Oxford in the same term with Dr. Liddell, his old head-master, who had been appointed dean of the college. Mr. à Beckett took his degree in 1857, and was entered at Lincoln's Inn, but never took any steps to be called to the bar. Shortly after leaving the university he accepted a clerkship in the Treasury, which he held for some years, until his literary work claimed his undivided attention. Mr. à Beckett was the author of a number of pieces written for nearly every prominent London theatre. His latest works were the librettos constructed from his own original scenarios for 'The Canterbury Pilgrims' and 'Savanarola' (Dr. Villiers Stanford's operas), and many graceful lyrics now being sung at the Lyric Theatre and elsewhere. He was joint author with Mr. Herman Merivale of one of the most poetical dramas of modern days, 'The White Pilgrim.' For the last twelve years he has been one of the principal contributors to *Punch*; and his portrait appeared in Mr. Sambourne's admirable picture, 'Round the Mahogany Table,' in the jubilee number of that periodical published in July last. He was an accomplished musician (many graceful ballads having been composed by him under a *nom de plume*) as well as an amateur artist. For many years he had been in most delicate health, but he had borne the infliction with cheerfulness.

MR. GEORGE MERCER, solicitor, of Deal, committed suicide on the 15th inst. by shooting himself while lying in bed. Mr. Mercer was admitted in Hilary, 1840. He was a notary public, a perpetual commissioner, a commissioner for oaths, coroner, clerk to the borough justices, clerk to the justices for the division of Deal, clerk to the justices of the Cinque Ports, registrar to the Commissioners of Salvage, clerk to the Walmer Local Board, and town clerk. Mr. Mercer, who was seventy-three years of age, was one of the oldest and best known solicitors in Kent. He held the office of town clerk of Deal for fifty-one years. For some time he had been reduced to a state of melancholia through anxiety about his business, and his condition was the cause of great concern to his friends and relations; but although he was closely watched he committed suicide as above stated, two bullet wounds being found, one through the region of the heart and one through the forehead. The revolver, which was found by his side, was a new one. A verdict of suicide while temporarily insane was returned.

MR. RICHARD MONTAGU PRESTON, solicitor, of Chester and Liverpool, died on the 1st inst. from a rupture of a blood vessel on the brain. Mr. Preston was admitted in Easter, 1854. He was district registrar of the High Court and registrar of the Chester County Court. He was solicitor to the London and North-Western Railway Company for the Chester and Holyhead line.

COMMERCIAL FAILURES.—According to *Kemp's Mercantile Gazette*, the number of failures in England and Wales gazetted during the week ending October 17 was eighty-five. The number in the corresponding week of last year was seventy-six, showing an increase of nine, being a net increase in 1891 to date of fifty-eight.

# CAUSE LIST.

## SUPREME COURT OF JUDICATURE.

*Michaelmas Sittings*, 1891.

### THE COURT OF APPEAL.

*Appeal Court I.—Notices.*

N.B.—Queen's Bench Interlocutory Appeals will be taken in Court I. on Monday, October 26, and afterwards on every Monday in Michaelmas Sittings.

N.B.—Subject to Interlocutory Appeals on Mondays and Bankruptcy Appeals on Fridays, and also subject to the New Trial Paper, Queen's Bench Final Appeals will be taken every day during the Sittings until further notice. The New Trial Paper will probably be taken in alternate weeks as heretofore, notice of which will be given in the Daily Cause List.

N.B.—Admiralty Appeals (with Assessors) will be taken in Court I. on days specially appointed by the Court, notice of which will appear on the Daily Cause List.

*Appeal Court II.—Notices.*

N.B.—Interlocutory Appeals from the Chancery and Probate and Divorce Divisions will be taken in Court II. on Monday, October 26, and afterwards on every Wednesday in Michaelmas Sittings.

N.B.—Subject to Chancery Interlocutory Appeals on Wednesdays, Chancery Final Appeals will be taken every day in Court II. until further notice.

Appeals from the Lancaster Palatine Court (if any) will be taken in Court II. on Thursday, October 29, on Thursday, November 5, and on Thursday, December 3; see Notice at end of List of Palatine Appeals.

Lunacy matters will be taken in Court II. on every Monday, at 11, until further notice.

### APPEALS FOR HEARING.

(SET DOWN TO THURSDAY, OCTOBER 15, INCLUSIVE.)

*From the Chancery and Probate and Divorce Divisions.*

FOR HEARING.

*Final List.*

1891.

London, Chatham, and Dover Railway Co. *v.* South-Eastern Railway Co.
In re Samuel Hurst, dec.
Addison *v.* Topp
Wenham Co. (Lim.) *v.* Champion Gas Lamp Co.
Nuttall *v.* Hargreaves
James *v.* Smith
Greenwood *v.* Sutcliffe
In re H. J. Sartoris, dec.
Sartoris *v.* Sartoris
In re Queensland Mercantile and Agency Co. (Lim.) & Co.'s Acts
Holland *v.* Skidmore
Rugby Portland Cement Co. *v.* Rugby and Newbould Cement Co. (Lim.)
In re Radcliffe, dec.
Radcliffe *v.* Bewes
Pirie & Sons (Lim.) *v.* Goodall & Sons
In re Pirie's Trade-mark No. 43,549, and Patent, &c. Act, 1883
Automatic Weighing Machine Co. *v.* National Exhibitions Associations (Lim.)
In re James Casey (part proprietor of Patents Nos. 10,511 and 10,513 granted to Stewart & Charlton) ex parte Stewart and another (exors. of Stewart (dec.) and Charlton)
Stewart *v.* Casey
De Francesco *v.* Barnum
In re Devonshire Silkstone Coal Co. (Lim.) & Co.'s Acts, ex parte Jonathan Blomely
Phillips *v.* Homfray
Fothergill *v.* Collins
In re J. Capstick, dec.
Capstick *v.* Simmonds
Levy *v.* Wurtmann
In re Park's Estate
Cole *v.* Park
Park *v.* Cole
Mills *v.* Lumb
Adams *v.* Adams
Same *v.* Same
Squire *v.* Pardoe
McDonald, otherwise Churcher, petitioner *v.* McDonald, respondent
Jones *v.* Merioneth Permanent Benefit Building Society
Same Society *v.* Jones
In re North Australian Territory Co. (Lim.) and Co.'s Acts
In re Wyatt, dec.
White *v.* Ellis
People's Co-operative Permanent Building Society *v.* Shaw
Godfrey *v.* Walker
In re Bell Bros. (Lim.) and Co.'s Acts
McClatchie *v.* Haslam
In re Northage, dec.
Ellis *v.* Barfield
In re Rev. J. T. Darby's Estate
How *v.* Draper
In re A. G. Sharpe, dec.
In re H. A. Bennett, dec.
Masonic and General Life Assurance Co. *v.* Sharpe
Nundy *v.* Seal
Stavert *v.* Passburg Grains Syndicate (Lim.)
In re Vendors and Purchasers Act, 1874
Leppington *v.* Freeman
Clifford *v.* Wilmot
Daw *v.* Herring
In re Ailesbury Settled Estates in the Counties of Wilts and Berks and Settled Land Acts, 1882-1890
Alcock *v.* Smith
In re Bechuanaland Co. (Lim.) & Co.'s Acts
In re Edward Ward's Settled Estates and Settled Estates Act, 1887
Stickney *v.* Holmes
London, Chatham and Dover Railway Co. *v.* South-Eastern Railway Co.
Haymen *v.* Cooper

*From the County Palatine Court of Lancaster.*

INTERLOCUTORY LIST.

1891.

Gittens *v.* Roberts

FINAL LIST.

1891.

Failworth, Moston, Woodhouse & District Bill Posting Co. (Lim.) *v.* Travis
Rayner *v.* Hood
Dobson *v.* Proprietors of Leeds and Liverpool Canal Navigation
In re J. Hunt's Will Trusts
In re Boulinikon Floor Cloth and Manufacturing Co. (Lim.) and Co.'s Acts
In re W. Crookell, dec. ex parte A. Crookell and others
In re Wm. Townson, dec. ex parte Jane Townson

*From the Chancery, Probate, and Divorce Divisions.*

INTERLOCUTORY LIST.

1891.

Steele *v.* Savory
Ellen S. White *v.* Wm. Woodhead and others (Olivia Quarrington and another, parties cited)
In re Wilkinson, dec.
Wilkinson *v.* Baird
Midwinter, petitioner *v.* Midwinter, respondent (S. A. Edwards, co-respondent)
Goodden *v.* Goodden
Johnstone *v.* Von Heidenstam
Abdy *v.* Abdy
Quorn Ranche Co. (Lim.) *v.* Martin
Towers *v.* Monk
Hepworth *v.* Hepworth
Guanta Railways, Harbour, and Coal Trust Co. (Lim.) *v.* La Société Française des Houillères du Nevers and others
Mona Hotel (Lim.) *v.* Page

*From the Queen's Bench and Admiralty Divisions.*

FOR HEARING.

*Final List.*

1890.

Rogers, Sons & Co. *v.* Lambert & Co.

1891.

Bound *v.* Lawrence (Q. B. Crown Side)
Bolling and another *v.* H. Birdseye & Co.
Loader *v.* London and India Docks Joint Committee (Q. B. Crown Side)
Blackburn *v.* Blackburn
West Ham Guardians of the Poor, Essex *v.* Barton-upon-Irwell (Lancashire) Guardians of Poor (Q. B. Crown Side)
Moir *v.* Williams (Q. B. Crown Side)
Tottenham (administratrix, &c.) *v.* New Guston Co. (Lim.)
Plumbly *v.* Shotborg
Metropolitan Railway Co. *v.* Fowler and others
Baumwell Manufactur Von Carl Scheibler *v.* R. L. Gilchrist & Co.
Hampton & Sons *v.* London Electric Supply Corporation (Lim.)
Jones *v.* Grierson
Law *v.* Local Board for the District of Redditch
Bird and others *v.* Jubber
Stumore *v.* Campbell and others
Whiffen and another *v.* Licensing Justices of Malling, Kent (Q. B. Crown Side)
Dickinson and another *v.* Fanshaw and another
Davies and others *v.* Chadwick and another
Green *v.* Briggs
Cross and others *v.* Fisher and others
Same *v.* Same
Same *v.* Same
Same *v.* Same
Same *v.* Same
Same *v.* Same
Same *v.* Same
Pritchard *v.* Humphreys
Dobbs *v.* Brain and another
Gates *v.* Cannon
Gates *v.* Cannon and Gaze
Bailey & Son *v.* Hart and another
Green *v.* Marsh and others
Same *v.* Same
Dinn *v.* Grover
Cross *v.* Morrison
Bircham *v.* Wade
W. W. Hughes & Co. *v.* Leigh and another
Morton *v.* Grosvenor and another
Campbell & Co. *v.* Brass
In re an Arbitration between Metropolitan Railway Co. and Metropolitan District Railway Co.
Dawes *v.* Thomas and others
Lafone *v.* Ronaldson & Co.
W. H. Turner *v.* Mersey Docks and Harbour Board
Stamford, Spalding and Boston Banking Co. (Lim.) *v.* Smith
Beaman *v.* Lawrence and another

Longman & Co. *v.* Hill
Edlestone *v.* Siddall
Lewis *v.* Bevan
Birmingham Canal Navigation Proprietors *v.* Hickman (Q. B. Crown Side)
Heighway and another *v.* Kirk and Randall
Edinburgh Ballarat Gold Quartz Mine (Lim.) *v.* Sydney
Ungar (trading, &c.) *v.* Sugg and others
In re an Application of Pickering Phipps and others (executors and trustees of Pickering Phipps, dec.) against London and North-Western Railway Co. and Great Northern Railway Co.
In re an Application of Pickering Phipps and others (executors and trustees of Pickering Phipps, dec.) against London and North-Western Railway Co., Great Northern Railway Co., and Manchester, Sheffield, and Lincolnshire Railway Co.
In re an Application of Pickering Phipps and others (executors and trustees of Pickering Phipps, dec.) against London and North-Western Railway Co.
Winstanley *v.* Smith
How *v.* London and North-Western Railway Co. (Q.B. *Crown Side*)
Ringrow *v.* Rogers
Cay *v.* Farnworth
Williams *v.* London and North-Western Railway Co.
Durham and Northumberland Working Men's Permanent Building Society (incorporated) *v.* Davidson
In re Duty upon Botham Ward, Strays, Yorks
Commissioners of Inland Revenue *v.* Scott and others, pasture masters (Q.B. Revenue Side)
Same *v.* Same
Pocock *v.* Richardson
Furness *v.* Tennant & Co.
Moore & Co. *v.* Reid and another
Pinhorn *v.* Dixon & Cardus (Lim.)
Devenish *v.* Waters (sued, &c.) and another
Edwards *v.* Williams
Wainwright and another *v.* Edgell
Keatch and others *v.* Squire
Briggs *v.* Pike
Same *v.* Same
Wilkinson *v.* Houghton Main Colliery Co.
Taylor, Sons & Co. *v.* Smith
In re Beyfus & Beyfus and Brown *v.* Perkins
Cleaver and others *v.* Mutual Reserve Fund Life Association
Bird *v.* Barstow
Garcia *v.* Avis Bros.
Imperial Tobacco Corporation of Persia (Lim.) *v.* Lees
Golden *v.* Darlow

### SUMMARY OF APPEALS.

| | Final | Interlocutory | Total |
|---|---|---|---|
| From the Chancery Division | 45 | 12 | 57 |
| From County Palatine Court of Lancaster | 7 | 1 | 8 |
| From the Queen's Bench Division | 64 | 10 | 74 |
| From the Probate, Divorce, and Admiralty Division, Admiralty with Assessors | 3 | — | 3 |
| From the Queen's Bench Division sitting in Bankruptcy | 6 | — | 6 |
| New Trial Paper | 10 | — | 10 |
| Totals | 135 | 23 | 158 |

## HIGH COURT OF JUSTICE.

## CHANCERY DIVISION.

*Michaelmas Sittings*, 1891.

### CAUSES FOR TRIAL OR HEARING.

(*Set down to Thursday, October* 15, *inclusive.*)

Motions, Petitions, and Short Causes will be taken on the usual days, as stated in the Michaelmas Sittings Paper.

Mr. Justice CHITTY will take Witness Actions on the following days—viz. November 10, 11, 12, 17, 18, 19, 24, 25, 26. In the weeks when Non-Witness Actions are taken Further Considerations will be taken on Tuesdays. In the weeks when Witness Actions are taken, Further Considerations will not be taken on Tuesdays, but may be taken on Saturdays.

Mr. Justice NORTH will commence taking Witness Actions on days to be appointed by His Lordship after the commencement of the Sittings.

Mr. Justice STIRLING will commence taking Witness Actions on days to be appointed by His Lordship after the commencement of the Sittings.

Mr. Justice KEKEWICH will commence taking Witness Actions on days to be appointed by His Lordship after the commencement of the Sittings. His Lordship will take Liverpool and Manchester Business as follows: Motions on days appointed for Motions, Short Causes, Petitions and Adjourned Summonses on Saturdays. Summonses in Chambers on Friday afternoons. Liverpool and Manchester Summonses will be taken on alternate Fridays, commencing with Manchester Summonses on Friday, October 30.

Mr. Justice ROMER will take Witness Actions every day in the order as they stand in the Cause Book. A recent Transfer of Causes, dated August 22, has been made to Mr. Justice Romer, a List of which will be found added to His Lordship's List in order of date of setting down for Trial.

Summonses before the Judge in Chambers: Justices CHITTY, NORTH, STIRLING and KEKEWICH will sit in Court the whole day on every Monday during the Sittings to hear Chamber Summonses.

Summonses Adjourned into Court will be taken as follows: Mr Justice CHITTY, with Non-Witness Actions, except Procedure Summonses, which (if any) are taken every Saturday; Mr. Justice STIRLING, with Non-Witness Actions. Justices NORTH and KEKEWICH on Fridays and Saturdays.

N.B.—The above note as to Chamber and Adjourned Summonses is subject to alteration as their Lordships may direct.

### BEFORE MR. JUSTICE CHITTY.

*Causes for Trial (with Witnesses).*

Western Wagon and Property Co. (Lim.) *v.* West
In re Baroness Craignish, dec.
Craignish *v.* Hewitt
Nichols *v.* Lewis & Co.
Boursot *v.* Boursot
Midland Railway Co. *v.* Metropolitan Railway Co.
Hubbard *v.* Elverston
Defence Vessel Construction Co. (Lim.) *v.* Scott
Montagu *v.* Burton
In re Whitchurch, dec.
Cotton *v.* Prowse
Skelton *v.* Schwabe
Lindsay *v.* Curtis
Warren *v.* Central Permanent Building Society

### *From the Queen's Bench Division.*

NEW TRIAL PAPER.

1891.

Shrapnel *v.* Brighton Solvo Laundries (Lim.)
Jenkins *v.* Bushby
Tognarelli *v.* Warburton
Edge *v.* Johnson
Hedley (administratrix) *v.* Pinkney & Sons' Steamship Co. (Lim.)
Rogers *v.* James
William Radams Microbe Killer Co. (Lim.) *v.* Leathers
Woodall *v.* Nuttall
Ferrand *v.* Bingley Township District Local Board
Fletcher *v.* London and North-Western Railway Co.

### *From Probate, Divorce, and Admiralty Division (Admiralty).*

FOR HEARING.

(*With Nautical Assessors.*)

1891.

Glamorganshire Steamship Co. (Lim.) *v.* Owners of Steamship P. Caland and Freight
Owners of Steamship Meggie *v.* Owners of Steamship Albano
R. B. Ballantyne and others *v.* E. R. Dixon and others, Owners of Steamship Waldridge

### *From the Queen's Bench Division, sitting in Bankruptcy.*

1891.

In re Wm. Allison, ex parte Lepard & Smiths
In re J. R. Rowbotham & Co. ex parte London and Suburban Bank (Lim.)
In re Jameson and another, ex parte Bullock, Lade & Co.
In re W. & J. Fraser, ex parte Debtors
In re Allan M'Innes, ex parte Bumstead & Co.
In re Nicholas B. Downing, ex parte Jno. Mardon

### *From the Queen's Bench and Admiralty Divisions.*

INTERLOCUTORY LIST.

1890.

Giffard *v.* Mayor, &c. of Wolverhampton

1891.

Regina *v.* Marsham (Metropolitan Police Magistrate—Q.B. Crown Side)
Regina *v.* A. H. Rourke (Q.B. Crown Side)
James *v.* Link

Bonham (married woman) v. Ellis
In re Earl of Caithness, dec.
Buchanan v. Sinclair
Burra v. Phillips
Nickalls v. Phillips
Watson v. Hawthorn
Bolanachi v. Zirzinia
Stephens v. M'Kellar
Yeoman v. Robinson
De la Mare v. Mayor, &c. of West Ham, Essex
Smith v. Rowbotham
Rowbotham v. Smith
Hill & Paddon v. Fuller
Bailey v. Fuller
Fuller v. Hill & Paddon
Same v. Bailey
Marquis of Aylesbury v. Darling
In re E. J. Smart, an infant, ex parte Stoner
Same, ex parte Gregory
Dibb v. Walker
Hollington v. Dear
Davis v. Acton Conservative Club (Lim.)
Same v. Same
In re R. O. Perkins, dec.
Perkins v. Hillier
Hillier v. Perkins
Braund v. Brown, Janson & Co.
Butt v. Same
T. P. Smith v. M. Smith
Richmond Main Sewerage Board v. Dickinson
Meader v. West Cowes Local Board
Scott v. Davies
Farrow v. York City and County Banking Co. (Lim.)
Edwards v. Shearman
Bevan v. Lewis
Henwood v. Goodwin
In re Castle, dec.
Castle v. Castle
In re Croxton, dec.
Devenish v. Bradshawe
New Venture Witwatersrandt Gold Mining Co. (Lim.) v. Hartmont
Insole v. Coed Cae Coal Co. (Lim.)
Douglas v. Callender
Freter v. Metropolitan Electric Supply Co, (Lim.)
Wilson v. Dudency
Champney v. Tayler
Osborne v. Aaron Reefs (Lim.)
Howell v. Maclean
Betjemann v. Yale Lock Co.
Walker v. Walker
Jessop v. Bambridge
Longman v. Davis
Porter v. Snell

*Causes for Trial (without Witnesses).*

Salmon v. Cheswright
In re Patani Concessions (Lim). (ex parte Liquidator)
In re Sarah Grimshaw's Estates
Barnard v. Yewdall (ex parte surviving Executor and Trustee)
In re Bifron's Estate, Barking, Essex, No. 3,474, Land Registry and the Land Transfer Act, 25 & 26 Vict. c. 53
In re Craven's Trusts
Craven v. Close
In re Cosens's Marriage Settlement Trusts
Cosens v. Cosens
Philips v. Low
Attorney-General v. Pinckard
Sawyer v. Bland
In re Anthony S. Allen, a Solicitor (ex parte J. H. B. Lutley)
In re W. P. Murche, dec.
Murche v. Murche
Attorney-General v. Hughes
Tyler v. Tyler
In re F. Foster, dec.
Foster v. Foster
In re J. T. Morgan, dec.
Ashmole v. Morgan
In re Colchester Tramways Co. (ex parte C. Chambers)
In re Moss Bay Hematite Iron and Steel Co. (Lim.)
In re Same
Pierce v. Southorn
In re W. J. Barrow & Sons (Lim.) (ex parte Official Liquidator)
In re G. Verner's Estate
Verner v. Chamberlain
In re Moorhouse, dec.
Moorhouse v. Moorhouse
Owen v. Woolryoh
In re Lord Magheramorne's Estate
Magheramorne v. Hogg
In re W. H. R. Bettesworth, dec.
Trevanion v. Attorney-General
Pink v. Pink
In re W. J. Foster, dec.
Esteen v. Foster
In re A. L. Medley's Estate
Medley v. Owen
In re Thos. Hinscliff, dec.
Nelson v. Leather (Order 55)
In re E. Donnithorne's Estate
Wilde v. Donnithorne
In re Jno. Richerson, dec.
Scales v. Heyhoe
In re H. Turner's Estate
Greenway v. Turner
In re Elizabeth Emerson's Estate
Emerson v. Emerson
Hopkins v. Hustler
Talbot v. Talbot
In re Duke of Marlborough's Settled Estates (ex parte Duke of Marlborough)
In re C. Thompson's Estate
Welman v. Ecclesiastical Commissioners for England
In re Robert Coulson's Estate
Jackson v. Hamerton
In re Jas. Compton, dec.
Lawes v. Compton
In re Oriental Corporation (ex parte Assets Realisation Co.
In re Wm. Bett's Settlement
Cheswright v. Campbell
In re Henry Lay's Estate
Edgell v. Gower
In re Wm. Watson & Sons (Lim.) E. G. Watson's Case
In re T. A. Rushbrooke's Estate
Rushbrooke v. Rushbrooke
In re Jno. Buckley's Estate
Palmer v. Jones
In re Earl of Devon's Settled Estates
White v. Earl of Devon (ex parte Incumbent of Settled Estates)
Ward v. Royal Exchange Shipping Co. (ex parte Lancaster, Spier & Co.)
In re Duke of Marlborough's Settlement and Settled Land Act (ex parte Tenant-for-life)
In re J. Rigby's Settled Trusts
In re J. Rigby's Estate
Stokes v. Butler (ex parte Surviving Trustees)
J. P. Fitzgerald's Trustee v. Mellersh
In re J. Fetherstonaugh's Estate
Stephenson v. Isaac (ex parte Plaintiff to Change Investment)
In re Ingram's Trust
Ingram v. Ingram (Order 55)
In re Ingram's Trusts
Williams v. Ingram (Order 55)
In re W. J. Kirk, dec.
Kirk v. Kirk (Order 55)
In re Jas. Michael, dec.
Michael v. Batchelor (Order 55)
In re R. Rumsey's Settlement Trusts
Peregrine v. Rumsey
In re Edward Cleary's Estate
Cleary v. M'Kean
Ward v. Ward
In re Wm. Hudson's Settled Estates and Settled Land Act Leasing Powers (ex parte Hudson and others)
In re J. C. Stillwell's Estate
Urquhart v. Haskins
In re Indenture executed by Dominie Navone
Navone v. Devey (Order 55)
In re Wm. Maude
Moorsom v. Moorsom (Order 55)
In re R. Webb's Settlement Trusts
Dickinson v. Wood (Order 55)
In re Moseley
Harrison v. Moseley
In re P. R. Eyton's Estate
Bartlett v. Charles

*Further Considerations.*

In re W. Evans, dec.
Evans v. Evans
In re Edward Smith, dec.
Loughran v. Smith
In re Goodwin, dec.
Goodwin v. Large
Webb v. Feast
Hancock v. Rainham Portland Cement Co. (Lim.)
In re Woodroffe
Clarke v. Woodroffe
In re Wm. Townson, dec.
Sly v. Townson

## Before Mr. Justice North.

*Causes for Trial (with Witnesses).*

Bentinck v. London Joint Stock Bank (Lim.)
Bright v. Eckersley
Parnell v. Halkett
Halkett v. Parnell
In re Lee
Lee v. Dickinson
Dance v. Hope
Coxon v. Schofield
Laybourn v. Gridley
Mara v. Brown
Morris v. Speyer
Speyer v. Morris
Procter v. Cheshire County Council
Neale v. Hickling
Winch v. Jones
Sheldon v. Mellen
Chubb v. Cincinnati Breweries (Lim.)
Tindall v. Castle
Finch v. Quebrada Railway, Land, &c. Co. (Lim.)
In re Hardcastle
Blackwell v. Hardcastle
Pratt v. Pratt
In re Champion
Dudley v. Champion
Baker v. Hewitt
In re Felton
Felton v. Anslow
In re Ford
Baker v. Mayo
Wallis v. Bell
Volckman v. Waring
In re Frewen
Hall v. Frewen
Ponsonby v. Sheldon
Kell v. Armitage
Lacon v. Sadd
Eyre v. Rodgers
Keeley v. Campbell
Shrewsbury and Talbot Cab, &c. Co. v. Neale
Aplin v. Willey
Batt & Co. v. Hogarzell
Smith v. Tailer
Smith v. Davis
Blake v. Solomon
Baker v. Williams
Quick and Son v. Standard Contract and Debenture Corporation (Lim.)
George v. Inston
Harrison v. Freeth, Rawson and Cartwright
Ellis v. Hills
In re Webster
Webster v. Webster
In re Bateson
Yoxall v. Simpson
Birmingham Trust (Lim.) v. Imperial Tobacco, &c. (Lim.)
Bass, Ratcliff, &c. (Lim.) v. Chandler & Co. (Lim.)
Turrell v. Brown
Hepburn v. Wigan
Hastuck v. Clayton
Same v. Trees
Same v. Henderson
Eliot v. Mayor, &c. of Bristol
Crowden v. Furse and Simmonds
Evans v. Jones
In re Co. of Financiers (Lim.) and Co.'s Acts
Vipont v. Butler
Hopcraft v. Bellite Explosive (Lim.)
Roper v. Foord
Parker v. Dale
Local Board of Hanwell, Middlesex v. Weirham
In re Clarke
Harding v. Clarke
Freeman v. Greig
British Electric Light Co. v. Woodhouse, &c. Co. (Lim.)
Brogden and Sons (Lim.) v. Lancaster Banking Co.
Bromilow v. Phillips
Lord Ashburton v. Worthington
Godden v. Holdoway
Qnorn Ranche Co. (Lim.) v. Martin
Same Co. v. Same
Municipal, &c. Building Society v. Grant
In re Scovell
Scovell v. Scovell
Bickford v. Bickford

*Causes for Trial (without Witnesses).*

Earl Aylesford v. Earl Poulett
In re Sykes
Deane v. Duffield
Yardley v. Peele
Lord Kilworth v. Earl of Mountcashell
Partridge v. Mason
In re Lott
Lott v. Lott
In re Ithell
Jones v. Ithell
Baker-Baker v. Baker Foster
Cumberland Union Banking Co. (Lim.) v. Maryport, &c. Co. (Lim.)
Gales v. Sharp
In re Taylor
In re Prior
Short v. Lee
In re Wooler
Wooler v. Wooler
Willoughby Osborne v. Clarke

*Adjourned Summonses.*

In re Cartwright
Cartwright v. Cartwright
In re Landed Estates Agency (Lim.) and Co.'s Acts
In re Champion
Champion v. Champion
In re Warner
Warner v. Young
In re J. D. Sympson, dec.
Sympson v. Hamlin
In re Cross
Page v. Hancock
In re Varley
Varley v. Varley
In re Ferrand
Hopkinson v. Thompson
In re Murray
Murray v. Murray
Birmingham Trust (Lim.) v. Imperial Tobacco Corporation of Persia (Lim.)
In re Upperton
In re Kingston-upon-Hull and Bailey and the Vendor and Purchaser Act, 1874
In re Baker
Ruddock v. Baker
Cockaholt v. Doré Gallery (Lim.)
Law Debenture Corporation (Lim.) v. Doré Gallery (Lim.)
In re Doré Gallery (Lim.) and Co.'s Acts
Eyre v. Rodgers
In re Bradley
Phelan v. Marsh
In re Fearenside
Maxsted v. Fearenside
In re H. P. Becher, one, &c.
In re Southwell
Osborne v. Southwell
Brewers' Investment Corporation (Lim.) v. Rowlands
In re Tower
Bircham v. Goulburn
In re Standard Portland Cement Co. (Lim.) and Co.'s Acts
In re Patrick
Bills v. Tatham
In re Walker
Inglis v. Walker
In re Swift
Barnes v. Cory Bros. & Co. (Lim.)

*Further Considerations.*

Carr v. Carr
Chillingworth v. Chambers
In re Richardson
Read v. Mitchell
In re Adams
Hobson v. Kingdom
Adams v. Whitaker

## Before Mr. Justice Stirling.

*Causes for Trial (with Witnesses).*

In re J. Davis
Joseph v. Davis
In re Hansford
Hansford v. Coombe
Coombe v. J. Jones & Son
In re Wells
Molony v. Brooke
In re Cunningham
Cunningham v. Todd
Crowder v. Cooper
Same v. Same
Jackson v. Snell
Lampard v. St. George's House (Lim.)
In re Bowman
Bowman v. Bowman
Field v. Nichols
Bailey v. Barnes
Bosler v. Brodhurst
Trimble v. Wake
Cannon v. Vickers
In re Gas Lighting Improvement Co. (Lim.)
In re Linton
Linton v. Reed
Lilley v. Elliam
Rough v. MacIvor's Patents (Lim.)
Woodman v. Knowles
Beckett & Co. v. Wake
Trimble v. Beckett & Co.
Wilkinson v. Swedish, &c. Railway Co.
Johnson & Co. v. Edge
International Cable Co. (Lim.) v. Suren, Hartman & Co.
Allen v. Banks
Rickard v. Hopkins
Judge v. Cole
In re Tilney
Richardson v. Rhodes
Dear v. Dear
North v. Medley
C. Dickens & Evans v. Battle
White v. Baillie
In re Collins
Collins v. Nobes
Dennis v. General Gordon Building Society
Edison United Phonograph Co. v. London Stereoscopic, &c. Co.
Hibbert v. Cosh & Co.
Compton v. Compton
Brown v. Gray
Tadman v. Needes
Swinden v. Miller
Glasbrook v. Richard
Hitchcock v. Stretton
In re Jack
Jack v. Cox
Hibbert v. Cosh & Co.
Brewery, &c. Co. (Lim.) v. Tune
Hay v. Hodgson
Caproni v. Alberti
Hudson v. Williams
Allen v. Ashby
Borrer v. Steel
Attorney-General v. London and Hampshire Canal, &c. Co.
Winfield v. Osler
Ross v. Spender
Spender v. Ross
Eley v. Dale
In re Pratt
Driver v. Ede
Farbenfabriken, &c. v. Dawson
Lawlor v. Howden
In re Liberian Government Concessions, &c. Co. and Co.'s Acts
Atwell v. Vanner
Eades v. Society of Licensed Victuallers
Samson v. Kinsman
Foster v. Thompson
M'Carthy v. Lennox
Robinson v. Concessions Trust (Lim.)
Boycott v. Boycott
Reveliere v. Gateley
Wells v. Isaacs
Same v. Emanuel
Oldland v. Crockford
Reckitt & Sons (Lim.) v. Edge
Parkhouse v. Blaiberg
Schmidt v. Hearn
Marshall v. Bradley
Osman v. Maggs
In re Tatham
Bensusade v. Hastings
Watson v. Watson
Snyder Dynamite Projectile Co. (Lim.) v. Drew
Same v. Clulow
Reversionary Investment Society (Lim.) v. Churcher
Edwards v. Immings
Hurlbutt v. Bath & Son
Same v. Sanz
Turner v. Roe
Summers v. Turner
Evans v. Gill & Blackburne
In re Broad
Broad v. Ingoldby
In re Mustapha
Mustapha v. Wedlake
Steel v. Wood & Co.
Womesley v. Hoyle
Newson v. Sheppard
Ingram v. Dodds
Charlton v. Beund
Edison, &c. Co. v. Hamilton and another
Whitehouse v. Gilpin & Co. (Lim.)

*Points of Law.*

Landon v. Goodban
Allen v. Longstaffe

*Causes for Trial without Witnesses and Adjourned Summonses.*

In re London, Windsor, and Greenwich Hotel Co. (Lim.)
Jones v. Williams
In re Cardiff Savings Bank and Co.'s Act, 1862, &c.
In re Knowles
Knowles v. Knowles
In re Lanning's Trusts
Lanning v. Hewson
In re Earl of Stamford
Payne v. Stamford
In re Sothern
Bromilow v. Molineux
In re Great Northern Salt and Chemical Works (Lim.)
Stogdon v. Guinness
In re Mitchell
Moore v. Moore
In re Rhondda Merthyr Steam Coal Colliery Co. and Co.'s Acts
In re Spurway & Co. (Lim.) and Co.'s Acts
In re Ownsworth
Ownsworth v. Ownsworth
In re Halifax Sugar Refining Co. (Lim.) and Co.'s Acts
In re Curtis
Bedford v. Miller
In re Jones
Williams v. Jones
Sacco v. Duran
In re Woodgate and Lloyd
Lloyd v. Queensland Bank (Lim.)
In re New Brunswick Trading Co. of London (Lim.) and Co.'s Acts
In re Guayana Co. (Lim.) and Co.'s Acts
Bye v. Gillett and Clinch
In re Eddystone Marine Insurance Co. (Lim.) and Co.'s Acts
In re E. Smith
Shearing v. Smith
In re R. Davis
Barnsley v. Davis
In re Rowlands
Cameron v. Williams
In re New Brunswick Trading Co. of London (Lim.) and Co.'s Acts
Talbot v. Talbot
In re Hargroves
Fletcher v. Hargroves
Daw v. Herring
In re Haywood
Thomson v. Haywood
In re J. Ray
Ray v. Ray
In re R. Hall
Prall v. Seymour
Crombie v. Lucas

*Further Considerations.*

In re Smith
Bilke v. Roper
In re Smith
Shepard v. Smith
In re Brown
Dixon v. Brown
In re Warren
Randleson v. Randleson
In re Walker
Sheffield Banking Co. (Lim.) v. Clayton

## Before Mr. Justice Kekewich.

*Causes for Trial (with Witnesses).*

Sanderson v. Allen
Marshall v. Borrowdale, &c. Co. (Lim.)
Jones v. Steamship Cairngoun (Lim.)
Meux, Bart v. Cobley
Richards v. Whitham
In re Dunk
Dunk v. Dunk
In re Metropolitan Coal Consumers' Association (Lim.) and Co.'s Acts
Secretary of State for India v. British Empire Mutual Life Assurance Co.
Stengel v. International Commercial Co. (Lim.)
Cameron v. Dandicolle & Gandin (Lim.)
Savory & Moore v. London Electric Supply Corporation (Lim.)
Wilkins v. Clydesdale Bank (Lim.)
Same v. Same
Cameron v. Stretton, Hilliard, Dale & Newman
Tunks v. Page
Page v. Tunks
James v. Jones
Slater v. Jones
In re Wright
Wright v. Sanderson
Tyler v. Bishop
Brownhill v. Sawer and Purves
Atkins v. Andrew
Adkins v. Canney
Marshall v. National Provincial Bank of England (Lim.)
Compton v. Wratislaw
Liverpool, &c. Bread and Café Co. (Lim.) v. Firth
In re Brundrett
Hall v. Hall
Sherwood v. Sudbury
Walker v. Wilkins & Co. (Lim.)
Crabtree v. Stainland with Old Lindley Local Board
Slight v. Wallis
Whittaker v. Parrott
New Land Development Association (Lim.) v. Avery
Chancellor v. Edgar
Cowne v. Roper
Glasbrook v. Owen
Jarrett v. Leveson-Gower
Metropolitan Coal, &c. (Lim.) v. Sheridan
Cross v. Morgan
Nevill v. Godalming, &c. Laundry Co. (Lim.)
Mogridge v. Clapp
Frew v. Home and Colonial Stores (Lim.)
Pitt v. Cowlin

Baumgartner v. Harrison
In re Barney
Barney v. Barney
Tidmarsh v. Tidmarsh
North Australian Territory Co. (Lim.) v. Goldsbrough, Mort & Co. (Lim.)
Kean v. Shillingford
Pearks v. Holliday
Knox v. Hayman
Harkhouse v. Thorne
In re Cordova Union Gold Co. (Lim.)
Farbenfabriken Vorm Friedr Bayer & Co. v. Nathan Ramsden & Co.
In re Hope
Hope v. Hope
Venables v. Baring Bros & Co.
Engel v. South Metropolitan Brewing Co. &c. (Lim.)
Raymont v. Greta Colliers Co. (Lim.)
Gadd v. Mayor, &c. of Manchester
Turnell v. Sanderson
Hesketh v. London and North-Western Railway Co.
Davis v. Simpson
Richardson v. Clement Smith
Talbot v. Chiswick Local Board
Gielgud v. Fearon
Davison v. Stitt
Smith v. Thompson
Thomas v. Griffiths
Hobson v. Clifford
Gape v. Taylor
Blaiberg v. Medhurst
Ford v. Hawley
Ferncliffe Steamship Co. (Lim.) v. Barwick
Sutton, Carden & Co. (Lim.) v. British Equitable, &c. Co.
Quarnby v. Fryer
Webb v. Bowen
Jared, Terrett, Hunt & Son (Lim.) v. Hunt
Timpe v. Wolfsky & Co. (Lim.)
Cassella & Co. v. J. Levinstein & Co. (Lim.)
Swansea, &c. Iron Co. v. Mannesman Tube Co. (Lim.)
Reed v. Miller
Bright v. Dewar
Bevan v. Arkell
Coward v. Steele
Gray v. Beeney
Mitchell v. Baker
Baker v. Kinnell
Mander v. Falcke
Hutton v. Allbutt

*Points of Law.*

Blaiberg v. Medhurst
Willerton v. Stocks

*Causes for Trial (without Witnesses).*

In re Wynn
Wynn v. Wynn
Hingston v. Hingston
Sondding v. Burial Board for St. Pancras
Davenport v. Davenport
Smith v. Rogers
Down v. Clarke
Baxter v. Hummerson
In re Newton
Newton v. Chapman
Kennedy v. Jones
Bourne v. Bradley
In re Mitchell
Wavell v. Mitchell

*Adjourned Summonses.*

Knowles v. Knowles
In re Evan Cross
Cross v. Cross
Elwell v. Graves
Same v. Same
In re E. A. Gaston, an infant, and Guardianship of Infants Act, 1886
In re Same
In re Same
In re Meux & Co. (Lim.) and Co.'s Act, 1862
In re W. G. Haggard
Edwards v. Edwards
In re Isaacs
Cronbach v. Isaacs
In re Waight
Waight v. Fry
Siddell v. Vickers, Son & Co. (Lim.)
Same v. Same
Howell v. Lewis
In re Harsant, Youell & Florence and In re Vendor and Purchaser Act, 1874
In re Lupton
Thornhill v. Lupton
In re Same
Same v. Same
In re Eastern and Midlands Railway Co. and Railway Co.'s Act, 1867
In re Same, &c.
Mander v. Falcke
In re Woollcombe
Woollcombe v. Woollcombe
Chamberlyn v. Allen
In re Tulley
Lander v. Tulley
In re Anglo-Colonial Syndicate (Lim.) and Co.'s Acts
In re Vivian
Vivian v. Barham
In re Palmer
Le Maire v. Webb
In re Staffordshire Gas and Coke Co. (Lim.) and Co.'s Acts
In re Same and Co.'s Acts
Brunton v. Electrical Engineering Corporation (Lim.)
Williams v. Williams
Same v. Same
In re Farnell
Watson v. Walton
In re E. Gaston and Married Woman's Property Act, 1882
Cameron v. Dandicolle & Studd

*Further Considerations.*

In re Rooker
Booker v. Herapath
Scott v. Clutton
Riddell v. Evans

## Before Mr. Justice Romer.

*Causes for trial (with Witnesses).*

Potter v. Passburg Grains Syndicate
Bigwood v. Passburg Grains Syndicate
Ilson v. Cheeswright
New Asbestos Co. (Lim.) v. Duncan
Hyde v. New Asbestos Co. (Lim.)
Smith v. Bowler

*Transferred for trial or hearing only, pursuant to Order dated April 20, 1891.*

Western Counties Railway Co. v. Anderson
Lloyd v. Fox
In re Parker
Lowe v. Parker
In re Carruthers
Talbot v. Carruthers
Bank of British North America v. Anderson

*Transferred for trial or hearing only, pursuant to Order dated June 22, 1891.*

In re Edgar
Edgar v. Edgar
Wood v. Hamblet
Edison, &c. Electric Light Co. (Lim.) v. Woodhouse, &c.
Landseer v. Zeffort
Ransome, Bouverie & Co. v. Whitby
In re Cash
Cash v. Hancock
Dale v. Fortescue
S. Kidd & Co. (Lim.) v. Perry
Bevan v. Webb
In re Boyce
Boyce v. England
Webster v. Puleston
Jahncke v. R. Bell & Co. (Lim.)
Meux v. Thomas
Petre v. Ferrers
Nettlefolds (Lim.) v. Reynolds
Same v. Same
Driggs Ordnance Co. v. Driggs & Schroeder, &c. Co.
Nelson v. Worsam
New Skegby Colliery Co. (Lim.) v. Dodsley
Cowood v. Vernon
Uniacke v. Scott
Scott v. Uniacke
Goodrham v. Goodrham
Soppitt v. Whiting
Isaacs v. Isaacs
Howell v. Broomhead
Lane-Fox v. Kensington, &c. Lighting Co.
Universal Stock Exchange (Lim.) v. Stevens
Stevens v. Universal Stock Exchange (Lim.)
Davey v. Hugill
In re Beckett
Lyons v. Hart
Kelsey v. Hodgkinson
Ellissen v. Surrey Machinists Co. (Lim.)
Surrey Machinists Co. (Lim.) v. Ellissen
Watts v. Paynter
Sanders v. Eaton
Brewers' Investment Corporation (Lim.) v. Rowlands
Rowlands v. Brewers' Investment Corporation (Lim.)
Bell v. Brewers' Investment Corporation (Lim.)
Witt v. Calderon
Murton v. City Bank (Lim.)
In re Heinrich's Registered Design and Co.'s Acts
Williams v. Williams
Compton v. Bagley
Spence v. Schiedweiler
London Association of Shipowners, &c. v. London and India Docks, &c.
Engelhart v. Gaydon
Marshall v. Glover
Alexander v. Marshall
Marshall v. Alexander
Wright v. Richmond
West India Shipping Co. (Lim.) v. Callender
Thomson v. Stewart
Barker v. Webber
Hughes-Hallett v. Kent
Nicholson v. Eyre
Mappin Bros. v. Mappin & Webb
Matthews v. Wells
Clark v. Smith

*Transferred for trial or hearing only, pursuant to Order dated August 22, 1891.*

Robinson v. Partridge
Hill v. Hill's Waterfall Estate and Gold, &c. Co. (Lim.)
Dew v. Barley
Lewis v. Marquis of Ailesbury
Williams v. Spargo
Elkington & Co. (Lim.) v. Hurter
Rogers v. Paragon Works (Lim.)
Kearney v. Blake
Steele v. Savory
In re J. Gurney
Mason v. Mercer
Ashworth v. Roberts
Campion v. Campion
Weatherall v. Burgess
Lord Hatherton v. South Staffordshire Water Works Co.
Cloudsdale v. Townson
Wellby v. Still
Siemens v. Taylor
Moore v. Moore
Lyric Theatre (Lim.) v. Cordingly
In re Hampton
Hampton v. Stephens
In re G. V. Wigan
Wigan v. Carpenter
J. Richardson (Lim.) v. Weddall
Same v. Procter
Ryan v. Mutual Tontine Westminster Chambers Association
Pullman v. Barker
Parton v. Ferme
Newen v. Mackey
Matthews v. Rogers
Cellular Clothing Co. (Lim.) v. Marsh
Richardson v. Westacott
Hampton Wick Local Board v. Southwark and Vauxhall Water Co.
Starr v. 282nd Starr Bowkett Building Society
Neville v. Lloyd
Davis v. Mills
Hawksley v. Outram
Same v. Same
Outram v. Hawksley
Lees v. West London Cycle Co.
Hodgor v. Raffety
Behden v. Atkins
Lane v. Capsey
Burdett v. Eldershaw
Everett v. Pennington
Williams v. Jenkins
Anstiss v. Gatti
French v. Burchell
Tucker v. Cooper
In re M. B. Jones
Williams v. Jones
Smelt v. Broughton
Comte v. Perkins
In re Llanwer
Llanwer v. Rayden
In re Canadian Direct Meat Co. (Lim.) and Co.'s Acts, 1862 and 1867
Gross v. Brown
Corbett v. Saffery
Northwich District Local Board v. Northwich Salt Co. (Lim.)
Tester v. Hedgcock
Miles v. Berridge
Fenner v. Hollway
Whittington v. Cusack
In re Grover
Acworth v. Grover
James v. Isaac
Cameron v. Anstruther
Marsh v. White
White v. Marsh

Thomas *v.* Morgan
In re the Patents, Designs and Trade-Marks Acts, 1883 to 1888, and Trade-Marks Nos. 96,822 and 96,823
In re Huxham
Huxham *v.* Huxham
Official Liquidator of the Trafalgar Co. (Lim.) *v.* Francis
Hall *v.* Thompson
G. G. Sandeman & Sons & Co. *v.* Piner & Co.
Walker *v.* Walker
Micklethwait *v.* Vincent
Bailey *v.* Greenwood & Son
Smith *v.* Dickinson
Gill *v.* Green
Cooke *v.* Collins
Smith *v.* Botolph and Nicholson's Wharves Co. (Lim.)
Corporation of the Royal Exchange Assurance *v.* Tod
Duke of Northumberland *v.* North-Eastern Railway Co.
In re Banks
Blower *v.* Thomas
Edwards *v.* Edwards
Cruso *v.* Allenby
Watson *v.* Watson & Sons (Lim.)
Joselyne *v.* Upton
Gadd & Mason *v.* Haslingden Union Gas Co.
Parry, Bart. *v.* Jones
Ogle *v.* Brin's Metals Foreign Syndicate (Lim)
David *v.* Sabin
Binney *v.* Clarke
In re Clarke
Harrison *v.* Sharp
Imbert-Terry *v.* Myers
In re Naylor
Hodson *v.* Sargeant
Gordon *v.* Ferris
Cooke *v.* Martin
Warden *v.* Alliance Bank (Lim.)
Maddock *v.* Girardot
Duncan *v.* Cole
Ramus *v.* Southend Local Board
Farbenfabriken Vorm Fried Bayer & Co. *v.* J. Ross & Co.
Wray *v.* Steven
Hewitt *v.* Crassidge
Crassidge *v.* Hewitt
Elletson *v.* Carpenter

## SUMMARY.

| | | |
|---|---|---|
| 1.—Mr. Justice Chitty—Witness Actions | 56 | |
| Non-Witness Actions, including Summonses | 64 | |
| Further Considerations | 7 | |
| | — | 127 |
| 2.—Mr. Justice North—Witness Actions | 72 | |
| Non-Witness Actions | 13 | |
| Adjourned Summonses | 25 | |
| Further Considerations | 4 | |
| | — | 114 |
| 3.—Mr. Justice Stirling—Witness Actions | 91 | |
| Non-Witness Actions, including Summonses and Points of Law | 35 | |
| Further Considerations | 5 | |
| | — | 131 |
| 4.—Mr. Justice Kekewich—Witness Actions | 87 | |
| Non-Witness Actions and Points of Law | 13 | |
| Adjourned Summonses | 34 | |
| Further Considerations | 3 | |
| | — | 137 |
| 5.—Mr. Justice Romer—Witness Actions:— | | |
| Old Transfer | 6 | |
| Remainder of Transfer, dated April 20 | 5 | |
| Remainder of Transfer, dated June 22 | 51 | |
| New Transfer, dated August 22 | 99 | |
| | — | 161 |
| Total Causes and Matters for Hearing in the Chancery Division | | 670 |

## HIGH COURT OF JUSTICE.

## QUEEN'S BENCH DIVISION.

*Michaelmas Sittings*, 1891.

### SPECIAL PAPER.

For Argument.

*Set down July* 6, 1891, *due July* 14, 1891.

Pedley & May *v.* Morris

*Set down July* 7, 1891, *due July* 14, 1891.

In re an Arbitration between Brierley and London and North-Western Railway Co.

*Set down July* 27, 1891, *due August* 1, 1891.

Prall *v.* Smeed, Dean & Co. (Lim.)

*Set down August* 1, 1891, *due August* 6, 1891.

In re an Arbitration between M'Intosh & Pontypridd Improvements Co. (Lim.)

*Set down August* 12, 1891, *due August* 17, 1891.

Graves *v.* Marks and another

### OPPOSED MOTIONS.

For Argument.

In re an Arbitration between De Morgan, Snell & Co. and the Rio de Janeiro Flour Mills (Lim.)
Pallister *v.* Bolckow, Vaughan & Co.
Cullum *v.* Strousberg
Leaver *v.* Channing
Orisford *v.* West Lancashire Railway Co.
Same *v.* Same
In re a Solicitor, ex parte Incorporated Law Society
Boyce *v.* Williamson
Adcock *v.* Foot
J. Kirkaldy (Lim.) *v.* Perry
In re a Solicitor, ex parte Incorporated Law Society
Eckhardt *v.* Compagnie Générale des Levures et Alcools de Grains
Norton *v.* Burr and another
Trainor *v.* Phœnix Insurance Co.
Moore *v.* Silber
London and Continental Bank and Exchange (Lim.) *v.* Home and Colonial Stores (Lim.)
In re an Arbitration between Robert Evans and Pontypridd Improvements Co. (Lim.)
Brice *v.* Seaman
Shrapnel *v.* Gamgee
Brady *v.* Lamb
Newitt *v.* Lewry
Goldring *v.* Quick
In re a Solicitor, ex parte Incorporated Law Society
Beddard *v.* Pfeil, Steddall & Son
St. John's College, Cambridge *v.* Pierrepont
Collyns *v.* Storey
In re an Abritration between Taliesin Cule and Pontypridd Improvements Co. (Lim.)
In re a Solicitor, ex parte Incorporated Law Society
Mills & Co. *v.* Willson and others
In re an Arbitration between Hardwicke and Campbell
Smith *v.* Rossiter
Johnson *v.* Carter
Hughes *v.* London and Edinburgh and Glasgow Assurance Co. (Lim.)
Mutual Loan Fund Association (Lim.) *v.* Butler
Edwards and another *v.* Corbett
Davis *v.* Billing & Sons
Inter-Colonial Publishing Co. (Lim.) *v.* Biggs
Fennings *v.* Kettlewell
Shropshire Railways Co. and another *v.* Whadcoat Bros. & Co. (Lim.)
Burt and others *v.* Bowen and others
Meyer and Co. *v.* Decroix, Verley et Cie and another
In re Charles William Davies, an unqualified person, ex parte Incorporated Law Society
Beckett *v.* Tower Assets Co. (Lim.)
Fowler & Powell *v.* Beckett (Tower Assets Co. (Lim.) Garnishees)
In re an Arbitration between Chilworth Gunpowder Co. (Lim.) and Manchester Ship Canal
Ogden *v.* Hartley
Same *v.* Holbrook
Same *v.* Topham
Red Reef Gold Mining Co. (Lim.) *v.* Cook (Rogers and others third parties)
Mellor *v.* Dugdale & Co. (Lim.) and another
Newall *v.* Ransom
In re an Arbitration between M'Intosh and Pontypridd Improvements Co. (Lim.)
Cunliffe *v.* Hampton Wick Local Board
Gale *v.* Emanuel (Emanuel, Claimant)
Beddard *v.* Pfeil, Stedall & Son
Walters *v.* Levick
Bridge *v.* Quick and others
Gregoropulos *v.* Papayanni and another
Dinn *v.* Sheppard
Williams *v.* South of England Marine Assurance Association (Lim.)
Ressich, M'Laren & Co. *v.* Robley
Kenrick *v.* Gibbens
Frost *v.* King and another
Peat *v.* Needham
Murphy *v.* Haslam
Oriental (Transvaal) Land and Exploration Co. (Lim.) *v.* Williams
Cooper & Co. *v.* Fox and another
Clough *v.* Whiteley
Frost *v.* King and another
In re an Arbitration between Eyre and Corporation of Leicester
Shrimpton & Co. *v.* Croome
Shouler and another *v.* Deane and another
Edwards and another *v.* Wathen
Hay and another *v.* Barnes
Germains *v.* Martyn and others
Dixon *v.* Dixon
Stevens (trading, &c.) *v.* Gem Glass Co. (Lim.)
Stedman *v.* Silber
Land Title and Trust Co. *v.* Sharp & Tyler
Cook *v.* Johnstone and others
Big Golden Quarry Mining, &c. Co. (Lim.) *v.* Perryman
Kino *v.* Palmer
Lemonius & Co. *v.* Duckworth
Eastmans (Lim.) and others *v.* Mackill & Co. and others

Mortimer, Booth & Co. v. Simpson
Jarred v. Edwards
Archer & Green v. J. W. Hobbs & Co. (Lim.)
In re Art Copyright Act, 1862, and In re Registration of a certain Picture entitled 'The Young Duchess' (ex parte Millard)
Bank of Vera Cruz (Lim.) v. Hope
Lane v. Steedman and another
Williams v. De Lavigerie and others
In re an Arbitration between James Wilson & Son and the Eastern Counties Navigation and Transport Co. (Lim.)
Makin v. Smith
Poole v. Same
Roberts v. Gwilliam
Bynoe v. Walford and others
Hall v. Marsh
Western National Bank v. Koppel
Freemantle v. Laffitte
Germains v. Cureoil Notesco Syndicate (Lim.)
Alexandre v. Montgomery
Same v. Same
Veale, Chifferiel & Co. (Lim.) v. Beall
Braham v. Sims
Jellinek v. Schmerl
Thompson & Shackell (Lim.) v. Bennett
Pollock v. Sharpe
Broms v. Tolputt
Same v. Same
Hawkins v. Trust Investment Corporation, &c. (Lim.)
King v. Day
In re a Solicitor, ex parte Incorporated Law Society
In re a Solicitor, ex parte Incorporated Law Society
In re a Solicitor, ex parte Incorporated Law Society
Kottgen v. Kottgen
Worth et Cie v. Tilden
Payne v. Hawkins
Nash v. Brown
Simpkins v. Brown
Hallward v. Shears
Hong Kong and Shanghai Banking Corporation v. Java Agency Co. (Lim.)
Schmals v. Millard
Tibbitts v. Forsyth and others
Payne v. Hawkins

## CROWN PAPER.

For Judgment.

Metropolitan Police District—Wilson and another v. Vestry of St. Giles, Camberwell

For Argument.

London—Jones and others v. Dobson and others
Surrey (Kingston)—Wimbledon Local Board v. Underwood (Simmons, claimant)
Kent—Regina v. Sandgate Local Board (ex parte Justices of Kent)
Middlesex (Shoreditch)—Meek v. Witherington
Leicestershire (Leicester)—Drinkwater v. Band
Yorkshire (Sheffield)—Clarke v. Barnsley Brewery Co.
Devonshire (East Stonehouse)—Regina v. Judge of County Court at East Stonehouse and How (ex parte Dawe)
Yorkshire, W. R.—Constantine v. Illingworth
Middlesex (Clerkenwell)—Bolton and another v. Goldman (Blackaby claimant)
Sussex—Allman v. Grist
Lancashire—Taylor v. Wilkinson
Yorkshire (Leeds)—Myers and others v. Wilson
Cornwall—Harvey & Co. v. Hesketh
Surrey—Regina v. Blenkinsop, Esq. and others, Justices, &c. and London and South-Western Railway Co. (ex parte Churchwardens of Wandsworth)
Derbyshire (Derby)—Grundy v. Slack
Warwickshire (Birmingham)—Cohen v. Higgins (Collins, claimant)
Warwickshire (Birmingham)—Jones v. Higgins (Collins, claimant)
Brecknockshire (Crickhowell)—Taylor v. Taylor and another
Bedford—Thompson v. Rose
Middlesex (Clerkenwell)—Ashton v. Hartley
Monmouthshire—Edmunds v. James
Kent (Tunbridge Wells)—Hursell v. Bird and another (trading, &c.)
Surrey (Lambeth)—Wright and Butler v. Watson (sued, &c.)
Metropolitan Police District—Hornsby v. Raggett
London—Meyer (trading, &c.) v. Gase (trading, &c.)
London—Chappell v. Overseers of Parish of St. Botolph Without
Middlesex (Marylebone)—Holmes (trading, &c.) v. Scholfield (Jameson, claimant)
Middlesex (Whitechapel)—Payne v. Wrathall (executor, &c.)
Cornwall (St. Austell)—Regina v. Judge of County Court of Cornwall, holden at St. Austell, and Bray
Middlesex (Bow)—{In re Lunacy Act, 1890, and In re Noyce, a pauper lunatic, &c. / Hilleary v. Noyce and others}
Worcestershire (Droitwich)—Wild v. Waygood & Co.
Lancashire (Blackburn)—In re Bottomgate Industrial Co-operative Society (Lim.) (in liquidation) and Industrial Societies Acts, 1862 and 1876 and Companies Act, 1862
Sussex—Regina v. Gaisford, Esq. and another, Justices, &c. and Gardner (ex parte Sayers)
Essex—Seabrooke v. Grays Thurrock Local Board
Middlesex—Regina v. Burrows (ex parte Robinson)
Middlesex—Edwards, an infant, &c. v. Chambers
Devonshire (Kingsbridge)—Quarm v. Quarm and others
Lancashire (Manchester)—Twigg & Co. and another v. Westbury & Son
Yorkshire (Huddersfield)—Warburton (on behalf, &c.) v. Huddersfield Industrial Society
Kent—Regina v. German (ex parte Sevenoaks Union)
Middlesex (Bloomsbury)—Murphy, an infant, &c. v. Probyn, trading, &c.
Cheshire (Stockport)—Williams v. Eddie
Middlesex (Westminster)—Bower & Co. v. Howe, trading, &c. (Marshall, claimant)
Middlesex (Clerkenwell)—Sapworth v. Hellbuth (Hellbuth, claimant)
London—In re Local Government Act, 1888 &c. (ex parte London County Council)
Surrey—Regina v. Brocklehurst, Esq. and others, Justices, &c. and King (ex parte Reigate Union)
Surrey—Regina v. Same and Rodgers
Middlesex (Westminster)—Reynolds & Co. v. Stephen
Newbury—Great Western Railway Co. v. Mayor, &c. of Newbury
Metropolitan Police District—Regina v. Tyler, Esq. and others (ex parte Noton)
Kent (Greenwich)—Grose v. Cross
Lancashire (Manchester)—Reece v. M'Connel & Co.
Essex—Lynn v. Towler
London—Regina v. Rayson and others, churchwardens, &c. (ex parte Elliott)
Worcestershire (Redditch)—Hollington & Co. v. Woodfield & Sons
London—Regina v. Young and others, Justices, &c. (ex parte London County Council)
Dorsetshire (Shaftesbury)—Combes v. Combes
Kent—Whitebread v. Sevenoaks District Highway Board
Middlesex (Bow)—Joyce v. Rait and another
Dorsetshire (Weymouth)—Greenhalgh v. Cwmaman Coal Co.
Kent (Dartford)—Ince v. Ince
Surrey (Southwark)—Barker v. London and South-Western Railway Co.
Staffordshire (Wolverhampton)—Slattery v. Bellis
Southampton—Radclyffe v. Bartholomew
Kent (Folkestone)—Sandgate Local Board v. Keene
London—Beriro v. Thalheim
London—Nash v. Cunard Steamship Co.
Middlesex (Edmonton)—Louis (trading, &c.) v. Walker (Abell, claimant)
London—Holmes v. Peninsular and Oriental Steam Navigation Co.
Glamorganshire (Pontypridd)—Williams and another v. Jenkins
Radnorshire (Presteign)—Stephens (suing, &c.) v. Lloyd
Middlesex (Clerkenwell)—Baker v. Lovatt
Cambridgeshire (Cambridge)—Bedwell v. Martin
Essex—Regina v. Morton
Middlesex (Clerkenwell)—Ross v. Blewit
Hampshire (Southampton)—Williams v. Day, Summers & Co.
London—Smith v. Greenwood
Derbyshire (Derby)—Beatson & Son v. Dulcken & Co.
Sussex (Brighton)—Hora and another v. Holdoway
London—Regina v. Judge of City of London Court and Payne (ex parte Green, Holland & Sons)
West Ham—West Ham Union v. Fourth City Mutual Building and Investment Society and another
Lancashire (Manchester)—Stott v. Howarth
Yorkshire (Dewsbury)—Dransfield v. Walker and another
Middlesex (Whitechapel)—Kearton & Co. v. Wood
London—Sellon v. Elmslie and others
Surrey (Southwark)—Free v. London and South-Western Railway Co.
Yorkshire (Halifax)—Riley v. Ratcliffe
Surrey (Wandsworth)—Rawlings v. Carpenter and another
Middlesex (Westminster)—Eames v. Burton (trading, &c.)
Middlesex (Marylebone)—Shillingford v. Wiltshire (Dunkley, claimant)
Trotter and another v. White and others
Trotter and another v. W. N. White & Co.
Surrey (Southwark)—Graham v. Tilling
Monmouthshire (Monmouth)—Morgan and another v. Jones and others
Middlesex—Regina v. H.M.'s Secretary of State for War (ex parte Colonel Mitchell)
Middlesex (Bloomsbury)—Capell v. Bynoe (Bynoe, claimant)
Metropolitan Police District—Payne v. Wright
Somersetshire (Taunton)—Tresham v. Refuge Assurance Co.
Lancashire (Salford)—Cockrell v. Makepeace (Pickstone, claimant)
Essex—Whitrow v. Brown
Essex—Fourth City Mutual Building and Investment Society v. Churchwardens, &c. of East Ham
Leicestershire (Leicester)—Cooper v. Peberdy
London—M'William v. Dawson
Durham (Hartlepool)—Pounder v. North-Eastern Railway Co.
Yorkshire (W. R.)—Regina v. Selby Dam Drainage Commissioners (ex parte Gallsworthy)
Essex—Warren v. Mustard
Devonshire (Axminster)—Pole, Bart. v. Bright
Worcestershire (Worcester)—Johnson v. Gaskain & Co.
Worcester—George v. Bellers
Suffolk (Sudbury)—Prigg v. Burton, jun.
London—North v. Bassett

Lincolnshire (Parts of Lindsey)—Caistor Union *v.* Cleaver
In re Law of Libel Amendment Act, 1888, and In re an Application, &c.
Pullbrook *v.* Perryman
Bristol—Guardians, &c. of Bristol *v.* Barton Regis Union
Surrey (Croydon)—Parsons *v.* King
Carnarvonshire—Banton *v.* Davies

## REVENUE PAPER.

Motions for Attachment for Contempt, 6

*Any Cases set down during the Sittings will come on for hearing as usual.*

## *Divisional List.*

SUMMARY.

| | |
|---|---|
| Special Paper | 5 |
| Opposed Motions | 123 |
| Crown Paper | 115 |
| Revenue | 6 |
| Total | 249 |

**The following Courts will sit until Saturday, October 31, for the trial of the following classes of actions:—**

Two Courts for Middlesex Special Juries.
Two Courts for Middlesex Common Juries.
Two Courts for London Special Juries, commencing Wednesday, October 28.
Two or Three Courts for Actions without Juries.

## MIDDLESEX.

### SPECIAL JURY ACTIONS.

Actions beyond No. 275 in this List will not be taken before Monday, November 2.

The following Numbers will be in the List for Trial on Tuesday, October 27: Nos. 64 to 118, both inclusive.

64 Leon *v.* Russell
71 Egyptian Minerals Corporation (Lim.) *v.* Sheen and another
75 Raftery *v.* Sharp
76 Greenwell & Co. *v.* Linton and another
112 Horner *v.* North Metropolitan Tramways Co.
114 Hill *v.* Hattersley and others
115 Sampson *v.* Fuller, Smith & Turner
118 Roe *v.* Benjamin
124 Jay *v.* Meux
130 Parker *v.* Lord Maghera-morne
132 Thompson *v.* Keighley, Maxsted & Co.
136 Abbotts *v.* London and South-Western Railway Co.
139 Hamerton *v.* Flatau
141 Lowenthal *v.* North Metropolitan Tramways Co.
142 Brinkley *v.* Mason
146 Kemp *v.* Cox
150 Morrison & Co. *v.* Lund
163 Shalless *v.* North Metropolitan Tramways Co.
182 Shuttleworth *v.* Flack, Chandler & Co.
193 Muirhead *v.* Debenture Guarantee, &c. Co. (Lim.)
199 Daffarn *v.* Golden Valley Railway Co. and others
215 Day *v.* Lazarus
226 Tipper *v.* Elliott
235 Stack *v.* Pontifex
285 Moore *v.* Charrington & Co.
296 Casey *v.* Lazarus
300 Einstein *v.* Stevens
305 Lee *v.* Dangar, Grant & Co. and others
83 Tichurst and another *v.* Robb
122 Brand *v.* Humphrey and others
137 Norman *v.* London and India Docks Joint Committee
145 Paterson *v.* Vicars
2 M'Grigor *v.* Hart
119 Hayne and another *v.* Jones, Lang & Co.
125 Jacobson *v.* Lister
126 Gregory *v.* Artisans', &c. Dwellings, &c. Co. (Lim.)
275 Sheen *v.* Booth
4 Hannay's Patents Co. (Lim.) *v.* Harden Star, &c. Co.
6 Lady Howard de Walden *v.* Claridge's Hotel (Lim.)
14 Bird *v.* Swatherbridge and another
17 Société Continentale des Distributeurs, &c. (Lim.) *v.* Willey
20 Wath-upon-Dearne Main Colliery Co. *v.* Wakefield, &c. Union Bank and another
38 Linton *v.* Mackenzie
40 Rumsey *v.* Edwards
59A Union Bank of Spain and England (Lim.) *v.* Fox & Co.
78 Head *v.* Taylor and another
81 Anglo-Oriental Corporation (Lim.) *v.* Alston and others
88 Adjemain *v.* Barlow and another
96 Monson *v.* Brown
103 Cook and others *v.* Franklin and others
113 Watts *v.* Atkinson and others
121 Mangan *v.* Metropolitan Electric Supply Co.
131 Thompson *v.* Hull Dock Co.
133 Mappin *v.* Phillips and another
153 Emerson *v.* James
191 Hearson *v.* Churchill and others
205 Express Printing Co. *v.* Lewis
206 Williams *v.* Lewis
218 Bellairs and another *v.* Boulton
220 Parminter *v.* London Stereoscopic, &c. Co. (Lim.)
252 Newman *v.* Oetzmann & Co.
273 Block *v.* Mappin & Webb
276 Smith *v.* Reynolds
309 Frankland *v.* Armine's Syndicate (Lim.)
310 Tyler *v.* Sheriff of London
313 Foote *v.* Cornwell and others
319 Richardson *v.* Wickens
322 Gordon & Co. *v.* Garrett
327 Usher *v.* Hilton and others
328 Fox *v.* Wildy
344 Wilkinson *v.* Taylor
359 Vickers *v.* Hamlyn
361 Serff *v.* Salaman
369 Phillips and another *v.* Mitchell
380 Carr *v.* Tucker
381 Jay *v.* Earl of Rosslyn
396 Pinnock *v.* Chapman & Hall
390 London and South-Western Bank (Lim.) *v.* Allbutt & Co.
392 Cadogan *v.* King
397 Middlewick Salt, &c. Co. *v.* Skelton
398 Cannon *v.* Collingridge and another
401 Agg Gardner *v.* Beard
406 Eyton *v.* Holford and another
416 Campbell and others *v.* Odell
418 Ruben *v.* Corrie
427 Gay *v.* Calcraft and another
428 Gower Iron and Tin Plate Co. *v.* Morris
435 Deavin *v.* London Trams Co. (Lim.)
449 Hansard *v.* Lethbridge and others
457 Wilkinson *v.* Scott, Murray and another
463 Depree and another *v.* Barrett
464 Secker *v.* Allen
465 Imperial Loan Co. (Lim.) *v.* Stone
470 Killick *v.* Ross
493 Huggins *v.* Railway Press Co. (Lim.)
503 Nyburg & Co. *v.* Wertheimer & Sons
513 Navarra *v.* Dickson
520 Putland *v.* Dunn
521 Putland, jun. *v.* Same
526 Turner *v.* Dasnieres
540 A. M. Perkins & Son (Lim.) *v.* Whiteley
542 Lewis *v.* London, Tilbury and Southend Railway Co.
551 Hodgson and Wife *v.* J. J. Ford & Sons
554 British Mutual Banking Co. *v.* Buchanan
559 Craig *v.* Macdonald and another
560 Osborne *v.* Hargreave and another
566 Von Buch *v.* Cornwell and others
436 Attorney-General *v.* Cohen, Sons & Co.
577 Cohen, Sons & Co. *v.* Reginam
578 Jay *v.* Bayley
583 Warden *v.* Hilton
591 Bonnard and another *v.* Perryman and another
594 Birmingham and Midland Trams Co. (Lim.) *v.* Birmingham and Western District Trams Co. (Lim.) and others
598 Nyburg *v.* Ullmann
621 Gill *v.* London and North-Western Railway Co.
625 Rickett and others *v.* Bourne and others
637 Garrad & Co. *v.* T. R. Oswald & Co. (Lim.)

### COMMON JURY ACTIONS.

Actions beyond No. 228 in this List will not be taken before Monday, November 2.

The following numbers will be in the List for trial on Tuesday, October 27: Nos. 12 to 172, both inclusive.

12 Damiral *v.* Mallaine
80 Masse *v.* Brewers' Co.
90 Ward *v.* Hermann
100 Philipp *v.* Baxter
101 Same *v.* Matthews
110 Lackersteen *v.* Sanctuary
134 Sutton *v.* Baillie
138 Griffith *v.* Turner
149 Grave *v.* Monkhouse
172 Crowder *v.* Gillespie
173 Pescodd *v.* Touchet
175 Williamson *v.* North London Trams Co.
178 Batten & Co. *v.* Bewick
183 Davis *v.* Caton
186 Flaws *v.* Bond
188 Watts *v.* Green
189 Block *v.* Hall
192 Clarke *v.* Tabernacle Permanent Building Society and another
195 Raikes *v.* Swepstone
197 King *v.* Wheeler
11 Langford *v.* Goodman
47 Wall *v.* Clarke
89 Solomon *v.* Brickwell and another
99 Smith *v.* Butcher and another
200 O'Neill *v.* Everest
201 Duffield *v.* Davis and others
27 Young *v.* Phillips
67 Gamble *v.* Hewitt
93 Nicholl *v.* Wilson
203 Thornhill *v.* Coles
10 Pocock *v.* Preston
48 Bona *v.* Erskine
87 Schwob Brothers *v.* Lawinski
92 Phillips *v.* Williamson and another
108 Cummins *v.* Palmer
111 Phillips *v.* Wainwright and others
120 Russell *v.* Farrant
166 Harris & Co. *v.* Hook
168 Bainbridge & Co. *v.* Anderson and another
207 Butler *v.* Andrews
209 Harlow *v.* Christmas
224 Farmer *v.* Jones
228 Cohen & Co. *v.* White and another
230 Gunton *v.* Reeves
232 Thompson *v.* Schmidt
234 Peed and another *v.* Nutt
236 Gibson *v.* Kimber
237 White *v.* Hinds
238 Austin and wife *v.* Wilson
245 Croyden *v.* Same
251 London and Southern Counties Investment, &c. Co. (Lim.) *v.* Langford and others
271 Wild *v.* Cushen
277 Peacock *v.* Plant
283 Barling *v.* Sheen
288 Baker *v.* Hodges and another
289 Mason *v.* Lane
290 Pearson *v.* Andrade
291 Link *v.* Allen
302 Miller *v.* Short
312 Talmey *v.* Pollard
317 Hill and another *v.* Earl of Lathom and others
318 Fry *v.* Glover
320 Pixton and another *v.* Dollman
330 Skinner *v.* London General Omnibus Co.
339 Ford *v.* Moeller
343 Hendra *v.* Chelsea Waterworks
348 Hughes *v.* Cox
349 Hayes and Wife *v.* North Metropolitan Trams Co.
350 Topley *v.* Pawly and others

352 Anderson v. London General Omnibus Company
105 Keen v. Cornelius
353 Richards v. Chatteris
363 Jarvis v. Maidment
364 Beecher v. Odell
371 Olley v. Hillier
373 Rayner v. James
379 West Malling Gas, &c. Co. v. Masters
385 Murley v. Blaney
387 Munns v. Ekins
391 Ward v. Robinson
395 London v. Fagg and another
400 Dolaro v. Harward Brothers
405 Edwards v. London General Omnibus Co.
407 Allard v. Mosedale
429 Kerruish v. London Road Car Co. (Lim.)
430 Higgins v. Truman, Hanbury, Buxton & Co. (Lim.)
431 Soult v. Hudson
432 Spurgin v. Salamon
439 Deacon v. Manning
442 Randall and another v. Miles and others
444 King v. Bragg
448 Campbell, Smith & Co. v. Lord Arthur Hill and others
451 Gittins and another v. Richardson and others
462 Maples v. Duncan and another
469 Bull v. Baldwin and another
471 Harrison v. Percy, Barclay & Co.
472 Potts v. Russell
473 Shore v. Wight
476 Lamb v. Hutton and another
479 Pope v. Johnson
483 Stock v. Pryor
484 Sparrow v. Studds
497 Wharton v. Mercer
501 Twyne v. Lloyd's Bank (Lim.)
502 Bryant v. London General Omnibus Co.
512 Briggs v. O'Brien
515 Walter and another v. House
516 Coughlin v. Wright
517 Barnett v. Lewis
518 Tuke and another v. Beale
522 James and another v. Kidd
527 Herbert v. Hilton
529 Perkins and another v. Daintrey
530 Packman v. Blewitt
536 Knoblauch v. J. Kitchen (Lim.)
547 Voss v. Hewett
562 Wynter v. Rivington
567 Bookbinder v. Williamson and another
579 Hebblethwaite and another v. Hollinshed and another
584 Barfield v. Barry

## ACTIONS WITHOUT JURIES.

Actions beyond No. 316 in this List will not be taken before Monday, November 2.

The following Numbers will be in the List for Trial on Tuesday, October 27: Nos. 139 to 208, both inclusive.

139 Trevenen v. Marriott
156 Robey v. Shanks
161 London and North-Western District Bank (Lim.) v. Mays and others
169 Troup v. Hawkins
174 Dunlop v. Macede
176 Hawkins v. Stewart
177 Jackson v. Board of Works for Limehouse District
179 Baxeres v. De la Sala
181 Coward v. Brown
184 Edinburgh Ballarat Gold Quarts Mine (Lim.) v. Haywood & Co.
185 Dorman v. Rankin and others
187 Norton & Sons v. Quinn
194 Maythorn v. Clark
198 Cooper and another v. Cloete and Wife
198 Faulks v. Hallinan
208 Saliceto v. Anglo-Sardinian Antimony Co. (Lim.)
210 Willett v. M'Lean
211 Same v. English and Scottish, &c. Trust (Lim.)
212 Hamerton v. Bradley
213 Ward v. Procter
107 Cahn & Co. v. Werner & Co.
109 Maynard and another v. Firbank
160 Isaac v. Hoare and another
214 Wadd v. Colquhoun
216 Marshall v. Chichester
217 Lee v. Cloete
221 Smith v. Hawkins
225 Stenhouse v. Butts
227 Munn and another v. Hibbert
231 Attorney-General, &c. v. Corporation of Oldham
246 Hebblethwaite v. Peever
247 Rolls v. Hills
254 Pym v. Hamlyn & Co.
255 Chapple and another v. Fletcher
257 Mitchell v. Lansdoune & Co.
258 Rollitt & Sons v. Mussett
260 Rawlinson v. Morgan & Co. (Lim.)
261 Jones v. Robinson and another
263 Robus v. Crystal Palace District Gas Co.
266 Advance Steamship Co. v. A. A. Adams & Co.
268 Willoughby v. Jaffray and others
272 Douglas-Willan v. Hewetson, Milner & Thexton (Lim.)
274 Brown and another v. Pankhurst and another
28 Jacomb v. Turner
278 Odwell v. Willesden Local Board
279 Heward v. Heward
281 Lilley v. Hewett
282 Gluck v. Italo-Britannica Royal Italian Mail Steam Navigation Co.
284 Rudall v. Lindgren
287 Low v. Evans
292 Lethbridge v. Mason
294 Latimer, Clark, Muirhead & Co. v. Francis
295 Davies v. Cartwright
297 Clever v. Tice
301 Doubleday v. Lacy, Hartland, Woodbridge & Co.
303 Bennett v. Meek
304 Lane v. Portugal
308 Ruthven v. Lee Theatrical Co. (Lim.) and another
314 Smith v. Roberts
315 Burtsal v. Bianchi
316 Savery v. Savery
5 Tilt Cove Copper Co. v. Comptoir d'Escompte and others
8 Good and others v. Isaacs & Sons
7 Edwards v. Bumpus
15 Kilkivan Mines (Lim.) v. Appleby
16 Red Reef Gold Mining Co. v. Rawlins
18 Mitchell v. De Veysey and another
23 Hartley and others v. Malins
25 Walter and another v. Gilbert and another
28 Belcher v. Belcher
29 City of Genoa Waterworks Co. (Lim.) v. Argentine Loan Co. (Lim.)
30 Daniel v. Preston
31 Myers v. Lawson
32 Jenkinson and another v. Bullock
33 British Empire Mutual Life Assurance Co. v. Bellaggio Estates (Lim.) and others
36 Wilson v. Union Oil Mills (Lim.) and another
37 Harris v. Downs and another
41 Burbidge v. Smith and another
42 Christmas v. Cook
43 Millgate and others v. Longhurst
45 Brandreth v. Hillyard
46 Steele v. Hudson
49 Tudors, Mash & Co. v. Gamage and others
50 Electrical Engineering Corporation v. Lord Charles Ker
51 Gamgee v. Gamgee Steam Generators (Lim.)
53 Beck v. Hendry
54 Hendry v. London and South-Western Railway Co.
55 Same v. Kent and others
56 Clapp v. C. M. Pront
58 Laitwood v. Heinemann and another
60 Trench v. Arnold
61 Hepburn & Co. v. Harding
66 Conservators of River Thames v. London, Tilbury and Southend Railway Co.
72 Morgan v. Lyon
73 Sovereign Life Assurance Co. v. Dodd
77 Christmas v. Lever and others
84 Hardy & Co. v. Cheque Bank (Lim.)
85 International Bank of Berlin v. Same
91 Smith v. Rossiter
102 Gray v. Smith
106 Somervail v. Hutchison
116 Malcolm, Brunker & Co. v. De Pont
129 Johns v. China Clay Union (Lim.) and another
135 Bunbury v. Bishop
140 Horsman v. Burr
148 Corbett v. M'Clymont
154 London Permanent Benefit Building Society v. Bell and others
155 Farlow and another v. Banks
159 Stogdon v. General Public Works and Assets Co.
165 Higgs v. Greenwell
170 Calvert & Co. v. Gleed and another
171 Red Reef Gold Mining Co. v. Cook
180 Mitchell v. Giffard Inventions Co. (Lim.)
204 Skene v. Inlaid Tile, &c. Co. (Lim.)
222 Webster v. Hilder
233 Weiner v. Hoare and another
241 Italo-Britannica Royal Italian Mail, &c. Co. (Lim.) v. Dunkelsbuhler
249 Lubbock v. Bergman & Co.
253 Sturdy v. Wallis
254 Garth SS. Co. (Lim.) v. Watts, Ward & Co.
293 Cameron v. Elliston
323 Powis v. Brickell
324 Bainbridge and others v. Doris Syndicate (Lim.)
325 Deed v. Yeo
326 Deacon v. Germain and another
329 Rey & Son v. Cowl
331 Clay & Sons v. Chapman
332 Val de Travers Asphalte Paving Co. (Lim.) v. Tatum
333 Symonds and another v. Kitchingman
269 Harrison v. Baumgartner
270 Same v. Same
334 Same v. Same
337 Powell v. Goldring
338 Roche v. Rogers
340 Clever v. Hanson
342 Clark v. Joy
347 Graham v. Hughes
351 Larsen v. Hamlyn & Co.
354 Walker v. Turner & Co.
355 Wallbridge v. Howard
356 Prosser v. Prosser
357 Perks v. Mottram
358 St. John del Rey Mining Co. v. Lampen & Co.
360 Gretton v. Beddoe
362 Cully v. Skinner
366 Morgan v. Robinson
368 Coles v. Cutting
370 Calvert v. Great Western Colliery Co. (Lim.)
374 Holmes v. Ingham
375 Rumilly v. Richards
376 Brown v. Ker
378 Redman v. Goad

## LONDON.

### SPECIAL JURY ACTIONS.

Actions beyond No. 658 in this List will not be taken before Monday, November 2.

The following Numbers will be in the List for Trial on Wednesday, October 28: Nos. 97 to 167 both inclusive.

35 Churchill & Co. (part heard) v. National SS. Co.
97 Batt & Co. v. Byrne & Co.
104 Welch, Perrin & Co. v. Anderson & Co.
128 Boehm v. Vogt & Co.
144 M'Gowan v. Stephens & Co.
147 Jones v. Mockford
151 Parker v. South-Eastern Railway Co.
158 Cooker v. London and South-Western Railway Co.
167 Murray v. London Street Tramways Co.
190 Dalison v. Formby's Cement Works
202 Hargreave v. Spink & Son
229 Gregory v. Russell
250 Dorman & Co. v. Thornham & Co.
262 Hayes v. Midland Railway Co.
3 Leadville Mines (Lim.) v. Green
13 Lamb v. London and India Docks Joint Committee
19 Mora, Ona & Co. v. Watts, Ward & Co.
20A Browne v. Taylor & Sons
52 Pinto v. Aviss
70 Miln v. Easton
94 Aarons v. Paddington Land, &c. Society (Lim.)
95 Lawrence v. Redfern, Alexander & Co.
99A Cohen v. Rivas
219 Hill v. Bromfield and Wife
280 Nourse v. Boland
288 Baker v. Midland Railway Co.
307 Lewis & Peat v. Huttenback & Co.
336 Snowsell v. Royal Agricultural Society of England
341 Altman v. North Metropolitan Tramways Co.
345 Best and another v. Palmer's Shipbuilding, &c. Co. (Lim.) and another
365 Watson & Co. v. Jones and others
372 Ruth v. Surrey Commercial Dock Co.

388 Farmer v. Poulter & Sons
399 Ciampi v. Johnstone
404 Howard v. Humpage
409 Smallman v. Gill and another
412 Walkinshaw v. Metropolitan Railway Co.
417 Marshall v. Hughes & Co.
424 Simpson and another v. Norwich and London Accident, &c. Insurance Association
446 Clarke v. Laing
447 Hosking v. Pahang Corporation (Lim.)
467 Johnson v. Co. v. Reid and another
500 Morris v. Great Western Railway Co.
504 Christopher v. London and India Docks Joint Committee
511 Beyts, Craig & Co. v. Barwick
525 Culver v. Holme and another
545 Chapman v. Lewis
590 Butterfield v. Marks
600 Child v. Barrow
615 Webb v. Ross
658 Gibb v. Sheward
661 Branton v. Shepherd and another
679 Whitnall v. South-Eastern Railway Co.
683 Walford & Co. v. Prince Steam Shipping Co. (Lim.)
691 Bennie & Sons v. Batt & Co.
694 Wright v. Perryman
699 Electric Wiring, &c. Co. (Lim.) v. Loder
706 Lawrence v. Gill
712 Smith v. Union Assurance Society
725 Thomas v. Hankey and others
729 Conservators of River Thames v. Barff & Co.
735 Robinson v. Kosterlitz
744 Law & Co. v. Waterhouse & Sons
763 Gillson v. London and India Docks Joint Committee
766 Blakey v. Standard Cash Register Co.
769 Congdon v. Howard and another
801 Jameson v. Equitable Life Assurance Society of United States and another
818 London and Colonial Finance Corporation (Lim.) v. Grant
833 Williams v. Rickman
843 Electrical Engineering Corporation v. Liverpool and London and Globe Insurance Co. and others
848 De Kaap Gold Mines Co. (Lim.) v. Cloete and others
850 Tidey v. North London Railway Co.
854 Rumney v. Walter and another
881 Linard v. Shipping Federation (Lim.)
911 Helps v. Vaughan
914 Smith and another v. Rosario Nitrate Co.
916 Jones v. Herron
930 Lidderdale v. Weaver
964 Signoreldi v. London Trams Co. (Lim.)
967 Preston v. Milburn & Co.
999 Hazell, Watson & Viney (Lim.) v. School Board for London

SUMMARY.

Actions entered for Trial to October 24, 1891.

| | |
|---|---|
| Middlesex—Special Jury | 168 |
| Common Jury | 189 |
| London—Special Jury | 86 |
| Common Jury | 49 |
| Without Juries | 496 |
| Total | 988 |

NOTE.—This Summary shows the total number of actions for trial up to and inclusive of the above date, and includes the actions contained in the foregoing printed Lists.

## APPEALS AND MOTIONS IN BANKRUPTCY.

*Appeals for hearing before a* DIVISIONAL COURT *sitting in Bankruptcy.*

In re Pinfold, ex parte Pinfold
In re Michael, ex parte Michael
In re Earle, ex parte Maples
In re Arnold, ex parte Official Receiver and others

*Motions in Bankruptcy for hearing before*

MR. JUSTICE WILLIAMS.

In re Benzon, ex parte Hasluck v. Cochrane
In re Moor & Bailey, ex parte Wilding v. Babbage
In re Ridgway, ex parte Clarke v. Hurlbatt
In re Crawford, ex parte Official Receiver
In re Beacon, ex parte Official Receiver v. Watney
In re Von Wiessenfeld, ex parte Hendry v. Concentrated Co. (Lim.)
In re Mullins, ex parte Official Receiver v. Gascoigne
In re Williams, ex parte Palmer, v. Liquidators of Williams & Co. and others
In re Bottomley, ex parte Bottomley v. Official Receiver
In re Same, ex parte Same v. Same
In re Hincks and another, ex parte Board of Trade v. Darling
In re Best, ex parte Official Receiver v. Best
In re Alderson, ex parte Spooner v. Trustee
In re Marsden, ex parte Board of Trade v. Trustee
In re Robertson, ex parte Schoetensack & Co. v. Trustee
In re Abrahams, ex parte Trustee v. Woolranch
In re Deerhurst, ex parte Board of Trade v. Foreman
In re Deerhurst, ex parte Coldham v. Foreman
In re Mayall, ex parte Nye and others v. Nichols
In re Hughes, ex parte Talbot v. Lumb

MATTERS IN BANKRUPTCY.

Total Appeals and Motions . . . . . 24

## PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

### PROBATE CAUSES.

*Michaelmas Sittings*, 1891.

*A List of Actions in the order in which they are entered for Trial will be posted at the Registry, Somerset House, and Supplemental Lists will be printed from time to time.*

*Parties must be prepared to try their Actions ten days after the same have been entered for Trial.*

BEFORE THE COURT ITSELF—WITHOUT JURY.

Ashwin and Addis v. Addis (Addis and others cited)
Burchell v. Webber (Cowie and others cited)
Petitt and Woods v. Case
Wilde and others v. Lloyd (Joyce and others cited)
Gee v. Gee and others
Redhouse v. Blakeslee
Groffman and Groffman v. Groffman (by Groffman, her grdian.)
Martyr (by Blackabey, his attorney) v. Perry
Paton v. Ormerod (Paton and Paton, by Corbould, their guardian, intervening)
Jones and Jones v. Edwardes
Radcliffe and Field v. Mellor (Mellor and others cited)
Barber v. Larrett and others
Featherstone v. Catterns
Witton v. Humphries (otherwise Witton)
Clark v. Dixon and others
Harris v. Hawker and others
Ennis v. Leahy and others
Banks and Ivens (Johnson and others cited) v. Burcher
Meads and Bland v. Smith (Brocard cited)
Jones and Eastham v. Eastham
Cavendish v. Cavendish (by Cavendish, his guardian)
Perry and others v. Norman and Blundy (Perry and others cited)
Hand v. Scott and others
Young v. Whitfield and others
Draper and others v. Lawrence and others (Lawrence and others cited)
Cousins and Burbidge v. Tubb (Lamb and others cited)
Gurowski v. Maciejowski
Cowburn and Wood v. Lee (Lee cited)
Patrick v. Greenwell and Greenwell
Eaton and Rivington v. Beardmore
Woodbridge v. Kidney (Bean and others cited)
Williams v. Owen
Spufford v. Loke
Grossman v. Horsfield
Tappenden v. Lucas
Frankland v. Walmesley (Ratcliffe cited)
Glover and Douglas (Douglas intervening) v. Forwood & others (Cartwright and others cited)
Heddle (Shaw intervening) v. Heddle
White v. Duvernoy (Newton and others cited)
Croley and Croley v. Croley
Eastwood & Co. (Lim.) v. Harris and others (Harris cited)
Blanshard v. Griffith & Blanshard
Rushford v. Morgan and Morgan (by Williams, their guardian)
Thompson v. Newbold
Palmer v. Robson (Robson and others cited)
Rashleigh v. Monk
Fildes and Fildes v. Pinching and Pinching
Cooks v. Young (by her guardian)
Leach v. Simmonds and Simmonds (Fitzmaurice and others cited)
Buxton v. Buxton
Hughes v. Owen and others
Marks v. Gamlin
Hopkinson v. Whittaker
Chantrell (Chantrell cited) v. Pollard and Knocker
Pizey v. Uniacke (Uniacke and others cited)
Brown and Chetham v. Brown
Hildrop v. Hildrop
Mellor and Smith v. Sykes and others
Brooke (Phillips intervening) v. Smith and Hare
Pilot v. Pilot
Tickell v. Mugliston and Jackson
Hussey v. Browning and others (Macgregor cited)
Smith v. Helliwell (Smith and others cited) (in default) (Helliwell intervening)
Wadely and Pike v. Allinson
Hampson v. Whitaker (Solicitor of Duchy of Lancaster)

COMMON JURY CAUSES.

Wills (Clapp and Norris cited) v. Clapp and Clapp
Roome v. Roome and Jones
Watson v. Dunn
Richards v. Farquhar
Pocock (Parsons and others cited) v. Brooks
Charlton and Charlton v. Charlton and others

SPECIAL JURY CAUSES.

Mahony v. McCarthy (McCarthy cited)
Peterson v. Atkinson
Parnell (formerly O'Shea) (O'Shea intervening) v. Wood and Wood (Steele and others intervening) (Farwell and others cited)
Donovan and Donovan v. Donovan
Wright (by his grdian.) v. Wright
Mitchell and Owen v. White and White
Sanders and Lawry v. Littleton
Edmonds and others v. Kilby and others

SUMMARY.

| | |
|---|---|
| Before the Court itself—without Jury | 65 |
| Common Jury Causes | 6 |
| Special Jury Causes | 8 |
| Total | 79 |

## DIVORCE CAUSES.

*Michaelmas Sittings*, 1891.

### PART-HEARD CAUSES.

*Notice to be given at Court when Parties are ready to proceed with the further hearing of these Causes.*

Kalbitzer *v.* Kalbitzer (undefended)
Briscoe *v.* Briscoe and Dockerty (undefended)
Thorn *v.* Thorn and Matthews (undefended)
Sanders *v.* Sanders (J.S.) (undefended)
McDowall *v.* McDowall and Jacob (S.J.)
Atterton *v.* Atterton and Irving (pauper cause) (defended)

### BEFORE THE COURT ITSELF—UNDEFENDED.

Henshall *v.* Henshall
Plum *v.* Plum
Crowley *v.* Crowley (pauper cause) (J.S.)
Newton *v.* Newton
Lawson *v.* Lawson
Thomson, otherwise Harris *v.* Thomson (*in camerâ*) (N.)
Morgan *v.* Morgan
Rhodin *v.* Rhodin
Brown *v.* Brown
Fulford *v.* Fulford and Hind
Ball *v.* Ball and Forster
Mountain *v.* Mountain
Shepherd *v.* Shepherd and Jarvis
Sicklemore *v.* Sicklemore
Prichard *v.* Prichard and Harvey
Bold *v.* Bold
Johnson *v.* Johnson
Small *v.* Small (pauper cause)
Fenwick *v.* Fenwick and Badrau
Towell *v.* Towell
Gooch *v.* Gooch
Taylor *v.* Taylor, Yarnell, and Parnham
MacOlive *v.* MacOlive and Glendennen
Birse *v.* Birse
Clark *v.* Clark and Kilburn (pauper cause)
Oates *v.* Oates
Hopthrow *v.* Hopthrow and Percy
Bonsall *v.* Bonsall and Johnson
Willison *v.* Willison
Lyles *v.* Lyles and Richardson
Woodnutt *v.* Woodnutt (pauper cause)
Denman *v.* Denman and Coborn
Rose *v.* Rose and Witherby
Hounsell *v.* Hounsell (J.S.)
Moser *v.* Moser (J.S.)
Smith *v.* Smith and Moss
Walter *v.* Walter and Tucker
Tarrant *v.* Tarrant
Fowler *v.* Fowler
Dunn *v.* Dunn and Tonks
Bawden *v.* Bawden
Frost *v.* Frost and Edgson
Ross *v.* Ross
Tomlin *v.* Tomlin
McWatt *v.* McWatt and Miller
Buchanan *v.* Buchanan
Lilley *v.* Lilley (J.S.)
Dicker *v.* Dicker and Russell
De Havilland *v.* De Havilland and Bell
Pidgeon *v.* Pidgeon and Lucas
Haslop *v.* Haslop
Nevill *v.* Nevill and Ross
Miller *v.* Miller
Denning *v.* Denning and Jenner
Strawson *v.* Strawson and Dawson
Smith *v.* Smith and Kimmins
Hodge *v.* Hodge and Darby
Whipple *v.* Whipple and Wood
Debney *v.* Debney & Bellingham
Simpson *v.* Simpson & McQuarrie
Craine orwise. Wootton *v.* Craine (*in camerâ*) (N.)
Chalmers *v.* Chalmers
Johnson *v.* Johnson
Darke *v.* Darke
Patient *v.* Patient
Hill *v.* Hill
Nevill *v.* Nevill
Williams *v.* Williams
Ross *v.* Ross
Simpson *v.* Simpson (pauper cause)
Butler *v.* Butler
Clark *v.* Clark
Abbott *v.* Abbott and Marsh
Pasmore *v.* Pasmore
Smith *v.* Smith and Daniels
Ferri *v.* Ferri
Ratcliff *v.* Ratcliff
Champneys *v.* Champneys
Niebler *v.* Niebler
Fairclough *v.* Fairclough
Whittow otherwise Phillips *v.* Whittow (*in camerâ*) (N.)
Crabtree *v.* Crabtree
Arnold *v.* Arnold and Buchan
Lee *v.* Lee and Kemp (pauper cause)
Peterson *v.* Peterson
Day *v.* Day, Buckle, and Appleby
Wilson *v.* Wilson (J.S.)
Roland *v.* Roland and Briggs
Wilson *v.* Wilson and Sparks
Seers *v.* Seers
Brindley *v.* Brindley and Plant
Glover *v.* Glover
Russell *v.* Russell
Aston *v.* Aston (commission)
Fairey *v.* Fairey and Naylor
Coles *v.* Coles (pauper cause)
Newton *v.* Newton
Bodger *v.* Bodger
Simons *v.* Simons and Nicholson
Parker *v.* Parker, Barnard, and Neadham
Lane *v.* Lane, Ball, and Roberts (pauper cause)
Gale *v.* Gale (pauper cause)
Williams *v.* Williams (J.S.)
Grant *v.* Grant and Atkinson
Davis *v.* Davis
Hardwick *v.* Hardwick
Gilmour *v.* Gilmour and Britton
Crompton *v.* Crompton and Teale
Cale *v.* Cale
Rendle *v.* Rendle
Taylor *v.* Taylor
Page otherwise Johnson *v.* Page (*in camerâ*) (N.)
Copping *v.* Copping
Diehl *v.* Diehl and Henderson otherwise Twyley
Rastall (by her guardian) *v.* Rastall
Nolôt *v.* Nolôt
Petty *v.* Petty and Martin
Obree *v.* Obree and Crabb
Weston *v.* Weston and Lea
Hornsey *v.* Hornsey and Pitts
Berry *v.* Berry
Cowan otherwise Nerontsos *v.* Cowan (*in camerâ*) (N.)
Crampton *v.* Crampton
Meikle *v.* Meikle
Ashton *v.* Ashton
Holland *v.* Holland, Curtis, and Hall
Simkin *v.* Simkin
Joseph *v.* Joseph
Tilley *v.* Tilley
Vincent *v.* Vincent
Whalley *v.* Whalley and Sutcliffe
Muncy *v.* Muncy and Nicholls
Baldwin *v.* Baldwin
Cumpernass *v.* Cumpernass (pauper cause) (J.S.)
Thomas *v.* Thomas (J.S.)
Weston *v.* Weston
Bayley *v.* Bayley
Lydiate *v.* Lydiate
Hudson *v.* Hudson and Roby
Leach *v.* Leach
Burton *v.* Burton (J.S.)
Beales *v.* Beales and Banham
Ashton *v.* Ashton (R.C.R.)
Nelson *v.* Nelson
James *v.* James
Pace *v.* Pace
Coates *v.* Coates
Govett *v.* Govett and Lucas
Hardy *v.* Hardy (J.S.)
Dejonge *v.* Dejonge and Watson
Sumner *v.* Sumner and Featherstonehough (commonly called Featherstone)
Lamb *v.* Lamb and Lohr
Freeman *v.* Freeman (pauper cause)
Mason *v.* Mason
Cheeseman *v.* Cheeseman
Coaks *v.* Coaks
Pigott *v.* Pigott
Harrison *v.* Harrison

### BEFORE THE COURT ITSELF—DEFENDED.

Forde *v.* Forde (J.S.)
Yarrow *v.* Yarrow
Wetherill *v.* Wetherill (J.S.)
Attwood *v.* Attwood and Roberts (Queen's Proctor showing cause)
Becker *v.* Becker
Scott, otherwise Kaye *v.* Scott (*in camerâ*) (N.)
Berrey *v.* Berrey and Stanley
Huddart *v.* Huddart
Hooper otherwise Fell *v.* Hooper (*in camerâ*) (N.)
Raynsford *v.* Raynsford (J.S.)
Smith *v.* Smith, Clare, and Salaraki (pauper cause)
Richardson *v.* Richardson (Gordon cited)
Mably *v.* Mably and Mitchell
White *v.* White
Schofield *v.* Schofield
Bailey *v.* Bailey and Mills
Carew *v.* Carew
Hicks *v.* Hicks and Smith
Wild *v.* Wild (J.S.)
Wild *v.* Wild and Carew
Aylett *v.* Aylett (J.S.)
Hearse *v.* Hearse (J.S.)
Jacobson, H. A. *v.* Jacobson, E.
Jacobson, E. *v.* Jacobson, H. A.
Herniman *v.* Herniman and Leach
Shine *v.* Shine
Dannatt *v.* Dannatt
Gardner *v.* Gardner and Pilkington
Calland *v.* Calland (J.S.)
Forbes *v.* Forbes
Blyth *v.* Blyth (J.S.)
Butler *v.* Butler
Burrow *v.* Burrow and Jones
Linom *v.* Linom
Pearson *v.* Pearson
Atherton *v.* Atherton and Pentecost
Tuckett *v.* Tuckett, Rees, Job (the younger), and Lardner
Bain *v.* The Attorney-General (Ushers, L. D. A. cited)
Hanbury *v.* Hanbury
Adams *v.* Adams and Burrington
Gatacre *v.* Gatacre and Fitzgerald
Moss *v.* Moss (J.S.)
Sears *v.* Sears (Queen's Proctor showing cause)
Hazlehurst *v.* Hazlehurst and Brassington
Dixon *v.* Dixon
Hill *v.* Hill and Pritchard
Cash *v.* Cash
Parker *v.* Parker and Loos
Tyars *v.* Tyars
Rippon *v.* Rippon and Charles
Parson *v.* Parson
Martin *v.* Martin and Leach (Queen's Proctor showing cause)
Duncombe *v.* Duncombe and Yates
Pearson *v.* Pearson
Martin *v.* Martin (Queen's Proctor showing cause)
Owen *v.* Owen
Jones *v.* Jones and Dyson
Short *v.* Short and Herring
Haffner (otherwise Lawley) *v.* Haffner (N.)
Baker *v.* Baker
Bean *v.* Bean and Bennett
Bromlow *v.* Bromlow and Kirkpatrick
Chettle *v.* Chettle and Hyde
Grovissier *v.* Grovissier (pauper cause)

### COMMON JURY CAUSES.

Marsh *v.* Marsh and Marsh
Martin *v.* Martin and Allkins
Atkinson *v.* Atkinson & Gwyther
Creber *v.* Creber and Bryan
Condley *v.* Condley and Ball
Mills *v.* Mills and Lemon
Harlow *v.* Harlow (J.S.)
Harlow *v.* Harlow and Smith
Wattler *v.* Wattler and Kimber
Smith *v.* Smith and Kayhil
Smith *v.* Smith
Cooke *v.* Cooke
Cooke *v.* Cooke and Maddock
Mackenzie *v.* Mackenzie, Ridley, German, and Hartsilver (cited as Hardsilber)
Dearden *v.* Dearden and Nuttall
Palmer *v.* Palmer, Sprules, and Sprules
Clarke *v.* Clarke (R.C.R.)
Gray *v.* Gray and Gutteridge
Levy *v.* Levy and Cox
Mims and Meager *v.* Mims
Hammond *v.* Hammond and Coochey
Pike *v.* Pike and Morrell
Gothard *v.* Gothard (J.S.)
Gothard *v.* Gothard, Avern, and Woolf
Gorham *v.* Knight
Cottrell *v.* Cottrell and Stockwell
Bramall *v.* Bramall and Miller
Hinchly *v.* Hinchly and Brown
Knight *v.* Knight and Beard
Craig *v.* Craig and Hamp
Benford *v.* Benford and Billson
Pringuer *v.* Pringuer and Gooch
Edwards *v.* Edwards and Edwards
Lewin *v.* Lewin and Green
Hammerton *v.* Hammerton and Osborne
Brew *v.* Brew and Belvere (stay security) (C.J.)

### SPECIAL JURY CAUSES.

Delaforce *v.* Delaforce & Driscoll
Russell *v.* Russell (J.S.)
Duplany *v.* Duplany (Cohen intervening)
Stuart *v.* Stuart and Kirwan
Cautley *v.* Cautley
Cautley *v.* Cautley and Playfair
Mowll *v.* Mowll

Erskine *v.* Erskine and Gentle
Hurley *v.* Hurley and Menzies
Parker, C. R. *v.* Parker, W. S. (J.S.)
Parker, W. S. *v.* Parker, C. R.
Howard *v.* Howard and Gilbert
Abdy *v.* Abdy (J.S.)
Dampier-Child *v.* Dampier-Child
Thornley *v.* Thornley and Wills
Gilroy *v.* Gilroy and Cook
Burton *v.* Burton, Teare, and Walton

SUMMARY.

| | |
|---|---|
| Causes before the Court itself—Undefended | 158 |
| " " Defended | 62 |
| Common Jury Causes | 32 |
| Special Jury Causes | 15 |
| Total | 267 |

CAUSES standing over by consent or otherwise, or stayed by order; to be replaced in the List of Causes for Hearing on the Petitioner giving Ten Days' Notice in writing to the other parties for whom an appearance has been entered, and filing a Copy of such Notice in the Registry.

Coustas *v.* Coustas (defnd. order) (J.S.) (1318)
Wood *v.* Wood and Brook (stay security) (C.J.)
Williams *v.* Williams (defended) (stay security)
Browse *v.* Browse (defended) (stay security)
Dodson *v.* Dodson (undefended) (stay security)
Wilson *v.* Wilson, Rand, and Wardell (stay security) (C.J.)
Bagge *v.* Bagge (defended order)
Pereira *v.* Pereira (undefd. order)
Fearn, A. E. *v.* Fearn, G. (defnd. order) (R.C.R.)
Nicol, M. A. *v.* Nicol, A. (defended order) (J.S.)
Bevington *v.* Bevington and Jameson (undefended) (commission)
Clark *v.* Clark (dfnd. order) (J.S.)
Titford *v.* Titford (defended) (stay security)
Payne *v.* Payne, Carter, and Fry (cited) (defended order)
Relph *v.* Relph (defended) (stay security)
Wood, H. *v.* Wood, John (defndd.) (stay security) (J.S.)
Holmes *v.* Holmes and Pearson (defended) (stay security)
McConachie *v.* McConachie and Beal (defended) (stay security)
Darvall *v.* Darvall, Scutter, and Curtis (defndd.) (stay security)
Arnott *v.* Arnott and Fox (defended) (stay security)
Bennett, D. *v.* Bennett, M. (defended) (stay security) (R.C.R.)
Richley *v.* Richley and Tate (defended) (stay security)
Piggott *v.* Piggott, Ball, and Kimber (defnd.) (stay security)
Amos *v.* Amos and Harding (defended) (stay security)
Nathan *v.* Nathan (defended) (stay security) (J.S.)
Prime *v.* Prime and Hewett (stay security) (C.J.)
Bucknall *v.* Bucknall (defd. order)
Francis *v.* Francis and Alderman (defended) (stay security)
Williams *v.* Williams and Hinton (stay security) (C.J.)
Corti *v.* Corti and Bruce (defended) (stay security) (C.J.)
Cardle *v.* Cardle and Jaggs (stay security) (C.J.)
Hodson *v.* Hodson and Seager (defended) (stay security)
Burnside *v.* Burnside and Hardy (defended) (stay security)
Park *v.* Park and Ashworth (stay security) (C.J.)
Shemtob *v.* Shemtob and Vitali (stay security) (C.J.)
Campbell *v.* Campbell (defended) (commission) (J.S.)
Kavanagh *v.* Kavanagh and Nesbitt (defended) (stay security)
Duncan *v.* Duncan (undefended) (stay security)
Clarke *v.* Clarke and Robinson (defended) (stay security)
Scarratt *v.* Scarratt and Bullock (stayed) (S.J.)
Wilkinson *v.* Wilkinson and Humphries (stay security) (C.J.)
Webster *v.* Webster (stay security) (J.S.)
Judkins *v.* Judkins (S.J.)
Harrison *v.* Harrison (C.J.)
Redfern *v.* Redfern, Williams, Murrell, Rae, & Herbert (S.J.)
Bill *v* Bill (defended)
Shewring *v.* Shewring & Houkes (C.J.)
Hopper *v.* Hopper (defended)
Breaks *v.* Breaks (undefnd.) (stay security) (J.S.)
Clark *v.* Clark and Hancox (defd.) (stay security)
Mims *v.* Mims and Meager (stay security) (C.J.)
Trafford *v.* Trafford (stay secrty.) (C.J.)
Mardon *v.* Mardon (stay security) (C.J.)
Bentley *v.* Bentley and Dorman (defended) (stay security)

## ADMIRALTY CAUSES.

*Michaelmas Sittings*, 1891.

ACTIONS FOR TRIAL.

The Bellenden
The Blairmount
The Bona
The Brenda
The Britannia
The British Peer
The City of Amsterdam
The Costa Rican
The Dronisre
The Duchess of Albany
The Dwina
The Eros
The Forth
The Glenarchy
The Glentanner
The Hallamshire
The Heinrich Cruse
The H. M. Pollock
The Jehu
The Karl XV.
The Killeena
The Mabel
The Merchant Prince
The Napier
The Nita
The N. Strong
The Otarama
The Ouse
The Princess Victoria
The Rei de Portugal
The Rimpha
The River Lagan
The Robin
The Sailor Prince
The Saxon Prince
The Schwan
The Sperber
The Staincliffe
The Tahta
The Torrens
The Tweed
The Ullswater
The Umbilo
The Zanzibar

APPEALS TO THE DIVISIONAL COURT.

The Racoon
The Eden
The Curlew
The Gazelle

SUMMARY.

| | |
|---|---|
| Actions for Trial | 44 |
| Appeals to Divisional Court | 4 |
| Total | 48 |

MEMORANDUM.—No complete List of Actions to be tried in this Division during Michaelmas Sittings can be given in advance, as the number and order in which they will be tried are necessarily dependent on the presence in this Country of Seafaring Witnesses whose movements are unavoidably uncertain. The List will therefore be subject to alterations and additions.

## LAW STUDENTS' SOCIETIES.

DEBATING.—The ordinary weekly meeting of the society was held at the Law Institution, Chancery Lane, on Tuesday, October 20, Mr. Pattinson in the chair. The subject for discussion was: 'That it is inexpedient to extend local government to Ireland.'—The debate was opened by Mr. Crawford, who gave a careful *résumé* of the most cogent arguments in support of the motion.—His views were vigorously combated by Mr. Cornelius Wheeler, a well-known advocate of home rule.—Mr. Douglas followed with some interesting details, drawn from personal experience, of the present system of local government in Ireland, and a most instructive debate ensued, which was spiritedly maintained until a late hour by the numerous members present.—The subject for discussion at the next meeting of the society on Tuesday, October 27, is: 'That the case of *Stuart* v. *Bell*, L. R. (1891), 2 Q. B. Div. 341, was wrongly decided.'

LIVERPOOL.—At a meeting of this association on Monday, the 19th inst., Mr. W. W. Rutherford in the chair, a debate was held on the following subject for discussion: 'A. entered into an unsecured composition with his creditors, which provided that, if default should be made in payment of any instalment, the deed should become void and of no effect. The instalments to be paid some in cash, some in notes. All the cash instalments being paid, A. gave promissory notes payable at given dates, and B. joined in them as surety. When the notes were handed to the creditors, A. took a receipt in the following form: "Received from A. two joint and several promissory notes of A. and B. for 5*l.* and 10*l.* each, which I accept in full satisfaction and discharge of my debt of 30*l.* owing to me by A." The first note was duly paid, the second was dishonoured. Does the original debt revive?'—Mr. F. Gittins, jun., opened in the affirmative, which was also supported by Messrs. F. H. Wilson, A. Forshaw, and E. C. Byrne.—Mr. W. H. T. Brown opened in the negative, which was also supported by Messrs. F. R. Martin and F. J. Priest.—The question was decided in the affirmative by a majority of two.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## RELIGIOUS SOCIETIES AND INCOME-TAX.

In a recent number we commented on Lord Herschell's Mortmain Bill. Questions of charitable trusts are always coming before the Courts, and in the case mentioned above, of *The Income-Tax Commissioners* v. *Pemsel*, the House of Lords has decided in favour of the immunity of the 'Unitas Fratrum,' a Moravian Society, from income-tax in respect of lands held in virtue of deeds of settlement executed in 1813 and 1815. The question was whether a religious society, for the propagation of its own peculiar trusts, was a charity within the exemption clause which has always been continued in successive Income-Tax Acts. For the purpose of the Act of the 43rd Elizabeth, relating to the administration of what are called 'charities,' a very wide interpretation has naturally been adopted. Instances of the extreme liberality of the Court of Chancery in this respect will be found in their lordships' judgments. But the same canons of construction were, of course, not binding for the purpose of the revenue. But still their lordships have extended the immunity to the respondents in this case. Lord Bramwell, however, in a most characteristic and humorous judgment dissented from the majority. He doubted whether the work of conversion to any religion was a charity. What, he asked, of a society for the conversion of the Jews? Would that be a charity? If so, what of a trust for their reconversion? There was said to be a trust in one of the Inns of Court (Lincoln's Inn, we believe) for the supply of oysters for the benchers. We are informed that the oysters are supplied to the barristers and students as well as the benchers, and it is not improbable that the Court would hold this to be charity.

Many persons will be disposed to agree with Lord Bramwell. The admission of religious bodies into the category of charities would, if logically carried out, involve the Courts in interminable religious controversies. It is nearly always in such cases the object to convert from one religion to another. The judges would then have to decide which of the competitors represented the purer and truer faith. How delightful a contest would be between the brilliant Catholic, Sir Charles Russell, and that doughty Scotchman, Mr. Finlay, Q.C., as to the respective merits of the decrees of the Council of Trent and of the Westminster Confession or the Shorter Catechism!

The truth is that the exemption ought to be abolished. It is well put in the Law Journal that this exemption is a form of concurrent endowment of the least defensible character. The *Times* expresses the same view in a more tentative fashion. Why should the country at large be called upon to contribute to every fantastic so-called charity which a weak-minded old maid may be moved to endow? In an interesting letter to the *Times*, Mr. Crackanthorpe, Q.C., reminds us that in 1863 Mr. Gladstone suggested the desirability of removing this privilege and was met with irresistible opposition. Deputations pointed out that the proposed reform would deprive forty boys of education in Christ's Hospital and turn adrift seventy widows dependent on the Corporation of the Sons of the Clergy. The consequence was that not a single member rose to support the motion subsequently introduced and advocated in a brilliant speech of two-and-a-half hours long by the even then 'Old Parliamentary Hand.' Mr. Crackanthorpe's letter, however, is mainly devoted to the more modest question whether the State should defray the heavy charges of the Charity Commission, now amounting to 40,000*l.* a year. He points out that it was not so intended by those who established the Charity Board, and bills introduced by Lord Lyndhurst on behalf of Sir R. Peel's Government in 1844-45-46 all contained clauses for taxing charity incomes to an extent sufficient to cover the cost of administration. Similar provisions continued in subsequent bills and resolutions embodying the same principle have from time to time been brought forward. Mr. Crackanthorpe concludes with the observation that the best chance of escape for charities from direct taxation 'lies in their giving a cheerful welcome to the milder legislative proposal that they should be required to pay out of their settled property the whole of the working expenses of the busy department at Whitehall which is at once their master and their servant.'—*Indian Jurist.*

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Successful Licensing Appeal.—At Gloucestershire Quarter Sessions, held at Gloucester on October 21, the landlord of the Ship Inn, Maisemore, near the county town, appealed against the decision of the local justices in refusing him a renewal of his license because he had been convicted of selling adulterated rum, and also on the ground that the house was not required, there being two licensed houses in the village, though it contained only 450 inhabitants. After a long hearing the Court granted the appeal and condemned the respondents in costs. This was the only appeal case, though nineteen licenses were refused or lapsed at the recent brewster sessions.

United Law Society.—The annual meeting was held on Monday at the Inner Temple Lecture Hall; Mr. J. R. Yates in the chair. The following are the officers elected for the ensuing session: Chairman, Mr. A. K. Common; vice-chairman, Mr. C. W. Williams; secretary, Mr. J. R. Atkin, 3 Pump Court; treasurer, Mr. F. B. Moyle; editor, Mr. J. L. V. Seymour Williams; secretary for societies in union, Mr. C. P. C. Kains Jackson; reporter, Mr. B. Hawkins; auditors, Mr. F. A. Wood and Mr. D'Arcy B. Collyer; non-*ex-officio* members of the committee, Messrs. C. Herbert Smith, W. S. Sherrington, R. C. Nesbitt, and L. W. Browne.—The next meeting is on Monday, the 26th, the subject for debate being 'That women ought to enjoy the fullest electoral franchise.'

The Recorder of Newcastle.—Mr. W. Digby Seymour, Q.C., charging the grand jury on October 16 at the Newcastle-on-Tyne Quarter Sessions, complained that he had been neglected in certain municipal ceremonies, chiefly the reception of the Prince of Naples, and the conferring of the freedom of the city on Mr. Gladstone. The recorder was a proper person to invite on such occasions, and would have been delighted to be present, but was conspicuous by his absence. The Municipal Corporations Act, 1882, provided that the recorder should hold rank next to the mayor, and it was becoming that he should be by the side of the mayor on such occasions. The mayor had evidently neglected the spirit of the Act. The recorder's complaint has arisen from a long-standing dispute as to whether he or the town clerk should have precedence in municipal functions.

The Lord Justice-General.—On October 16 in the first division of the Court of Session, Edinburgh, the ceremony of installing the Right Hon. J. P. B. Robertson as Lord Justice-General of Scotland and Lord President of the Court of Session took place in presence of a crowded assemblage. The Lord Justice Clerk presided, and there was a full attendance of the judges. Mr. Robertson presented his commission to the Lord Justice Clerk. The commission was recorded. Mr. Robertson, as Lord Probationer, then heard a case at Lord Wellwood's bar and afterwards reported it to the judges in the First Division. The trials of the Lord Probationer having been sustained, the oaths of office were administered to him. He was then invited to the bench by the Lord Justice Clerk, and he took the chair under the style and title of Lord Robertson.

## CALENDAR OF THE COUNTY COURTS.

FROM OCTOBER 26 TO OCTOBER 31.

| No. of Circuit | His Honour | Oct. 26 | Oct. 27 | Oct. 28 | Oct. 29 | Oct. 30 | Oct. 31 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Birkenhead | Northwich | Warrington | — | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leigh | — |
| 15 | Judge Turner | Middlesbrough | Stockton-on-Tees | — | — | — | — |
| 16 | Judge Bedwell | Hull | Scarborough | Hull | Hull | Hull | — |
| 22 | Judge Harington | — | — | — | Hereford | Hereford | — |
| 47 | Judge Bristowe | — | Lambeth | Greenwich | Lambeth | Lambeth | — |
| 54 | Judge Metcalfe | Weston-supr-Mare | Wells | Axbridge | — | — | — |

## NOTICES FOR THE WEEK.

### ROTA OF REGISTRARS.

MONDAY, October 26.—Court of Appeal No. 2: Mr. Pemberton. Mr. Justice Chitty: Mr. Jackson. Mr. Justice North: Mr. Leach. Mr. Justice Stirling: Mr. Farmer. Mr. Justice Kekewich: Mr. Carrington. Mr. Justice Romer: Mr. Beal.

Tuesday, October 27.—Court of Appeal No. 2: Mr. Ward. Mr. Justice Chitty: Mr. Clowes. Mr. Justice North: Mr. Godfrey. Mr. Justice Stirling: Mr. Rolt. Mr. Justice Kekewich: Mr. Lavie. Mr. Justice Romer: Mr. Pugh.

Wednesday, October 28.—Court of Appeal No. 2: Mr. Pemberton. Mr. Justice Chitty: Mr. Jackson. Mr. Justice North: Mr. Leach. Mr. Justice Stirling: Mr. Farmer. Mr. Justice Kekewich: Mr. Carrington. Mr. Justice Romer: Mr. Beal.

Thursday, October 29.—Court of Appeal No. 2: Mr. Ward. Mr. Justice Chitty: Mr. Clowes. Mr. Justice North: Mr. Godfrey. Mr. Justice Stirling: Mr. Rolt. Mr. Justice Kekewich: Mr. Lavie. Mr. Justice Romer: Mr. Pugh.

Friday, October 30.—Court of Appeal No. 2: Mr. Pemberton. Mr. Justice Chitty: Mr. Jackson. Mr. Justice North: Mr. Leach. Mr. Justice Stirling: Mr. Farmer. Mr. Justice Kekewich: Mr. Carrington. Mr. Justice Romer: Mr. Beal.

Saturday, October 31.—Court of Appeal No. 2: Mr. Ward. Mr. Justice Chitty: Mr. Clowes. Mr. Justice North: Mr. Godfrey. Mr. Justice Stirling: Mr. Rolt. Mr. Justice Kekewich: Mr. Lavie. Mr. Justice Romer: Mr. Pugh.

UNQUALIFIED MEDICAL PRACTITIONERS IN BAVARIA.—It appears from statistics just published that in the year 1890 no fewer than 1,170 persons were prosecuted for the illegal practice of medicine in Bavaria. Of this number, 861 were men and 309 women. Large as the total number of prosecutions was, it was somewhat smaller than in 1889, when the number was 1,219. Of those proceeded against in 1890, 486—including thirty chemists and druggists and thirty-seven midwives—were more or less connected with the medical profession. The remaining 684 were persons who had had no medical training, and belonged for the most part to the class of working men. The number of clergymen prosecuted for the illegal practice of medicine was twenty-one. The number of chemists who overstepped the limits of their province was very small compared with what it is in England. The special lines of practice followed by the unqualified persons in Bavaria included 'Secret remedies and sympathy,' which had 117 adherents; homœopathy, seventy-one; magnetism, twelve; and electro-homœopathy, nine. Tapeworm curing was pursued by thirteen enthusiasts.

## HONOURS AND APPOINTMENTS.

MR. HENRY RIDGE GREENHILL, solicitor (of the firm of Sweetland & Greenhill), who was admitted in 1886, has been appointed by the Lord Mayor (as Alderman of the Ward) Ward Clerk of Langbourn Ward, in the City of London.

Mr. James Rawlinson, of 11 Kingsdown Road, Upper Holloway, London, N., has been appointed a Perpetual Commissioner for taking Acknowledgments of Deeds by Married Women. Mr. Rawlinson was admitted in 1872.

Mr. H. P. Mann, of Chatham, has been appointed Town Clerk of Chatham, and Clerk to the Chatham Burial Board. Mr. Mann is also clerk to the Rochester and Chatham Joint Hospital Board, and a commissioner for oaths. He was admitted in Easter Term, 1858.

LAW SITTINGS AT THE GUILDHALL.—The trial of causes set down to be tried by the City of London jurors, which, since the opening of the Royal Courts of Justice, have been tried in that building with other general cases, will, at the ensuing Michaelmas sittings, be heard, as formerly, at the Guildhall, wherein two convenient Courts have been provided for the purpose by the Corporation of London. The number of causes entered up to the present consists of eighty-six special and forty-eight common jury cases, and the hearing of the former will be commenced on Wednesday, the 28th inst. Two Courts will sit on that and the following days, one of which will be presided over by Lord Chief Justice Coleridge. The hearing of these cases will be proceeded with for about a fortnight, after which common juries will be taken.

CYCLISTS AND ROAD RACING.—A case of considerable interest to cyclists and local authorities came before the Northumberland county magistrates at Newcastle on Saturday, October 17, when twelve young men were charged with furiously riding bicycles on the highway. Mr. Parsons prosecuted, and Mr. T. J. Forster defended. At an early hour on the morning of the 2nd inst. a road-race took place from North Shields to Morpeth and back. At Gosforth, about half-way on the outward journey, the police took the names of the competitors, the time being half-past six. It was stated by the police that the defendants were riding at the rate of seventeen or eighteen miles an hour; but Mr. Forster said this could not have been the case owing to the hill and the heavy road. Mr. Forster raised the point that to constitute an offence it was necessary to prove that the road-racing was dangerous to the life or limbs of pedestrians, and he contended that no such danger arose, as only the police and the cyclists were present at the time referred to. The police produced a handbill issued at the instance of the joint committee of the county, which defined bicycle or tricycle racing as an offence under the Local Government Act, 1888. The bench intimated that they were against Mr. Forster, who thereupon obtained an adjournment to enable him to take the opinion of a higher Court.

THE RULES OF ADVOCACY.—During the Vacation the LAW JOURNAL has been printing some interesting *résumés* of English *causes célèbres*. *Ryves* v. *The Attorney-General* was given recently, the concluding paragraph being of peculiar interest: 'Mr. Smith, in replying for the petitioner, said that he believed, on his word of honour as a gentleman, that the documents which Mrs. Ryves had produced——' But the Lord Chief Justice interrupted him in a moment. 'I insist,' he said, 'on your not finishing that sentence. It is a violation of a fundamental rule of conduct, which every advocate ought to observe, to give the jury your personal opinion.' We fancy that a frequenter of our law courts would say that this is a rule more honoured in the breach than in the observance. We could name at least one very eminent advocate who is not altogether innocent of trying to influence a jury by expressing his own opinion.—*Law Gazette.*

LITIGATION AND INSOLVENCY.—From the observations of the official receiver, issued under the failure of George Willis, described of Askew Crescent, Shepherd's Bush, of no occupation, it appears that the debtor has been engaged for many years in litigation connected with a claim, which he sets up as heir-at-law, to an estate valued, he says, in 1880 at several millions sterling, left by one William Jennens, who died in 1798. He attributes his insolvency to his liability for costs incurred on a judgment given against him in an action recently brought by him against the petitioning creditor in respect of an injury stated to have been sustained by the debtor while attempting to take possession of certain premises in assertion of his claim on the estate. He asserts that he is of no occupation, and is entirely supported by voluntary allowances from friends. Of the unsecured indebtedness (which amounts to 231*l.*), 165*l.* appears to be due in connection with the costs of the action referred to, and there are no available assets. The debtor states that his furniture was sold about two or three years ago, and that he is now living in apartments.

THE JUDICIAL ADMINISTRATION OF HYDERABAD.—A recently issued Government resolution, signed by the Nizam's Home Secretary, the Nawab Mehdi Hassan, gives a detailed account of the judicial administration in Hyderabad for the year 1890–91. It begins by stating that 'until the recently appointed Law Commission completes its labours, and proper codes of law and procedure are supplied, the administrative work will necessarily demand particular attention;' and it goes on to affirm that it has received such attention at the hands of the Chief Justice Nawab Emad Jung Bahadur. The want of qualified pleaders has been much felt in the Hyderabad Courts, and the standard of examination for legal practitioner has been accordingly raised, while the old order under which persons who had already practised in any Court without license were exempted from the examination prescribed has been cancelled. One of the greatest difficulties in the infliction of punishment has been the indifference shown to the imposition of fines. The returns for the year in question show that more than half the fines imposed remain to be realised. It is not surprising after this to find that a large proportion of the witnesses subpœnaed do not present themselves for examination. Out of 22,318 witnesses summoned about 3,500 failed to appear. Of 18,753 offences the largest number was under offences to the human body, other than murder, manslaughter, rape, and grievous hurt. Of the 9,205 persons convicted, 39 per cent. were sent to imprisonment, 53 per cent. to pay fine, 1 per cent. to whipping, 5 per cent. to both fine and imprisonment, and 2 per cent. to whipping and imprisonment. The resolution recommends whipping as the most appropriate punishment for small offences, stating that 'short terms of imprisonment can do little good, as they are an excitation to crime, and whipping might well be substituted, instead of filling our gaols with convicts who should be earning their livelihood.' The Home Secretary, in conclusion, lays down the advisability in the case of juvenile offenders of substituting flogging in moderation for imprisonment, except in very exceptional cases, for, according to the best authorities, 'the prison is an incubator for those who are young in crime.'

THE LORD CHIEF JUSTICE AND THE BIRMINGHAM ASSIZES.—At a meeting of the Birmingham justices on Wednesday, a letter was read from the Home Secretary, replying to a communication with reference to the action of the Lord Chief Justice at the recent Birmingham Assizes, in releasing, on their own recognisances, nine prisoners committed to the quarter sessions, because they had not been committed to the intervening assizes. Mr. Matthews said on the one hand it undoubtedly appeared to have been the intention of the Assizes Relief Act to free the assizes from sessions cases; on the other hand, it was not desirable to keep prisoners too long waiting for their trial, and, if an assize intervened, prisoners might, with advantage, be sent for trial thereto, instead of undergoing a prolonged detention. He could not, however, agree that every sessions case should necessarily be sent to the intervening assizes. The Mayor considered the practical outcome would be that the Lord Chief Justice would not come again to Birmingham for some time to come.—The stipendiary magistrate said two members of Parliament had undertaken to bring the matter before the House of Commons. It transpired that two of the released prisoners had committed offences whilst on bail, and two others had absconded.

## BIRTHS.

On Oct. 12, at Thessalia, Appian Way, co. Dublin, the wife of Adam Lloyd Blood, Solicitor, of a daughter.

On Oct. 12, at 27 Warwick Square, S.W., Lady Helen Lacey, wife of Francis Eden Lacey, Barrister-at-Law, of a son.

On Oct. 14, at Cadaxton, Sydney, N.S.W., the wife of A. R. Butterworth, Barrister-at-Law, of a daughter.

On Oct. 18, at Stafford Terrace, Kensington, the wife of Arthur J. Ashton, Barrister-at-Law, of a daughter.

On Oct. 20, at Southcott, Wimbledon, the wife of Thornton Toogood, of 3 New Inn, London, Solicitor, of a daughter.

## MARRIAGES.

On Sept. 12, at St. Bartholomew's Church, Barrackpore, Bengal, Charles Roger Orr, Manager, Gowrepore Company (Lim.), Naihati, Bengal, to Alexander Mary (Amo), eldest daughter of John Cave Orr, of Calcutta and Barrackpore, Solicitor, and granddaughter of the late Venerable John Williams, Archdeacon of Cardigan.

On Sept. 22, at the English Church of St. Andrew, Moscow, Alexander Manners Stevensen, of Uglitch Government of Jaroslav, Russia, to Letitia Anne Babington, youngest daughter of the late William St. Leger Babington, LL.D., M.A., Barrister-at-Law.

On Sept. 22, at St. Alban's Cathedral, Pretoria, Edward Leppan Mawby, Solicitor, Pretoria, to Ruth Hilda Bousfield, third daughter of the Bishop of Pretoria.

On Oct. 13, at the Church of St. John the Evangelist, Norwood, Thomas Lynedoch Graham, of the Inner Temple, Barrister-at-Law, and Advocate of the Supreme Court of the Cape of Good Hope, son of the late Robert Graham, Esq., of Fintry, and of the Mains, Wynberg, S.A., to Annye Ismena Prior, daughter of the late Rev. J. F. A. Gavin, M.A., Senior Chaplain H.M.I.E.S.

## DEATHS.

On Sept. 26, at Mooltan, Punjâb, John Montague Russell, of the Army Pay Department, late Captain in the 17th Lancers, and of 86 Queen's Gate, London, youngest son of the late James Russell, Q.C., aged 41.

On Oct. 6, at Hugomont, Ballymena, Ireland, of typhus fever, Jane Harrison, eldest surviving daughter of the late Wm. Orr, Solicitor, aged 45 years.

On Oct. 11, at Tenterden, Kent, William Glover Mace, Solicitor, aged 64 years.

On Oct. 19, suddenly, at his residence, Thirlestane, Hampton Hill, William Joyce, Barrister-at-Law, late of 12 Endsleigh Street, W.C., and 7 New Square.

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# The Law Journal.

*SATURDAY, OCTOBER* 31, 1891.


## 'OBITER DICTA.'

The Chancery judges certainly set a good example to their brethren of the Queen's Bench Division on Monday last, the opening day of the Michaelmas Sittings. Of the common law bench only two judges (Mr. Justice Smith and Mr. Justice Mathew) took their seats, although several others appeared in the procession which followed the Lord Chancellor up the Central Hall of the Law Courts. On the equity side, however, all the judges took their seats and disposed of a certain amount of business.

For all practical purposes the sittings of the Queen's Bench Division did not commence until Tuesday, the 27th inst., when three Divisional Courts sat in addition to six Courts for the trial of jury and non-jury cases. On Wednesday, however, the Lord Chief Justice and Mr. Justice Wills commenced their sittings at the Guildhall for the trial of London causes, with the result that the number of Divisional Courts was reduced to two.

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As regards the amount of business likely to be disposed of in the Queen's Bench Division during the present sittings, it is much to be feared that it will be but small. Nine of the judges of that division have been assigned to the various circuits; and as the autumn assizes will probably commence in the second week in November, and will last about a month, it is easy to see that in a very short time business at the Law Courts on the common law side will be again almost at a standstill. In the interests of suitors who have now been waiting many months to have their causes tried, this state of things is much to be regretted; but if the staff of judges is not to be increased, nor the present circuit system abolished, it seems very difficult to suggest a remedy.

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The Lord Chief Justice is not just now *persona grata* at Birmingham. His somewhat high-handed method of dealing with prisoners who had been committed for trial at the quarter sessions instead of being brought up at the intervening assizes was naturally resented by the Birmingham magistrates. The letter from the Home Secretary, read at a meeting of the Birmingham justices on the 21st inst., was clearly an attempt to reconcile the divergencies of opinion which had arisen between Lord Coleridge and the magistrates. The Mayor seems to have considered that the practical outcome would be abstention from that circuit on the part of the judge. There is no doubt a good deal to be said on both sides of the question, and the liberty of the subject is very properly regarded as a right not to be lightly surrendered. Unfortunately the severest criticism on the action of the Lord Chief Justice is derived from the fact that two of the prisoners he released on their own recognisances committed offences while on bail and two others absconded. The prisoners, at any rate, approved of Lord Coleridge's theory and practice.

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A very odd, probably unique, proceeding has just been witnessed in a Westmoreland village near Kendal. Most businesses, including that of a publican, are carried on primarily for the benefit of the owner, and it is indeed an edifying spectacle to find an innkeeper appealing to his fellow-parishioners as to whether they think his inn a benefit or a nuisance to the neighbourhood. Yet this has happened in the case of an ancient tavern at Burneside. There was many years ago a beershop in Drury Lane where they refused to serve any customer with more than one drink. The proprietors of the Anglers' Arms at Burneside for many years past, deeming themselves physicians or moralists as well as publicans, appear to have exercised a like discretion, and often declined to serve applicants with liquor. The present owners have even gone a step further, and a week or two ago deliberately invited the opinion of the

ratepayers by the issue of voting-papers, and undertook, if a substantial majority should be in favour of the discontinuance of the business, to close the house for the purposes of alcoholic refreshment. All except fanatical teetotalers will rejoice that so venerable a combination of virtue and 'cakes and ale' is not to be dissolved. The *Westmoreland Gazette* of Saturday last gives the result as follows: 'The population is 1,161 and the ratepayers 205. Of these, 108 wish the Anglers' Arms to remain open; 56 only record their votes on the other side, and 41 did not vote at all. If the transaction was a teetotal device, it has signally failed; but the tradition of the house and the fact that 1,300*l.* was not very long ago given for the business by the present owners seem to prove the perfect good faith of the experiment. Long may the Anglers' Arms flourish for the good of its single-minded owners and the refreshment of thirsty wayfarers.'

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The same issue of the *Westmoreland Gazette* reports the refusal by the Quarter Sessions to renew the license of a public-house at Appleby. As far as can be judged from the report, there were adequate grounds for the decision; but one circumstance which was alleged by Mr. Mattinson, M.P., who appeared for the licensed victualler, deserves adverse comment. The learned counsel alleged that Lord Hothfield presided over the bench of magistrates who refused to renew notwithstanding that he was the owner of seven out of the thirteen licensed houses in the town. It is difficult to imagine a more flagrant impropriety on the part of a judicial officer. It might reasonably be urged by a temperance reformer that the owner of licensed houses should not hear such applications; but it is a much worse case for a man to assist in a magisterial capacity in increasing the value of his own property by the extinction of a competitor.

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The case of *Harmann* v. *Powell*, 60 Law J. Rep. Q. B. 628, was one of considerable importance to the owners of public-houses and their lessees. The defendant, the lessee of a public-house, covenanted not to 'do or suffer to be done on the premises any act whereby the licenses necessary for using the said premises as an inn, tavern, or public-house may be forfeited or the renewal thereof withheld.' The defendant was subsequently twice convicted of offences under the Licensing Acts, and the convictions were indorsed on his license. He afterwards surrendered his lease, and a subsequent tenant of the premises obtained a renewal of the license. Under these circumstances, it was contended that there had been no breach of the defendant's covenant, inasmuch as the license had not been actually forfeited, but had, in fact, been renewed. The Court were, however, of opinion that the object of the covenant was that the tenant should not jeopardise the license of the house, and they, therefore, held that there had been a breach of the covenant by the defendant, notwithstanding that the license was not in fact forfeited.

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There will be general agreement with the decision of the Court of Appeal on Tuesday in the case of *Bound* v. *Lawrence*, in which it was held that a grocer's assistant was not a workman within the meaning of the Employers and Workmen Act, 1875, s. 10. The appellant entered the service of his master at a salary of 25*l.* a year and his board. He was convicted and fined under the Act for leaving his employment without notice. On a special case Mr. Justice Smith and Mr. Justice Grantham differed in opinion, the latter agreeing with the magistrate that the appellant came within the definition of workman in the Act, which, excluding a domestic or menial servant, includes, 'any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour,' has entered into a contract with an employer. No intelligent layman in reading the Act could come to the conclusion that it was intended to apply to a case like this. Lord Justice Fry remarked that all human work was, in some degree, both intellectual and manual. This is substantially true, with some important exceptions, as the labour in which he was engaged—the hearing and determining of law suits—was in nowise manual. The question really is, What is the quality required in the person concerned? Clearly in a tradesman's assistant it is the knowledge of different classes of goods—perhaps, also, the diplomacy by which he may induce customers to take what they do not really want. Manual labour has a very small part in the qualifications of a competent grocer's assistant, and much less in the case of a draper, who, to be successful, must have a profound insight into the feminine heart. Surely, even Mr. Justice Grantham would not have held that the duties of the chemist's boy in 'Pickwick,' who laboured under the incurable delusion that oxalic acid was Epsom salts, were of a manual character. The term 'workman' is fully intelligible by itself, and in this, as in other instances, the multitude of words in the so-called definition clause has only served to darken counsel.

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The question whether crime can be committed under the influence of hypnotic suggestion is seriously dividing medico-legal opinion at the present moment. According to the Nancy school, this question must be answered in the affirmative. At the recent meeting of the Psychological Section of the British Medical Association, Dr. Voisin, of the Salpêtrière, Paris, read a paper on this subject, in which he cited the case of a patient who, acting on his suggestion and in the presence of three magistrates, stabbed a 'dummy' woman with a real knife. According to another view, of which Professor Benedikt, of Austria, is the most illustrious exponent, the power of the hypnotist over his patient will probably end if he really attempt to urge him to the commission of crime. It must be confessed that this *à priori* way of dealing with the matter is not altogether satisfactory, although it is obvious that the fact that a person under hypnotic influence can be induced to stab a 'dummy' by no means proves that he would go the length of committing murder in obedience to the hypnotic suggestion. On one point there will be no dispute—namely, that the British Medical Association has done well in recommending the legislative regulation of hypnotic exhibitions.

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We referred recently (*ante*, p. 638) to a conviction of a farmer's son for using a gun to scare birds without a license, and to a doubt expressed in *Truth* whether the law laid down by the convicting justices was

'good' in the legal sense, which, as we pointed out, it was. The editor, while courteously accepting our view of the law, now raises the more serious question whether it is 'good' in the legislative sense, and emphatically protests against the Gun License Act, 1870, s. 7, subs. 4 (which exempts from the penalty under that Act for shooting without a gun license only the farmer himself or a person acting under his orders *in case he himself has a license*), as bearing too heavily on the farmer, who ought not to have his own time employed in the work of scaring birds. The criticism is a reasonable one, and a mode of amending the Act in the direction indicated by *Truth* may be readily found by applying to the Gun License Act certain restrictions which are to be found in the Ground Game Act, 1880, which gives occupiers the right, inseparable from their occupation, to kill and take ground game. By section 1 of this Act 'the occupier shall kill and take ground game only by himself or by *persons* duly authorised by him in writing,' but 'no person shall be so authorised' by the occupier except members of his household resident on the land in his occupation, persons in his ordinary service on such land, and any one other person *bonâ fide* employed by him for reward in the taking and destruction of ground game.' The Act of 1880, we may observe, only allows one other person to be authorised by the occupier to kill ground game with firearms—rather too severe a restriction.

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Sir Wilfrid Lawson, in a long speech at the annual gathering of the United Kingdom Alliance, has reviewed the legal position of the licensed victuallers by the light of *Sharp* v. *Wakefield* and its practical consequences in the shape of the refusal to renew some 300 licenses at the Brewster Sessions which have just drawn to a close. The results yet achieved he speaks of as 'grievously disappointing,' the only cheering incident from Sir Wilfrid's point of view being the notice given by Sir M. Hicks-Beach at Fairford, 'that the tied houses system would be looked into.' As far as we can learn, the effect of *Sharp* v. *Wakefield* has been to cause the justices to look more strictly into the character of licensees applying for renewal than they ever did before. And the view of Sir Wilfrid Lawson and his party, that mere superfluity of licensed houses affords a reason why any house amongst a superfluous number may be extinguished, has as yet found little or no favour amongst licensing justices, still less amongst justices in quarter sessions assembled. Sooner or later, however, a case will probably arise when justices, avowedly on teetotal grounds, will refuse to renew some license or other *without giving the applicant a hearing*, with the almost certain result that, acting on the rule laid down in *Regina* v. *The Walsall Justices*, 3 C. L. R. 100, the High Court will issue a *mandamus* 'to hear and determine.'

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It is not often, we imagine, that Sir Walter Phillimore and Lord Grimthorpe find themselves in agreement. At such a happy conjunction the strong presumption surely is that they are both right. In a letter to the *Times* on Wednesday, which we reprint in another column, Sir W. Phillimore has successfully attacked, by means of numerous precedents, the doctrine promulgated by Lord Cairns against Sir Fitzroy Kelly, and recently supported by Lord Selborne, of the obligation of secrecy in Privy Council judgments. There are strong and obvious reasons against the present practice. In the first place there is the appearance where there perhaps is not the reality of unanimity. The judgment may not be 'the judgment of their lordships,' but that of three weak judges as against that of two strong ones. Then there is an inevitable loss of individuality in a common judgment, and the arguments and considerations which may actuate a vigorous-minded judge are not likely to emerge in a decision framed to suit the opinions of the whole or of the majority. There is a temptation to acquiesce in the language of some one member of the committee, and perhaps in his ideas, on the part of indolent men, who satisfy themselves by simply coming to a conclusion on the matter in hand, without careful analysis of argument. Again, law is not final; it is, and ought to be, subject to the development of knowledge and sentiment. A decision of the Privy Council or the House of Lords may be undermined and its effect overruled in progress of time. Improvement can best be effected when each man's contribution to the progressive movement is made known to the world. There is also an argument of a technical character. The decisions of the Privy Council are not strictly judgments, but advice tendered to Her Majesty. Cases are imaginable in which it might be expedient for the Queen—especially in Constitutional questions arising in India or the Colonies—to disregard the advice so given. Such a step would be clearly made less dangerous if it were in accordance with the opinion of a minority of the Council whose ability and reputation were higher than those of the majority.

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In connection with the attempt to wreck trains on the Great Western and Brighton Railways, attention should be drawn to 24 & 25 Vict. c. 97, ss. 35, 36, and 24 & 25 Vict. c. 100, ss. 32, 34. By the former of these enactments the placing of wood or stone or anything else on a railway with *intent* to obstruct, overthrow, &c., any engine or carriage thereon is a felony punishable by penal servitude for life, while the mere unlawful placing with the result of obstruction is a misdemeanour punishable by two years' imprisonment. By the latter, the like offence, if committed with intent to endanger the safety of railway passengers, is also a felony punishable by penal servitude for life, while doing any unlawful act, whereby the safety of railway passengers may be endangered, is likewise a misdemeanour punishable by two years' imprisonment. It may perhaps be doubted whether it should be necessary in these cases to prove any guilty intention, and whether the punishment for the mere unlawful act of placing a sleeper on a railway should not be made somewhat heavier than two years' imprisonment. *A propos*, we observe that the Great Western Railway Company has offered a reward of 50*l.* for the detection of the offenders, whereas the Brighton Company has offered no such reward. Which company is right, and which is wrong? We incline to think that the Brighton company is right. At any rate the offering of rewards by the Government has been discontinued for several years in this country on the ground that persons committed crimes for the purposes of obtaining rewards by false accusations, and the Home Office, though urgently requested to offer a reward for the discovery of the

Whitechapel murders, steadily refused to do so on this express ground. (See Wharton's 'Law Lexicon,' tit. 'Reward.')

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The results of the recent appeals at quarter sessions have not been consoling to license-holders or to owners of licensed properties. Nor is it possible to read the reports of the various cases without being strongly impressed with the conviction that, in some instances at least, the magistrates were predisposed in favour of the respondents, and were more anxious to reduce the number of public-houses in a district than to weigh with impartial judgment the arguments and evidence laid before them as a Court of Appeal. The fighting at Winchester was especially vigorous, and two well-known 'licensing' counsel, Mr. Candy, Q.C., and Mr. Forest Fulton, M.P., were taken in 'special' on behalf of the brewers interested. In one of the three appeals the evidence of the respondents' witnesses was so shaken and contradicted that there was a general expectation among the members of the bar and the solicitors in Court that the appeal would be allowed. The result was, however, the same as in the other, and certainly less hopeful, cases. That owners of property should practically be mulcted in very heavy fines (for that is in effect the result) on account of the omissions and commissions of their tenants is not in accordance with public sentiment, apart from the 'teetotal platform.' At present the 'houses' are punished and not the licensees; and this anomaly is becoming more and more burdensome as magistrates recognise the enormous power placed in their hands.

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Mr. J. S. Gathorne-Hardy, M.P., chairman of the second Court of the West Kent Quarter Sessions, thinks 'it is a mistake that juries are not allowed to know something of the antecedents of the prisoners they are trying,' and his remarks *à propos* of the verdict given by what he considered a perverse jury called forth a protest from the prisoners' counsel. There ensued what a London daily paper described as 'a sharp passage of arms' between the chairman and counsel, and though the interruption may have been ill-timed, it is impossible not to sympathise with a successful advocate who had saved his clients, and was certainly not responsible for the existing state of the law. Experience of human nature leads one to believe that while occasional miscarriages of justice occur through absence of knowledge as to a prisoner's record of convictions, the adoption of a different system would inevitably introduce such prejudice in the minds of a jury as would frequently lead to verdicts against the weight of evidence.

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The refusal by the London County Council to renew two music and dancing licenses has met with much unfavourable comment on the grounds (1) that the licensees had at the suggestion of the council gone to considerable expense in improvements, and (2) that some of the committee, on whose report the refusal was grounded, were heard by counsel when the question was considered by the main body of the council. The law of the case is this. The council, as successors, under section 3, par. v., of the Local Government Act, 1888, to the powers of the Middlesex justices, under 25 Geo. II. c. 36, have an absolute and uncontrolled discretion to renew or refuse to renew licenses for music, dancing, or public entertainment of the like kind. The Act of Geo. II., which recites that 'the multitude of places of entertainment for the lower sort of people is a great cause of thefts and robberies, as they are thereby tempted to spend their small substance in riotous pleasures, and in consequence are put on unlawful methods of supplying their wants and renewing their pleasures,' was passed 'to prevent the said temptations to thefts and robberies, and to correct as far as may be the habit of idleness which is become too general over the whole kingdom, and is productive of much mischief and inconvenience.' It contains no restriction whatever on the discretion of the tribunal which it invested with absolute power, nor can any suggestion of the licensing body, however fully acted on, that a licensee should execute improvements, have any effect on the exercise of this discretion. The Lord Chamberlain's power to license public entertainments is, no doubt, expressly saved by section 4 of the Act, but interference from this quarter would hardly be looked for. But how about the part which the committee of the council took in supporting their own recommendation? It was laid down in *Regina* v. *Myers*, L. R. 1 Q. B. Div. 173, that the being a litigant in a matter before the justices will disqualify any one of their number from acting, and that if a justice so disqualified merely sits upon the bench the order by his fellow-justices will be quashed on *certiorari*, although the disqualified justice may not have signed the order. *Regina* v. *The Great Yarmouth Justices*, 51 Law J. Rep. M. C. 39; L. R. 8 Q. B. Div. 525, is to the same effect. There is some ground for saying that the impugned acts of the London county councillors come within the principle of these cases.

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The Hardwicke Society, for 'the discussion of legal, political, and social subjects' by members of the four Inns of Court, has taken the wise course of publishing its rules and the list of its members, and laying them on the tables of the Inns of Court libraries. There appear to be nearly 1,000 names on the books. The subscription of 1*l.* entitles the subscriber to membership for life. The annual general meeting takes place on the first Friday in the Michaelmas Inns of Court Dining Term in each year. No speech may last more than a quarter of an hour, except that of the opener, who is allowed half an hour.

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## SERVICE OUT OF THE JURISDICTION.—I.

In the following papers it is proposed to consider the development and present position of the law as to *service out of the jurisdiction*.

Down to the year 1852 service out of the jurisdiction was unknown in actions of common law, and the only remedy available to a plaintiff against a defendant who was obstinate and fraudulently keeping out of the jurisdiction of the English Courts was to proceed to outlawry.

The Common Law Procedure Act, 1852, provided a simpler and more efficacious procedure. The material sections of that enactment are in the following terms:

'In case any defendant, being a British subject, is residing out of the jurisdiction of the . . . Superior Courts in any place except in Scotland or Ireland, it

shall be lawful for the plaintiff to issue a writ of summons in the form contained in the schedule A to the Act annexed, marked No. 2, which writ shall bear the indorsement contained in the said form, purporting that such writ is for service out of the jurisdiction of the said Superior Courts; and the time for appearance by the defendant to such writ shall be regulated by the distance from England of the place where the defendant is residing; and it shall be lawful for the Court or judge, upon being satisfied by affidavit that *there is a cause of action which arose within the jurisdiction or in respect of the breach of a contract made within the jurisdiction*, and that the writ was personally served upon the defendant, or that reasonable efforts were made to effect personal service thereof upon the defendant, and that it came to his knowledge, and either that the defendant wilfully neglects to appear to such a writ, or that he is living out of the jurisdiction of the said Courts in order to defeat and delay his creditors, to direct from time to time that the plaintiff shall be at liberty to proceed in the action in such manner and subject to such conditions as to such Court or judge may seem fit, having regard to the time allowed for the defendant to appear being reasonable and to the other circumstances of the case.' (Section 18.)

'In any action against a person residing out of the jurisdiction of the said Courts, and not being a British subject, the like proceedings may be taken as against a British subject resident out of the jurisdiction, save that in lieu of the form of writ of summons in the schedule A to this Act annexed, marked No. 2, the plaintiff shall issue a writ of summons according to the form contained in the said schedule A, marked No. 3, and shall in manner aforesaid serve *a notice* of the last-mentioned writ upon the defendant therein mentioned.' (Section 19.)

The practice under these sections, and the divergence of judicial opinion to which they gave rise, must now be briefly examined.

The writ of summons (No. 2, Schedule A) differed from the ordinary writ of summons in only two particulars. (*a*) The time limited for appearance was not specified in the body of the writ. The responsibility of fixing the proper time and filling it in rested with the plaintiff. If he failed to allow sufficient time for appearance, the Court or judge might refuse him liberty to proceed. (*b*) The summons purported to be for service out of the jurisdiction. It should be observed that, contrary to the present practice, the plaintiff, under the Act of 1852, proceeded in the first instance *ex parte*. He took out his writ as of course. He limited the time for appearance. He served the writ, or, in the case of a foreigner without the jurisdiction, the notice of the writ, without let or hindrance. It was only when the defendant had failed to appear * and the plaintiff applied for liberty to proceed under section 18 that the regularity and competence of the service were subjected to judicial review. At this critical period the plaintiff had to satisfy the Court or judge, by affidavit, (1) that there was 'a cause of action which arose within the jurisdiction or in respect of the breach of a contract made within the jurisdiction;' (2) that the writ was personally served, or that reasonable efforts were made to effect personal service, *and* that the writ came to the defendant's knowledge; (3) that the defendant wilfully neglected to appear to the writ, and was living out of the jurisdiction of the Court in order to defeat and delay his creditors. We shall consider each of these *facta probanda* in turn:—

1. It is obvious that the clause defining the kinds of process to which sections 18 and 19 were applicable is capable of at least two conflicting constructions. It may be taken to have limited the statutory power so far as actions *ex contractu* were concerned to contracts made *within* the jurisdiction. On the other hand, it may be interpreted as including contracts made abroad but broken within the jurisdiction—the *breach* of contract being regarded in such a case as a 'cause of action' within the meaning of the first part of the limitation. For many years the Courts of common law were hopelessly divided upon the question which of these constructions was the correct one. According to the Court of Exchequer in *Sichel* v. *Borch*, 33 Law J. Rep. Exch. 179; 2 H. & C. 954, and the Court of Queen's Bench in *Allhusen* v. *Malgarejo*, 37 Law J. Rep. Q. B. 169; L. R. (1868) 3 Q. B. 340, and *Cherry* v. *Thompson*, 41 Law J. Rep. Q. B. 243; L. R. (1872) 7 Q. B. 572, section 18 of the Act of 1852 applied only to cases where the *whole* cause of action arose within the jurisdiction, *or* where a contract, wherever broken, was made in England. The Court of Common Pleas, however, in *Jackson* v. *Spittal*, 39 Law J. Rep. Q. B. 321; L. R. (1870) 5 C. P. 542, and the Court of Exchequer itself in *Durham* v. *Spence*, 40 Law J. Rep. Exch. 3; L. R. (1870) 6 Exch. 46, held that the words 'cause of action' meant 'the act on the part of the defendant' which gave 'the plaintiff his cause of complaint.' In *Vaughan* v. *Weldon*, 44 Law J. Rep. C. P. 64; L. R. (1874) 10 C. P. 47, the whole question was threshed out. At the close of the argument Lord Coleridge stated that, in consequence of the conflict of decisions, the impossibility of taking the question to error and the great desirability of establishing a uniform practice, it was intended to hold a conference of the judges to discuss the subject. The conference was held. The majority agreed with *Jackson* v. *Spittal*; the minority gracefully yielded, and it was finally decided that 'it is sufficient to entitle a plaintiff to proceed under the Common Law Procedure Act, 1852, s. 18, that the *breach* of contract should have arisen within the jurisdiction.' The only other point deserving notice under this head is the clause excepting Scotland and Ireland from the sweep of section 18. 'The words creating this exception,' says Mr. Justice Day (Common Law Procedure Acts, p. 15, note), 'were introduced into the Act at the last moment. A Scottish plaintiff may sue an English defendant in the Courts of Scotland if he have *any* property . . . which can be attached *jurisdictionis fundandæ causâ*, and the latter may never hear of the action till he finds his property seized by a judgment creditor; an English creditor has no such remedy against a debtor in Scotland or Ireland. He must go to the Scotch or Irish Courts, as the case may be, and this even if the debtor have all his property in this country.' But, according to the same high authority (*ubi sup.*), one who was not a British subject might 'be proceeded against by English process under section 19, though resident in Scotland or Ireland.'

(*To be continued.*)

* If the defendant *appeared* he was held to waive any objection to the jurisdiction (*Forbes* v. *Smith*, L. R. 10 Exch. 717). Any such objection had to be taken by a summons to set aside the service (*Jackson* v. *Spittal*, 39 Law J. Rep. C. P. 321; L. R. (1870) 5 C. P. 542).

## BUILDING SOCIETY SHARES HELD BY MINORS.

Can a building society accept a transfer of shares from a minor? asks our correspondent, 'A Director,' in his recent letter (see *ante*, p. 640). The question propounded is of considerable importance to building societies, but is one that it is not easy to answer with absolute certainty. On the whole, we incline to the opinion that a minor has no power to execute a transfer of shares held by him in a building society. So far as we are able to discover, however, there is no direct authority on the point. A minor derives his capacity to acquire shares in an incorporated building society solely from section 38 of the Building Society Act, 1874. It is thereby expressly enacted that 'any person under the age of twenty-one years may be admitted as a member of any society under this Act, the rules of which do not prohibit such admission, and *may give all necessary acquittances*; but during his nonage he shall not be competent to vote or hold any office in the society.' This provision corresponds with that of section 32 of 10 Geo. IV. c. 56; but the applicability of that section to unincorporated building societies is by no means clear. All the provisions of 10 Geo. IV. c. 56, 'so far as the same, or any part thereof, may be applicable to the purpose of any benefit building society,' are by 6 & 7 Wm. IV. c. 32, s. 4, extended and applied to unincorporated building societies. But as a minor cannot execute a mortgage, it is doubtful whether the particular section 32 of 10 Geo. IV. can be extended to an unincorporated building society. We must, therefore, in this article confine our remarks to incorporated building societies.

The question, therefore, whether a minor who is admitted a member of an incorporated building society can transfer his shares turns upon the words 'all necessary acquittances,' that he is empowered to give by section 38 of the Act of 1874. Can giving an acquittance include executing a transfer? We should say not. The meaning of acquittance, according to the 'Imperial Dictionary,' is '(1) the act of acquitting or discharging from a debt or any other liability; the state of being so discharged; (2) the writing which is evidence of a discharge; a receipt in full which bars a further demand.' None of those definitions seems to cover a transfer of shares. They point, in the case of an acquittance in respect of building society shares, to a receipt given to the society for interest on the shares, or for the capital if the same be withdrawn from the society. In our opinion, it would require a considerable straining of the word acquittance to render it applicable to the act of passing the property in shares of the kind from one member (a minor) to another, or to a writing which is evidence of such an act. It seems to us that the intention of the Legislature was that an infant member of a building society desirous of being relieved of his shares should be at liberty to discharge the society from all liability in respect thereof on receiving his money back from the society after due notice of withdrawal; but that a parting with the shares by way of transfer was not contemplated, and cannot be inferred.

Little or no assistance is attainable from decided cases as regards the definition of 'acquittance,' for it appears to be almost bare of authority. Turning to Mr. Stroud's 'Judicial Dictionary'—a work which frequent testing has satisfied us is perfectly trustworthy—we find that the only reported judicial interpretation of the word 'acquittance' has occurred in the case of *Regina* v. *French*, 39 Law J. Rep. M. C. 58; L. R. 1 C. C. R. 217. There it was held that a 'clearance certificate' from one branch of a friendly society to another was not an acquittance within section 23 of 24 & 25 Vict. c. 98, which makes forgery of any 'acquittance or receipt for money' a felony.

So much for the general view of the subject apart from any provision in the rules of a society supplementing the enactment contained in section 38 of the Act of 1874. Where, however, the rules of a society, as in the case mentioned by our correspondent, authorise the minors who take shares therein to transfer the same, does that circumstance make any difference? Can any reliance be placed upon the fact that such rules have been duly registered, and are authenticated by the seal of the central office, bearing in mind that section 21 of the Act makes the rules binding on the several members and officers? We do not see that it can. A certificate of registration cannot make valid that which is not valid under the Act. Nor can it be regarded as conclusive by virtue of the provision of the preceding section that 'any certificate of . . . . registration or other document relating to a society under this Act, purporting to be signed by the registrar, shall, in the absence of evidence to the contrary, be received by the Court . . . . without proof of the signature.' The very recent decision of the Court of Appeal in *In re The National Debenture and Assets Corporation*, 60 Law J. Rep. Chanc. 533; L. R. (1891) 2 Chanc. Div. 505, illustrates the view which the Court entertains on the point of conclusiveness of a certificate of registration.

The result is that in our opinion the plan suggested by our correspondent of disposing of the appropriation which the minor has obtained is not feasible. But although we do not see our way to approving of that plan, the difficulty is not insuperable. An easy mode of getting over it is suggested by a case that was adjudicated upon by the registrar of building societies, in September, 1877. A dispute was then referred for settlement to the registrar in the case of *Cork* v. *The Chatham, &c. Starr Bowkett Building Society*, where a minor had been declared entitled to an appropriation, and the registrar held that the guardian might sell it for her benefit. A sale for the benefit of the infant member in the case which 'A Director' refers to might not be so satisfactory to the parties as the proposed device of a transfer of the shares; but it has at least the advantage of not being illegal.

# Reviews.

## PAINE ON THE FORMATION OF COMPANIES.

*The Formation and Registration under the Companies Acts of Companies limited by Shares and Companies limited by Guarantee not having their Capital divided into Shares.* By Tyrrell T. Paine, of the Inner Temple, Barrister-at-Law. Second Edition. London: The Solicitors' Law Stationery Society (Lim.). 1891.

The object of this little manual is to be a guide for the use of those who are engaged in forming a company under the Companies Acts; and the idea which is here worked out is to set out the various steps in the formation and registration of a company in the order in

which they would naturally be taken. The limits which the author has fixed for himself are the time when advice is first sought on the one hand and the holding of the first statutory meeting on the other. The classes of joint-stock companies which are considered are companies limited by guarantee (not having their capital divided into shares). It is not, the author tells us, his object to deal with the conversion of existing companies into limited companies, or with the formation either of unlimited companies or of companies limited by guarantee and having their capital divided into shares. The work is executed in a very careful and systematic manner. In the chapters devoted to the memorandum and its alteration we have a very fair summary of the law as it existed before the Companies (Memorandum of Association) Act, 1890, and as it now stands. In Part II. we have a consideration of the law affecting those companies which are conveniently, though not very accurately, spoken of as private companies. The work will be found useful so far as it goes.

## A MONEY-MARKET PRIMER.

*A Money-Market Primer and Key to the Exchanges.* With Diagrams. By George Clare. Effingham Wilson. 1891.

This is scarcely a law book, but it may be useful to lawyers whose practice lies in the direction of monetary matters. The exact position of the Bank of England, the effect of fluctuations in the 'Bank rate,' the 'foreign exchanges,' and 'the open market'—these and cognate topics are carefully dwelt upon and illustrated by no less than fifteen very picturesque diagrams. The price of the book is 5*s.*

## MACMORRAN'S PUBLIC HEALTH (LONDON) ACT.

*The Public Health (London) Act*, 1891. With Introduction, Notes, and Index. By A. Macmorran. London: Shaw & Sons. 1891.

Mr. Macmorran has done good service in promptly coming forward with a fully annotated edition of the Public Health (London) Act. All the numerous changes are effectively pointed out, with copious citations of cases. The only fault we have to find is that some of the notes—*e.g.* that on section 4—are too long, and thus stand in the way of a continuous reading of the statute. There is a good and, though short, sufficiently long introduction, and the index is fairly good, but neither 'pigs' nor 'meat' appear in it, the reader having to refer to 'swine' and 'unsound food.' References are, we are glad to observe, given to all the current reports. The price of the book is 10*s.* 6*d.*

## STEINTHAL ON THE ELEMENTARY EDUCATION ACT.

*The Elementary Education Act*, 1891. With Introduction and Notes. By A. E. Steinthal. Sweet & Maxwell (Lim.). 1891.

The notes to this edition of the Act are extremely well done; the introduction is comprehensive and clear, and there is a proper supply of supplementary matter in the appendix. The Act coming into effect on September 1, after having received the royal assent on the previous August 5, Mr. Steinthal has worked under great difficulties, with the unfortunate result of being obliged, 'owing to a mistake in the text of the Act as at first published by the Queen's printers,' to print not a few *corrigenda*, and to omit the Departmental 'regulations' under section 1, subsection 1, of the Act, which bears date August 26. The price of the book is 2*s.* 6*d.*

# Correspondence.

## THE HOSPITALS ASSOCIATION.

Sir,—Will you allow me to draw attention to the bill promoted by this association with a view to modifying the restrictions hitherto prevailing in connection with devises of land to charities, and which became law at the end of last session?

Briefly the new Act (Mortmain and Charitable Uses Act, 1891) makes every gift by will of every kind of property good, only requiring that land given should be sold within a fixed period, the proceeds to become the property of the charity. It further has the important effect of excluding from all restrictions, as regards dispositions in favour of charity, every kind of property to which the restriction formerly extended except land. The cases in which land might be validly acquired by a charity under the old law are not affected by the new Act, the provisions of which, while removing the vexatious hindrances previously existing, in no way facilitate the permanent acquisition of land by a charity.

Carmarthen,
Chairman of Council.

140 Strand, London, W.C.: Oct.

## MORTGAGOR AND MORTGAGEE RECONVEYANCE.

Sir,—Is not the solution of this question as follows? Before payment off of the mortgage money the mortgagee is master of the situation, and can elect whether to reconvey by indorsement or by separate deed, for he cannot be compelled until then to reconvey at all.

On payment he gives up the deeds, and then it matters not to him how the reconveyance is taken, whether by indorsement or otherwise.

In practice mortgagees' solicitors do not in my experience usually raise much difficulty about indorsing reconveyance before payment; but I think they should be careful as to this, for I have more than once seen mortgagees left with an executed, indorsed reconveyance, the mortgagor having made default in paying off.

The difficulty thus occasioned is not insuperable, but the position is, to say the least, unpleasant.

Liverpool: Oct. 28. Adviser.

The Autumn Circuits of the Judges.—The following are the circuits chosen by the judges for the ensuing autumnal-winter circuits: South-Eastern Circuit, Baron Pollock; Western Circuit, Mr. Justice Cave; Oxford Circuit, Mr. Justice Day; Midland Circuit, Mr. Justice Grantham; Northern Circuit, Mr. Justice Lawrance and Mr. Justice Collins; North-Eastern Circuit, Mr. Justice Wills and Mr. Justice Wright; North and South Wales Circuits, Mr. Justice Williams. Prisoners only will be tried at these assizes, except at Manchester, Liverpool, and Leeds, where civil causes will also be taken. The assizes are expected to commence about the middle of next month.

# Unreported Cases.

## SOLICITORS' CASES.

### ACCESS TO IMPOUNDED DOCUMENTS.

On October 27, in the Queen's Bench Division, before Lord Coleridge, C.J., and Mr. Justice Collins, *In the Matter of a Solicitor* was heard. This case raised for the first time a question as to access to documents which have been impounded by the Court for the purposes of justice. It arose under the new Order XLII., rule 33 (*a*), which is in these terms: 'Impounded documents while in the custody of the Court are not to be parted with, and are not to be inspected, except on a written order signed by the judge on whose order they were impounded and by the President of the Division. . . . Such documents shall not be delivered out of the custody of the Court except upon an order made on motion in open Court.' In the present case the question had arisen under these circumstances. On May 12 last a case, in which were certain matters apparently affecting the conduct of a solicitor, was heard in a Divisional Court, which ordered certain documents to be impounded. An inquiry was then instituted by the Incorporated Law Society into the conduct of the solicitor, and they, for the purpose of the inquiry, required to have access to these documents.—Mr. Hollams, on the part of the law society, moved that the documents be delivered out to them for the purpose of the inquiry, to be returned to the Court when the inquiry was concluded. He submitted that the rule would allow of this. [Lord Coleridge: The meaning of the rule is that while the documents are in the custody of the Court they should not leave its custody. In some cases the safe custody of the documents may be of no importance, but there are cases in which a party implicated would give thousands of pounds to obtain possession of them, and in a case of this kind, if the documents could have been got at, they would certainly have been disposed of.] The documents are impounded for the purposes of justice, and an inquiry is now instituted which cannot be prosecuted without the production of the documents. [Lord Coleridge: They cannot be parted with by the Court.] Probably the Court would allow the society to inspect them. [Lord Coleridge: Certainly.] And to make copies of them. [Lord Coleridge: No.]—The Court accordingly ordered that the Incorporated Law Society should have leave to inspect the documents.

### PROFESSIONAL MISCONDUCT.

In this case an accountant at Swansea, secretary to the Swansea Cricket Club, had made on behalf of the club an application that Carlyle, a solicitor there, might be required to answer the matters set forth in an affidavit of the applicant, which was, under the Solicitors Act of 1888, referred to the committee of the Incorporated Law Society, who had made the following report, now submitted to the Court: '(2) The charge made by the affidavit was that the respondent, having been instructed by the committee of the Swansea Cricket Club to act as their solicitor, and in that capacity to carry out the surrender of an existing lease of their ground and the grant of a new lease, applied for and received a cheque for 38*l.* 7*s.* 6*d.* for the purpose of completing the matter, and that, instead of so applying the money so received, he misappropriated to his own use 33*l.* 2*s.* 6*d.*, part thereof. (3) The committee heard the application at the Hall of the Incorporated Law Society, Chancery Lane, London, on May 14 and 28, 1891. Mr. R. White, solicitor, London, agent for Messrs. Davies & Ingram, of Swansea, solicitors, appeared for the complainant. The respondent appeared in person on May 14, but he did not appear and was not represented on May 28. (4) The committee report as follows: (5) The complainant is an accountant carrying on business at 5 Bryn Road, Swansea, and is secretary to the Swansea Cricket Club. (6) The respondent was admitted a solicitor in November, 1881, and practised at Swansea down to November, 1890, since which date he has been employed as a clerk in a solicitor's office there. (7) In the year 1889 the respondent was instructed by the complainant to carry out the surrender of the existing lease of the cricket-ground and the grant of a new lease, and on June 27, 1890, he attended a meeting of the committee (of which he was then a member), and applied for and received a cheque for 38*l.* 7*s.* 6*d.*, made up of the following items:—

| | | | |
|---|---|---|---|
| Costs of Messrs. Beor, Fry & Plant, Swansea, solicitors to the lessors, in connection with the surrender and new lease | £25 | 0 | 0 |
| One quarter's rent due to the lessors to March 25, 1890 | 6 | 5 | 0 |
| Portion of a quarter's grazing to March 25, 1890 (at 15*l.* a year), due to the lessors | 1 | 17 | 6 |
| The respondent's costs in connection with the surrender and new lease | 5 | 5 | 0 |
| | £38 | 7 | 6 |

No receipt was given for the said sum, but the cheque (exhibit "F. J. C. 1") which was produced bore the respondent's endorsement, and was cashed by him on June 28, 1890. (8) Considerable delay took place in completion, owing, in part at all events, to the respondent having lost or mislaid the surrender, which was endorsed on the old lease and had been partially executed, and in February, 1891, the committee of the cricket club decided to place the matter in the hands of other solicitors. (9) Messrs. Davies & Ingram were accordingly instructed to act on behalf of the club, and, after some correspondence, they called on the respondent at his office on March 9, 1891, in order to receive from him the drafts and deeds which he had and the balance of the money he had received. (10) The respondent then for the first time stated that he had a claim for extra costs in connection with a declaration of trust and other business which he had done for the club, and promised to call on Messrs. Davies & Ingram the next day and hand over the balance. He did not do so, nor did he hand over the deeds, and subsequently new deeds had to be prepared, and Messrs. Davies & Ingram, on March 26, 1891, completed the matter and paid to the lessors the sum of 37*l.* 2*s.* 6*d.*, being the first three sums shown in paragraph 7 of this report as having been paid to the respondent, and 4*l.* for extra costs occasioned by the delay. (11) The respondent did not dispute the facts, or that he had received the money for a specific purpose as alleged, but he contended that when he was asked to return the money and to deliver up the documents belonging to the club he was entitled to retain any further costs which he had earned. (12) The respondent has never delivered any bill of costs nor repaid any part of the money. (13) The committee find that the charge has been proved, and that Mr. Francis John Carlyle has been guilty of the professional misconduct alleged.'—Mr. Hollams appeared on the part of the Incorporated Law Society, and read the report. The solicitor, he said, had received the money for a specific purpose, but had tried to set up a claim for costs as a charge upon a sum which he had so received. [Lord Coleridge: Was there any ground for such a claim of further costs?] Possibly there may have been to some small extent, but, the society having allowed him time to return the difference, he had not appeared.—The solicitor did not now appear by counsel or in person.—The learned judges having conferred, Lord Coleridge said it was one of those cases in which the Court had a painful duty to perform, but one which it was very important for them to discharge. For it was by virtue of the credit and character which the Court gave to solicitors, as its officers, that they were enabled in some instances to commit such frauds; and the Court was

bound to exercise its jurisdiction over them in such cases, not merely for the purpose of punishment, but for the protection of the suitors or clients who relied upon them. This was in some respects a bad case. The money had undoubtedly been received by the solicitor for a specific purpose; he set up a claim which he never prosecuted, and which could not be beyond some small sum; and when it was clear that the report must be against him, and he was allowed a certain time—as long ago as May—to repay what was due, he made no appearance, and made no attempt at restitution. This report was made in June, and he has done nothing, and has not appeared. It certainly is not one of the worst class of cases, in which a client has been ruined, but it is a case which must be visited with an exemplary sentence, and the solicitor must be suspended for three years.

## LICENSING APPEALS.

At Westmoreland Quarter Sessions, on October 23, a licensing appeal was heard, in which the appellant was R. Yare, occupier of the Coach and Horses Inn, at Appleby, and the respondents were Westmoreland justices. In September last, at the adjourned Brewster Sessions at Appleby, the magistrates refused to renew the license of the Coach and Horses, evidence having been given that the house had been badly conducted in the time of Sowerby, the late owner and occupier, against whom there had been several convictions for drunkenness during the last two years. In spring the house had been purchased by Mr. Henry Newton, brewer, Penrith, who had secured a respectable tenant, and evidence given by the police and others showed that the inn had been well conducted since it changed hands. An assurance was further offered to the Appleby bench that the house would continue to be well conducted, but they refused to renew the license. Against that decision the new tenant (Yare) now appealed to the Quarter Sessions. The case for the respondents was that while Sowerby occupied the house it was badly conducted; that disorder and acts of indecency were frequently witnessed in front of the house; and that the public requirements were well provided for by other houses, there being four other licensed houses within a short distance of the Coach and Horses. For the appellant it was submitted that since the inn had been occupied by Yare it had been well conducted, and that, inasmuch as the house was centrally situated and convenient, the principle involved in the case of *Sharp* v. *Wakefield* did not apply. It was further urged that it would be monstrous, after the license had been temporarily transferred to Yare by the magistrates, to punish him for the misconduct of his predecessor, Sowerby, whom the bench had had power to deal with during his occupancy of the premises. To this Mr. Shee replied that the magistrates had not been aware of their power until the law had been made thereon by the judgment of the House of Lords in the case of *Sharp* v. *Wakefield*. The bench dismissed the appeal, with costs.—Mr. Mattinson, M.P., and Mr. Lumb were counsel for the appellants; Mr. Shee and Mr. M. Wilson appeared for the respondents.

At the Quarter Sessions of Monmouthshire, held on Thursday, October 22, at Usk, an appeal was heard from the refusal of the Newport borough justices to renew the license of a beerhouse known as the Luncheon Bar, at Newport, on the ground that the licensee did not reside on the licensed premises. Mr. C. M. Bailhache, who appeared for the appellants, the licensee and the owner of the house, objected that no such notices as are required by section 42 of the Licensing Act of 1872 had been given, and, if so, the borough justices had no jurisdiction to entertain any objection to the renewal of the license. It appeared that two notices, one signed by a ratepayer representing the temperance party in the town, and one by the superintendent of the borough police, both good in form, had been served by leaving them with the licensee's manager on the premises. It was contended that under the Act the service must be either personally on the innkeeper, or by registered letter, and that service on the manager was bad. In the second place, Mr. Bailhache argued that, as there had been no notice of seven days by the justices to the licensee to appear before them, even if the notices of objection were good, the licensing justices had no jurisdiction. This point depends on the construction of clauses 1 and 2 of section 42 of the Act of 1872. The bench, holding that both points were fatal to the respondents, allowed the appeal and granted the license.

## POLICE.

LOTTERY.—ANSWERS COMPETITION.

Arthur Watson, Alfred Brown, and John Evans, the three well-connected young men charged with keeping a lottery under the trade name of Brooks & Co., at 30 Queen Street, Albert Square, Manchester, were again before Mr. Headlam, the stipendiary, on October 27.—Mr. Cobbett, who prosecuted, said when the young men were before the Court on the last occasion the charge of conspiring together to defraud was preferred against them in addition to that of keeping a lottery. The men took rooms in Queen Street for that purpose. They issued an advertisement and placards, offering prizes to those who should first answer the question, 'If a brick weighs 3 lb. and half a brick, what is the weight of a brick and a-half?' and they had received by letter a large number of shilling contributions, it being a condition that all who entered the competition should forward that amount. This was a clear case of keeping a lottery, and he understood that the defendants proposed to plead guilty to that charge. He was willing to accept that as a satisfactory solution of the case.—Mr. Headlam said he understood that the defendants were willing to pay the costs of the prosecution.—Mr. Hockin defended, and thanked Mr. Cobbett for the moderate and fair way in which he had stated the case. His clients had already lost 40*l.* by this business.—Mr. Headlam said in this case he thought there was no intention to defraud, and, that being so, the defendants would be discharged on payment of the costs of the prosecution.

## RESUMPTION OF THE GUILDHALL SITTINGS.

At the Guildhall on Wednesday, October 28, two Courts, presided over by Her Majesty's judges, sat at Guildhall for the trial of jury cases—or, in other words, for trials at Nisi Prius. The last of these trials at the Guildhall took place in 1882, they having continued previously, perhaps it may be said, for time out of mind. Formerly, when the Courts sat in Westminster Hall, and the business of term was concluded, the 'three chiefs'—*i.e.* the Lord Chief Justice of England, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer—sat for about a fortnight for the trial of special and common jury cases, and at the end of these sittings their lordships proceeded to the Guildhall, where they held their three Courts for another fortnight. There were also formerly three Courts at Guildhall sitting in term for the trial of what were then called short causes, most of which, according to the present practice, would never come into Court at all. After the Judicature Act all this was changed. One of the chief objects of the reform was the erection of the present Royal Courts of Justice, the site of which occupies parts of Middlesex, the City, and Westminster,

and where the whole of the Courts covered by the Judicature Act are now brought under one roof—a desideratum which it was reasonably supposed would be for the convenience of jurors as well as of the legal profession. Last session, however, an Act was passed which provided that 'notwithstanding anything in the Courts of Justice Building Acts, 1865, or any Order in Council thereunder contained, sittings may be held in the City of London by judges of the High Court, under commissions issued for the trial of issues or inquiries in cases at Nisi Prius.' The reason for this change was understood to be, first, the convenience of such sittings to parties, jurors, and witnesses whose occupations were in the City; and, secondly, the desirability of bringing back in the Courts important commercial cases which it was said owing to recent legislation had been of late years disposed of by arbitration. The Corporation have provided two Courts for these revived sittings. The old council chamber has been fitted up for the principal Court, and is almost better for its purpose than the best Court in the Royal Courts of Justice. New windows have been constructed in the chamber so that a better light will be obtained, and it is lofty and well ventilated, the whole interior has been reconstructed, and there are ample and commodious seats for the jury, the bar, solicitors, and reporters, while there is also a good gallery for the public. The second Court is that which was formerly occupied by the Court of Exchequer at the north-west end of the hall, and it remains in the same state in which it was left in 1882.

Shortly after eleven o'clock the Lord Chief Justice and Mr. Justice Wills arrived at the Guildhall, where they were met by the Lord Mayor (Sir Joseph Savory), Alderman and Sheriff Tyler, Mr. Sheriff Foster, Sir John Monckton (town clerk), Secondary Roderick, and the other civic authorities.

In the principal Court the Lord Mayor, addressing the Lord Chief Justice, said that as the head of the Corporation of the City of London he desired, upon the occasion of the resumption of these sittings of the Court within the City, to express his extreme pleasure at once again welcoming to the Guildhall the Lord Chief Justice of England and Her Majesty's other judges.

Lord Coleridge: My Lord Mayor,—I thank you for my colleagues and myself for your kindly greetings and for this new proof of your wise care for the administration of the law. It was supposed, whether rightly or not, that trials of mercantile issues had diminished in number owing to their removal from here to the Strand. I express no opinion as to whether this belief is well-founded or not. But it would be unbecoming in me to discourage any attempt to restore these causes to their former position. I thank you for your cordial welcome and for these handsome and convenient Courts. I earnestly hope that the expectations of those who have brought about this change may be fulfilled. To secure their successful fulfilment and to carry out the intentions of those instrumental in making this change will be the endeavour of my colleagues and myself.

Mr. Murphy, Q.C., added a few appropriate words on behalf of the bar.

The Associate then read the commission appointing the Courts to be held.

Upon the termination of the proceedings, Lord Coleridge proceeded to the trial of London special jury actions.

Home Cure for Deafness.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. De Vere & Co., Publishers, 22 Warwick Lane, London, E.C.—Advt.

## PRIVY COUNCIL SECRECY.

Sir Walter Phillimore writes to the *Times* as follows:—

In your issue of March 26 last appeared a letter from Lord Grimthorpe, in which he recurred to the old controversy between the late Lord Cairns and the late Sir Fitzroy Kelly as to the obligation of secrecy in Privy Council judgments, and very emphatically threw his weight in favour of Sir F. Kelly and against the supposed necessity of secrecy.

This seems to have led Lord Selborne to publish a pamphlet, which he has had long by him, in defence of Lord Cairns ('Judicial Procedure in the Privy Council,' Macmillan & Co., 1891), which, as it came out on the eve of the Long Vacation, I had only an opportunity of seeing quite lately.

I happen, however, to have in my possession a collection of cases of which Lord Selborne appears to be entirely unaware—cases not of theological controversy, but of appeals from the Admiralty and Prerogative Courts and from India, in which the language of the judges seems to me impossible to reconcile with the idea that there was any duty to be secret either as to the fact of division of opinion or as to the particular privy councillors who dissented.

In *Cooper* v. *Bockett*, in 1846, a will case on appeal from the Prerogative Court, part of the judgment (4 Moore's 'Privy Council Reports,' p. 452) is as follows:—

'One of their lordships, the Vice-Chancellor Knight Bruce, differs in this conclusion of law, but the rest of their lordships consider that this sentence must be reversed.'

In *Cowie* v. *Renfrey* (5 Moore), an Indian appeal decided in 1846, the judgment ends thus:—

'I must add, however, that this is the judgment of the majority of their lordships, and that the Chancellor of the Duchy of Cornwall was inclined to have taken a different view of the case.'

In *Shersby* v. *Hibbert*, an Admiralty appeal decided in 1847 (5 Notes of Cases, p. 470), the judgment is delivered by Lord Campbell, ending in the usual form:—

'Their lordships will, therefore, advise Her Majesty that the decree appealed against should be affirmed,' &c.

And the reporter immediately adds, at p. 478:—

'Lord Brougham very emphatically declared his dissent from this judgment.'

In *Craig* v. *Farnall*, a clerical discipline case in 1848 (6 Notes of Cases, p. 693), the judgment says:—

'On the whole we are of opinion that the evidence is insufficient to support this charge, and that the decision of the Court below must be reversed. This is the opinion of the majority of their lordships. We cannot avoid adding, and in this all their lordships are entirely agreed. . . .'

In *Phillips* v. *Phillips*, 5 Notes of Cases, p. 440, a divorce case decided in 1847, Lord Brougham is, and in *Michell* v. *Thomas*, p. 614 of the same volume, a will case, both Lord Brougham and Lord Campbell are, reported as adding, at the end of judgments given by one of their colleagues observations, qualifying and limiting the principles of the judgment.

I have besides a great number of cases in which the fact of unanimity or of probable unanimity has been stated in the judgment.

Lord Selborne, I see (p. 42), admits that there are a good many examples of this 'to be found in the books.'

But, if so, and if there is to be regularity in the form of Privy Council judgments, either unanimity should always be expressed, or it should be supposed unless the contrary is stated.

If the latter, how monstrous it was, in a case of the

importance of *Ridsdale* v. *Clifton*, not to allow the dissentient minority the right to have it stated that the judgment was not that of the whole body.

Why the statement in *Sheppard* v. *Bennett*, that the judgment on one point was not unanimous, why the statement in the *Gorham Case* that the Bishop of London and Vice-Chancellor Knight Bruce, mentioning them by name, dissented, and the similar statement in the 'Essays and Reviews' case that the two archbishops dissented are permissible, and yet it was a breach of Sir F. Kelly's oath for him to declare his own dissent when the majority would not (as in other cases) declare it for him, are questions for which your readers will look to Lord Selborne's solution with interest.

My contribution to your columns is only intended to take a humbler form—that of precedents of publicity *versus* secrecy.

I may just add, as Lord Selborne refers to the undoubted fact that the delegates giving no reasons for their judgments also did not officially and publicly state any division of opinion, that he will find judicial notice taken of the fact that a delegates' decision was the judgment of 'a narrow majority' in *Cockcroft* v. *Rawles*, 4 Notes of Cases, p. 249.

## LAW AND PROFESSIONAL NOTES.

By T. F. Uttley, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### QUARTER SESSION CHARGES.

*A.—Public-houses and Beer-houses.*

In his charge to the grand jury the chairman at the opening of the quarter sessions at Lancaster said they would be all aware that interest had been excited throughout the country by the decision in *Sharp* v. *Wakefield*, which related to a public-house in a remote part of Westmoreland being deprived of its license. That case had drawn public attention very actively to the question of licensing, but he thought the public mind was not fully alive to the position of affairs. There were two important classes of licenses—namely, public-house and beer-house licenses—but probably they were not aware that until an Act passed in 1869 came into operation (and which was known as Sir Henry Selwyn Ibbetson's Act) the issue of beer-house licenses was entirely in the hands of the Excise. The intention of the Legislature no doubt was good; but the result was that the country was completely deluged—he did not think that that was too strong a term to use—with houses of that kind. Unfortunately the Act gave no power to deal with existing houses unless the licenseholders had failed in certain statutory conditions. Offences committed against the tenor of the license would render the holder liable to be dealt with; but unless those conditions arose the magistrates were absolutely without power. With regard to public-houses, it should never be forgotten that no houses had been licensed except at the instance of people in the neighbourhood, therefore it was extremely difficult for magistrates to take action in the reduction of licensed houses unless they were stimulated to do so to some extent by people in the different localities. He was one of those who held very strongly that any material change in any licensing division could only be made after localities had expressed their views definitely to the justices. He thought it would be advisable before any considerable action was taken in this matter that the law as to beer-houses should be put upon the same footing as that for public-houses.

*B.—Prisoners' Imperfect Education.*

At the opening of the Salford Quarter Sessions the chairman (Mr. Higgin, Q.C.) referred to the imperfect education of many of the prisoners. The grand jury would know that in Parliament last year there was a great struggle as to the age at which children should be bound to remain at elementary schools. One party advocated one age and another party another. But ever since the Education Act came into force the number of persons imperfectly educated was enormous—compared with the total number, it had rather increased than decreased. What was the cause? Some people thought that children were not kept long enough at school, and urged that they ought to remain under their teachers longer than they were at present compelled by law, so that their education, instead of being imperfect, should be complete. He did not venture to express any opinion whatever, because he knew that there were great differences of opinion among persons who were, perhaps, better able to judge than he. At the same time, the fact was that children were imperfectly educated under the system of elementary education.

### MUNICIPAL ELECTIONS.

With reference to the election of town councillors the burgess roll comes into operation on November 1, on which day in every year (or on the 2nd if the 1st be a Sunday) an election of town councillors takes place. In Manchester, Saturday last, October 24, was the day of receiving the nominations of candidates. A correspondent in a local paper considers, however, that the last day for delivery of nomination papers ought, according to the Municipal Corporations Act, to have been Monday, the 26th. By rule 7 of Part II., Schedule III., to the Act the nomination papers have to be delivered seven days, at least, before the day of the election, and before five o'clock in the afternoon of the last day for delivery of nomination papers. The day of election is (in this year) Monday, November 2, and, counting seven days before the day of election, the last day would be Sunday next. By section 230, where the last day of any limited time appointed or allowed for the doing of any act or the taking of any proceeding is a Sunday, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards. By virtue of section 230 it is submitted therefore Monday, the 26th, was the last day for delivery of nomination papers. Further, only nine days' notice of election is required, which could consequently be given as late as Friday, the 30th, thus allowing only one day between the last day for publication of the notice and the last day for delivery of the nominations (if Saturday was made the last day), whereas the Act contemplates a lapse of two days between the last day for giving the notice and the last day for delivery of nominations. In view of any dispute arising in connection with the municipal elections all over the country, it is perhaps as well to put on record this view of the matter.

### CORRECT SERVICE OF A SUMMONS.

According to the County Court rules as to the modes of service of an ordinary summons, it is laid down that subject to the provisions of Order LI., rule 6, the service of an ordinary summons, except in the cases specially provided for in this order, may be either personal or by delivering the same to some person, apparently not less than sixteen years old, at the house or place of dwelling, or place of business of the defendant. If the bailiff shall ascertain that the defendant has removed from the address given on the entry of the plaint to some other place within the district, he shall serve the summons at such place. A place of business shall not be deemed to be the place of business of the defendant unless he shall be the master or one of the masters thereof. At Stockport County Sessions, however, recently, a travelling representative of an assurance company was charged with travelling on the railway without payment of

his fare. His advocate said the summons was served in London and left with a sub-manager at defendant's office. This was not, he argued, according to the Act, defendant's 'place of abode,' and he submitted that it was bad service. The bench overruled the objection, and allowed the company's solicitor costs on the defendant's advocate's application for an adjournment being granted. Afterwards, however, the defendant appeared, but the company's representative refused to re-open the case and the bench declined on this account to rescind their order as to costs. The question, therefore, as to whether this was a good service of a summons appears to be still open to a more reasonable settlement.

### CURIOUS BETTING AND GAMBLING POINTS.

That deeply rooted and mysterious instinct which teaches most men to gamble whenever they get the chance, presents no easy problem to the legislator. The way is full of stumbling-blocks and dark corners. 'Gaming' cannot be correctly defined. If it could, the definition would include sixpenny points and half-crown bets, and these could hardly be written down as *mala in se* without regard to extenuating circumstances. Justice is not, however, such an innocent as she looks. She is known to wink occasionally, though she certainly did not at Westbromwich lately, where the landlord of an inn was charged with permitting betting on his licensed premises. A police-constable stated that on a certain day he visited defendant's house, and presently a customer asked what odds he was laying on Martagon. The landlord replied starting price. The customer then said he would have so much on for a win and so much for a place. A betting man who was on the premises, however, advised the landlord not to take any bet in his house, especially from a stranger. The landlord thereupon returned the money to his customer. The landlord did not decline to take the money offered as a bet at first. The landlord's counsel said that the bet was not completed as the money was returned by the landlord to his customer. The bench, after hearing the arguments and evidence, considered the case proved. They held that a bet was made, and whether the bet was withdrawn in a few minutes or a fortnight was immaterial to the case, and, accordingly, fined the defendant. Another case, this time at Manchester, was more favourable to those fond of a game. There the complacent stipendiary of Salford declared, in spite of the persuasions and remonstrances of the police, that playing cards for a glass of beer, or even twopenny jacks, was not gambling as he read the law.

### ACCOUNTANTS ACTING AS SOLICITORS.

Quite recently the organ of the chartered accountants indulged in one of its usual complaints as to solicitors encroaching on the functions of accountants and undertaking accountancy work. Perhaps the *Accountant* has not heard of a far more flagrant instance of accountants infringing solicitors' rights. In many County Courts accountants and their clerks are permitted to appear on behalf of plaintiffs and swear to the debts being due, and the plaintiffs need not, therefore, attend the hearing. If a solicitor appears the plaintiff must be there to swear the debt, and, as a consequence, people who do not wish troubling to attend Court put their case into unqualified hands. A solicitor is taxed heavily for being permitted to undertake business, and yet the accountant is placed at a greater advantage in this respect. If accountants were not allowed to swear to the debts, this would be remedied. This is clearly not as it should be, and probably arises from the remissness of the County Court officials. It is a matter, however, which the Incorporated Law Society might well take up and obtain a substantial remedy.

### SHOULD POSTED OFFICIAL NOTICES BE PREPAID?

In these modern days when notices and certificates have to be despatched rapidly, it is a convenience to be able to send them by post. The question arises, should they in that case be prepaid or are they exempt from postage? A doctor sought to recover a sum of money for sending certain certificates of cases of infectious diseases to the medical officer of health under the Infectious Diseases Notification Act, 1889. It appeared that the doctor on one day sent four certificates of cases of infectious disease to the local board medical officer of health in envelopes which were unstamped, so that the medical officer had to pay extra postage. On receipt of these letters the latter gentleman gave the postman notice that he was not to deliver any more unpaid letters. Subsequently three other certificates were sent, also in unstamped envelopes, but were not taken in. In due course the doctor's bill was presented to the local board, who deducted the fee for the three certificates and the expenses the medical officer had been put to for the four letters, but the amount thus arrived at the doctor refused to take. The clerk for the local board, who defended in this case, contended that section 9 of the Infectious Diseases Notification Act incorporated the Public Health Act, 1875, under which the notices should be prepaid, and paid a certain sum into Court. The judge of the Bury County Court, where this case of *Chisholm* v. *The Radcliffe Local Board* was tried, considered that medical practitioners were under no obligation to prepay letters containing certificates, and decided in favour of the plaintiff.

### A TITLE TO LAND.

A New Zealand chief had taken up his residence upon a piece of land, his right to which was contested. 'I have an undeniable title to the property,' he observed, 'as I ate the preceding owner.'

## JUDGMENT AGAINST HUSBAND AS A BAR TO ACTION AGAINST WIFE.

'The argument of Mr. Willis goes the length of asserting that a married woman cannot by possibility enter into a joint-contract, for if she enters into a contract conjointly with another she must always contract in respect of something the other does not, and that this is so even if she jointly contracts with another married woman. This proposition I have never heard before, and I do not agree with it,' said Mr. Justice Smith, naturally with unqualified emphasis, in *Hoare* v. *Niblett*. It was a case in which the question, hitherto undecided, arose as to whether, in an action against a married woman on a contract, upon which a previous action had been brought against her husband, the ordinary rule of law would apply, holding that a judgment against one of two joint-contractors is a bar to a subsequent action for the same breach against the other contractor. That principle itself depends on the doctrine of merger, the right of action becoming 'transformed and metamorphosed into a matter of record' (6 Rep. 45), whence, 'if there be a breach of contract or wrong done, or any cause of action, by one against another, and judgment be recovered in a Court of Record, the judgment is a bar to the original cause of action, because it is thereby reduced to a certainty, and the object of the suit attained, so far as it can be at that stage; and it would be useless and vexatious to subject the defendant to another suit for the purpose of obtaining the same result.' So it was explained in *King* v. *Hoare*, 13 M. & W. 494, where it was held accordingly that where judgment has been obtained for a debt as well as for a tort, even without satisfaction, the right given by the record merges the inferior remedy by action for the same debt or tort

against another party; and so, see *Brinsmead* v. *Harrison*, L. R. 7 C. P. 547; *Kendall* v. *Hamilton*, 4 App. Cas. 504; *Hammond* v. *Schofield*, L. R. (1891) 1 Q. B. 453. 'The reason, as I understand it,' said Mr. Justice Smith, in *Hoare* v. *Niblett*, is 'that there can be only one judgment upon one entire contract.' Then, what is the position of a married woman, in this connection, in respect of her power to contract, and her liability to be sued for breach of contract? 'The effect of section 1, subsection 2, of the Married Women's Property Act, 1882, as it appears to me,' said Lord Justice Fry, in the case of *Whittaker* v. *Kershaw*, L. R. 45 Chanc. Div. 320, 'is to allow a married woman to be sued in respect of anything in respect of which a man could be sued, subject to this, that her power to contract is limited, and that the remedy is confined to her separate estate. The right of action is the same as against a man, but the relief is different.' 'It seems to me,' said Mr. Justice Smith, in *Hoare* v. *Niblett*, 'that she can contract in the same way as a man, subject to this, that she must have separate estate at the date of the contract, which the man of course need not.'

This being so, what were the circumstances in *Hoare* v. *Niblett*, as appears from the report in this month's issue of the LAW JOURNAL REPORTS? It seems that by agreement in writing, dated September 19, 1888, Charles Niblett, the husband of the present defendant, by his agent, Vincent, contracted to let to the plaintiff No. 42 Upper Bedford Place, Russell Square, together with the furniture and effects therein, for the term of one year, and thereby contracted to give to the plaintiff the option of purchasing such furniture and effects. This contract Charles Niblett broke, and thereupon the plaintiff sued him for not letting the house to her and for not giving her the option to purchase, and ultimately recovered judgment against him for 30*l*., damages and costs. Charles Niblett only in part satisfied this judgment, and then became a bankrupt. The plaintiff thereupon commenced another action in the County Court against the present defendant, the wife of Charles Niblett, upon the same contract and for the same breaches for which she had sued Charles Niblett. And the County Court judge nonsuited the plaintiff, holding that this second action was not maintainable by reason of the well-established rule of law that a joint contractor cannot be sued in a second action upon the same contract, though not a party to the first action in which judgment had been recovered. Now, the way the plaintiff sought to make out a case against the defendant was by showing that Vincent in reality contracted with her not only on behalf of Charles Niblett, as stated in the contract, but also on behalf of his wife, the present defendant, and it was taken that legal evidence could be produced in that behalf, so that the case, on appeal by the plaintiff, was discussed upon the hypothesis that both the husband and wife had signed the contract of September 19, 1888. Mr. Willis, for the plaintiff, asserted that, even if it were so, the husband and wife were not joint-contractors upon one entire contract, because by the contract the wife could only contract in respect of her separate estate, whereas the husband contracted personally; and he said that consequently there were two contracts and not one. But they both contracted by one contract in writing to do the same identical thing—they both committed the same breaches and both became liable for the same amount of damages. Why, then, was this not one entire contract jointly entered into by both?

'It appears to me,' said Mr. Justice Smith, 'that Mr. Willis is in this difficulty—if the defendant had separate estate when she contracted, she can contract as a *feme sole*, and consequently can enter into a joint contract. If she has not, she cannot contract at all. So, whichever way it is taken, the plaintiff cannot succeed, for if the defendant had separate estate then the rule of law about joint-contractor applies, and if not then she cannot be sued. Whichever way you look at it the plaintiff must be nonsuited.' 'Assuming there had been no other proceedings taken under this contract, which ended in judgment being obtained by the plaintiff against C. Niblett, I think,' said Mr. Justice Grantham, 'the plaintiff could have maintained an action; but as in this case the plaintiff first sued Charles Niblett, not as agent at all, but as principal, and got judgment against him, she cannot now sue the wife. The action could only be maintained on one of two grounds—either that she was an undisclosed principal, or else that she was a *feme sole* dealing with her separate estate. If the former, the plaintiff is precluded from maintaining it, because the only written contract is one by Vincent as agent for the husband; and if the husband is treated as agent for the wife then there is a judgment outstanding against the agent, and until that is set aside you cannot maintain another action against the principal; and if you treat it as an action against the wife, contracting in reference to her separate estate, she must have entered into a joint contract with her husband, because the transaction being one, the contract being one, the subject-matter of the contract being the same, it is exactly the same cause of action in respect of which the plaintiff first sued—namely, a contract to put her in possession of these goods—and she having obtained a judgment on that cause of action, it must be treated as a judgment obtained against one of two joint contractors; and no authority has been suggested that takes the case out of the ordinary law above referred to.'

Clearly, therefore, the original cause of action *transit in rem judicatam*, within the principle of merger and the well-established rule upon which the decision turned applied. So, in *Kendall* v. *Hamilton* (*ubi supra*), Lord Cairns said: 'Where an agent contracts in his own name for an undisclosed principal, the person with whom he contracts may sue the agent, or he may sue the principal, but, if he sues the agent and recovers judgment, he cannot afterwards sue the principal, even although the judgment does not result in satisfaction of the debt.' And so, where a judgment is obtained against two persons as partners, in respect of a partnership debt, a new action cannot be brought in respect of the same debt against another person who is discovered afterwards to be a partner (*ibid.*). But, it may be added, where one of two partners, defendants, does not appear, the plaintiff may mark judgment and issue execution against him for the entire demand, without abandoning his right against the co-defendant, which can be enforced by suggestion (Common Law Procedure Act, 1853, s. 97; Order XVI.; *Montgomerie* v. *Ferris*, 20 L. R. (Ir.) 282).

*Irish Law Times.*

## SOCIETY FOR THE STUDY OF INEBRIETY.

AT a quarterly meeting held recently in the rooms of the Medical Society of London, the president, Dr. Norman Kerr, called attention to the remarkable growth of public opinion in support of more drastic legislation for the care and treatment of inebriates. The very general agreement in favour of compulsory power to receive and detain such as have lost all power of voluntary application for admission to a home for inebriates for curative purposes, as exhibited in the recent prolonged correspondence in the *Daily Telegraph*, indicated an extraordinary advance in the estimation of the general public in approval of compulsion. This proposal was endorsed by the editor, by many other newspapers and journals, and by most of the recent scientific and medical congresses. Several of our colonies had enacted such a compulsory provision, some other countries possessed it,

and public opinion was so ripening that the time was opportune for a resolute and widespread agitation in support of this proposal, which had practically originated from the medical profession. On the motion of Dr. Kerr, seconded by Dr. Williams, it was resolved to invite an expression of opinion in favour of compulsion, by individuals and by medical and other associations, and to urge the presentation of petitions to Parliament by all persons interested in the care and treatment of diseased inebriates.

A paper was read by Dr. Wynn Westcott, deputy-coroner Central London and Middlesex, upon 'Alcoholic Poisoning in London, and Heart Disease as the Fatal Result.' After referring to two previous sets of statistics compiled by him, one on alcohol in relation to the general mortality, and the other in special reference to alcohol as a cause of sudden death, Dr. Wynn Westcott gave a summary of the results of a tabulation of 1,900 inquests held in London by himself. Of these cases, two-fifths were children and young persons under sixteen years of age; the remaining three-fifths, or 1,150, supplied 255 cases in which medical evidence testified to alcohol as a direct factor in causing the death. This gives a proportion of one death due to alcohol in every 4·5 cases, a rise in percentage since 1888, when the proportion was one in 5·25 cases in the same district of London. Of these deaths due to alcohol, thirty-eight were suicidal, forty-seven accidental, and 170 from natural (or unnatural) causes. The point especially dwelt upon was that of this last class seventy-three died of syncope due to fatty disease of the heart, leaving only ninety-seven to the account of all other diseases; and, again, of all the deaths due to syncope there was proved alcoholic excess in more than one-third of the cases.

Dr. Wynn Westcott looks upon alcoholic intemperance as the most frequent and important of all the causes of fatty degeneration of the heart; which is a disease very difficult to diagnose, and still more difficult to cure.

F. A. A. Rowland, Esq., solicitor of the Supreme Court, read a paper on 'The Principle of Compulsion as Relating to Inebriety,' in which he laid down that legal restraint in the case of disease must depend upon its peculiar circumstances. Even if inebriety were regarded simply as a vice, how far was the State justified in temporarily depriving the inebriate of his liberty, in the public interest? A liar was left at full liberty while a thief was imprisoned, because experience had taught that property and civilisation could be preserved only by the legal restraint of thieves. In the United States, and some of our colonies, as in France, inebriates (in France other offenders also) could be restrained. Here the inebriate could only be retained in a retreat for any period (not exceeding twelve months) which he had signed for, before two justices. The victim's consent was essential, yet in many cases the will-power has been so impaired as to render his voluntary assent impossible. For the poor the present law was inoperative. On the whole, Mr. Rowland believed there ought to be compulsory power, and that provision should be made for the poor. The liberty to destroy the peace and happiness of a family was, after all, closely akin to the liberty to walk about disseminating small-pox, which was interdicted. There might be some simple process by which the friends of the victim might apply to a County Court judge in his private room, the judge having the power to compel the attendance of medical and other witnesses. Government retreats might have similar powers to the Board schools in compulsory education. Whether regarded as a disease or a vice, inebriety ought to be dealt with in some such efficient fashion, in the interests of the public and of the individual.

## HONOURS AND APPOINTMENTS.

After a long and somewhat heated controversy as to the desirability of appointing a legal clerk to the Tonbridge Local Board in succession to Mr. J. A. Snelling, the late clerk, who was not a solicitor, the point was on Thursday week last determined in favour of a lawyer, and Mr. Arthur H. Neve was unanimously appointed to the vacant post. Mr. Neve was admitted in 1883, and has ever since practised in Tonbridge.

Mr. Lauriston Winterbotham Lewis (of the firm of L. W. Lewis & Son), of Walsall, has, as president of the Birmingham Law Society, been elected an Extraordinary Member of the Incorporated Law Society. Mr. Lewis was admitted in 1847.

Mr. Richard Henry Barrett (of the firm of Barrett & Dean), of Slough, has, as president of the Berks, Bucks, and Oxon Law Society, been elected an Extraordinary Member of the Incorporated Law Society. Mr. Barrett was admitted in 1865.

Mr. William Cobbett (of the firm of Cobbett, Wheeler, & Cobbett), of Manchester, has, as president of the Manchester Law Association, been elected an Extraordinary Member of the Council of the Incorporated Law Society. Mr. Cobbett was admitted in 1868.

## LAW STUDENTS' SOCIETIES.

Debating.—The ordinary weekly meeting of this society was held at the Law Institution, Chancery Lane, on Tuesday, October 27; Mr. Marshall in the chair. The subject for discussion—'That the case of *Stuart* v. *Bell*, L. R. (1891) 2 Q. B. 341, was wrongly decided'—was opened by Mr. Savory, followed by Mr. Watkins.—Mr. Crawford, followed by Mr. Simon, opposed.—The debate having been declared open, the following gentlemen spoke: in the affirmative, Messrs. Walton and Willson; in the negative, Messrs. Bower, Thorp, Stevens, Herbert-Smith, Welmoon, Chilcott, Watson, Levi, and Pritchard.—On the motion being put to the meeting, it was lost by a majority of nine.—The subject for discussion at the next meeting of the society, on Tuesday, November 3, is: 'That, as taxation and representation is an essential constitutional principle of this country, women, who pay taxes, should have the same political rights as men.'

Erratum.—It is stated in last week's report of the meeting of this society that the motion was opposed by Mr. Cornelius Wheeler, 'a well-known advocate of Home Rule.' We are requested to state that the word 'advocate' is an error for 'opponent.'

Liverpool.—The next meeting of this association will be held at the Law Library on Monday, November 2. The chair will be taken at 5.30 P.M. by F. J. Leslie, Esq., solicitor. Subject for discussion: 'A.'s donkey and B.'s donkey run in an open race, and A.'s donkey comes in first and B.'s donkey second out of a large number. B. goes to A. and gives him 1*l.* not to start his donkey on the next race. A. promises. B. then backs his donkey to the amount of 20*l.*. The race is run, but A. starts his donkey contrary to the agreement, and it again wins. B.'s donkey again coming in second, B. has to pay the 20*l.* he had laid on his donkey, and claims from A. the 20*l.* so paid. Is he entitled to recover?' *Muller* v. *Gernon*, 3 Taunt. 393; *Simpson* v. *Bloss*, 7 Taunt. 246; *Harrington* v. *The Victoria Graving Dock Company*, 47 Law J. Rep. Q. B. 594; *Read* v. *Anderson*, L. R. 13 Q. B. Div. 779; *Kearley* v. *Thomson*, L. R. 24 Q. B. Div. 742. Affirmative, Mr. J. E. B. Bagshaw; negative, Mr. P. N. Stone.

## CALENDAR OF THE COUNTY COURTS.

FROM NOVEMBER 2 TO NOVEMBER 7.

| No. of Circuit | His Honour | Nov. 2 | Nov. 3 | Nov. 4 | Nov. 5 | Nov. 6 | Nov. 7 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Pfoulkes | — | Runcorn | — | — | Birkenhead | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | — | — | — | Middlesbrough | Stockton-on-Tees | — |
| 26 | Judge Jordan | Stoke | Newcastle | Lichfield | Stafford | Leek | Cheadle |
| 47 | Judge Bristowe | — | Lambeth | Woolwich | Lambeth | Greenwich | — |
| 54 | Judge Metcalfe | Bristol | Bristol | Bristol | Bristol | Bristol | — |
| 55 | Judge Machonochie | Shaftesbury | Wincanton | Crewkerne | Yeovil | Salisbury | — |
| 58 | Judge Edge | — | Exeter | Exeter | Exeter | Newton Abbot | Torquay |

# Court of Appeal Register.

## APPEAL COURT I.

Before the LORD CHANCELLOR, the MASTER OF THE ROLLS, LOPES, L.J., and KAY, L.J.

MONDAY, OCTOBER 26.

*Regina* v. *Marsham* (*Metropolitan Police Magistrate*) (Q. B. *Crown Side*) (appeal of the New Land Development Association, argument of rule *nisi* granted by Court of Appeal for *mandamus* to hear complaint for non-payment of paving expenses; *ex parte* motion for rule *nisi* refused July 23 by Denman, J., and Wills, J.).—Part heard.

Before the MASTER OF THE ROLLS, LOPES, L.J., and FRY, L.J.

TUESDAY, OCTOBER 27.

*Bound* v. *Lawrence* (Q. B. *Crown Side*) (appeal of W. Bound from judgment of Smith, J., and Grantham, J. (*dissentiente*), dated April 11, on appeal from decision of magistrates).—Allowed.

*Bolling and another* v. *H. Birdseye & Co.* (appeal of plaintiffs from judgment of Lawrance, J., dated May 8, at trial without a jury in Middlesex).—Allowed.

Before the LORD CHANCELLOR, the MASTER OF THE ROLLS, FRY, L.J., and LOPES, L.J.

WEDNESDAY, OCTOBER 28.

*Regina* v. *Marsham* (*Metropolitan Police Magistrate*) (Q. B. *Crown Side*).—Rule absolute.

Before LORD ESHER, M.R., FRY, L.J., and LOPES, L.J.

*Loader* v. *London and India Docks Joint Committees* (Q.B. *Crown Side*) (appeal of plaintiff from judgment of Smith, J., and Grantham, J., dated May 15, on appeal from City of London Court).—Dismissed.

## APPEAL COURT II.

Before LINDLEY, L.J., and KAY, L.J.

MONDAY, OCTOBER 26.

*In re Hilliard and others, ex parte Arthur & Co.* (North, J) (application of Arthur & Co. for rehearing of appeal from order of Romer, J., dated July 24, heard August 10, and dismissed with costs).—Application dismissed.

*Johnstone* v. *Von Heidenstam* (application of plaintiff for security for costs of appeal of R. T. Moore named in order dated August 10). *Johnstone* v. *Von Heidenstam* (similar application by defendants).—Order made.

*North Australian Territory Company* (*Lim.*) v. *Goldsbrough, Mort & Co.* (*Lim.*) *and others* (application of plaintiff company for dismissal of defendants' appeal from order of Kekewich, J., dated April 25, 1890, for want of prosecution)—Order made dismissing appeal.

Before LINDLEY, L.J., BOWEN, L.J., and KAY, L.J.

TUESDAY, OCTOBER 27.

*Steele* v. *Savory* (appeal of plaintiff from order of Stirling, J., dated July 31, refusing order for further affidavit and production of documents).—Dismissed.

*Midwinter* (*petitioner*) v. *Midwinter* (*respondent*) (*S. A. Edwards, co-respondent*) (appeal of petitioner from order of Jeune, J., dated July 24, refusing motion for settlement of respondent's life interest on decree *nisi* being made absolute).—Allowed.

*Goodden* v. *Goodden* (appeal of petitioner W. C. Goodden from order of Jeune, J., dated August 12, allowing alimony).—*Cur. adv. vult.*

WEDNESDAY, OCTOBER 28.

*Quorn Ranche Company* (*Lim.*) v. *Martin* (appeal of defendant from order of Collins, J.—for North, J.—dated September 2, directing payment into Court).—Allowed.

*London, Chatham and Dover Railway Company* v. *South-Eastern Railway Company* (appeal of defendants from order of Kekewich, J., dated April 10, on application to vary official referee's report).—Part heard.

## NOTICES FOR THE WEEK.

ROTA OF REGISTRARS.

MONDAY, November 2.—Court of Appeal No. 2: Mr. Jackson. Mr. Justice Chitty: Mr. Lavie. Mr. Justice North: Mr. Rolt. Mr. Justice Stirling: Mr. Ward. Mr. Justice Kekewich: Mr. Pugh. Mr. Justice Romer: Mr. Godfrey.

Tuesday, November 3.—Court of Appeal No. 2: Mr. Clowes. Mr. Justice Chitty: Mr. Carrington. Mr. Justice North: Mr. Farmer. Mr. Justice Stirling: Mr. Pemberton. Mr. Justice Kekewich: Mr. Beal. Mr. Justice Romer: Mr. Leach.

Wednesday, November 4.—Court of Appeal No. 2: Mr. Jackson. Mr. Justice Chitty: Mr. Lavie. Mr. Justice North: Mr. Rolt. Mr. Justice Stirling: Mr. Ward. Mr. Justice Kekewich: Mr. Pugh. Mr. Justice Romer: Mr. Godfrey.

Thursday, November 5.—Court of Appeal No. 2: Mr. Clowes. Mr. Justice Chitty: Mr. Carrington. Mr. Justice North: Mr. Farmer. Mr. Justice Stirling: Mr. Pemberton. Mr. Justice Kekewich: Mr. Beal. Mr. Justice Romer: Mr. Leach.

Friday, November 6.—Court of Appeal No. 2: Mr. Jackson. Mr. Justice Chitty: Mr. Lavie. Mr. Justice North: Mr. Rolt. Mr. Justice Stirling: Mr. Ward. Mr. Justice Kekewich: Mr. Pugh. Mr. Justice Romer: Mr. Godfrey.

Saturday, November 7.—Court of Appeal No. 2: Mr. Clowes. Mr. Justice Chitty: Mr. Carrington. Mr. Justice North: Mr. Farmer. Mr. Justice Stirling: Mr. Pemberton. Mr. Justice Kekewich: Mr. Beal. Mr. Justice Romer: Mr. Leach.

## BOOKS RECEIVED FOR REVIEW.

Banking and Negotiable Instruments. By Frank Tillyard, Barrister-at-Law. London: Adam & Charles Black. 1891.

Copyright and Patents. By W. A. Bewes, Barrister-at-Law. London: Adam & Charles Black. 1891.

Digest XIX. 2. Locati Conducti. Translated, with Notes. By C. H. Monro. Cambridge University Press.

Seton's Judgments and Orders. Fifth Edition. By C. C. M. Dale and W. Clowes. Vol. I. London: Stevens & Sons (Lim.). 1891.

Solicitors' Diary, Almanac, and Legal Directory, 1892 (The). London: Waterlow & Sons (Lim.).

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Failure of Solicitors at Deal.—A preliminary meeting of creditors on the estate of Messrs. Mercer & Edwards, an old-established firm of Kentish solicitors, practising at Deal, was held at St. George's Hall, Deal, on October 27, before Mr. Worsfold Mowll, the official receiver in bankruptcy. Mr. Mercer, one of the partners, who recently committed suicide, had been town clerk for Deal for over half a century. The official receiver stated that he estimated the total amount of liabilities at 94,280*l.* The estimated value of securities was set down at 34,570*l.*, representing roughly a deficit of 60,000*l.*, upon which only 10,000*l.* was expected as assets. A considerable amount of the liabilities is stated to be for trust money. It was decided to take the necessary steps to wind up the estate, and, with the approval of the Board of Trade, Mr. Worsfold Mowll was appointed master.

Registration Appeals.—The hearing of registration appeals from the decisions of the various revising barristers is fixed to take place before the judges of the Queen's Bench Division on Tuesday, November 10. There are eight of these appeals set down—viz. one from the Tower Hamlets, three from St. Pancras, one from the Harrow Division of Middlesex, one from Bangor, one from Kesteven, and one from Bury, in Lancashire. One of the most important appeals is that from the decision of Mr. L. L. Shadwell, Revising Barrister for West St. Pancras, relating to the attestation clause of "lodgers" claims. The barrister decided that it was necessary that the witness to the signature of a lodger claiming a vote should see the claimant actually sign the paper, and that a subsequent acknowledgment to the witness that he had signed was not sufficient. About sixty votes in West St. Pancras are affected by this decision. Mr. Asquith, Q.C., M.P., will appear on behalf of the appellants.

A Former Magistrate of the Thames Police Court.—An interesting presentation was, on Tuesday, October 27, made to Messrs. Mead and Dickinson, the present magistrates at the Thames Police Court, by the Rev. Maurice William Pitman, M.A. This gentleman handed to Mr. Mead an oil portrait of his maternal grandfather, William John Harriott, projector and resident magistrate of the Thames Police. The Rev. Mr. Pitman had previously handed to the late Mr. Saunders, one of the magistrates at this Court, a work, in three volumes, 'Struggles through Life,' written by Mr. Harriott, and which had been placed in the library of the Court. Mr. Harriott was a man of considerable abilities, and had travelled in Europe, Asia, America, and Africa, and at one time he held the office of Judge-Advocate in India, and in 1798 was appointed to act with Mr. Colquhoun in protecting the shipping on the river. At that period much business in connection with the king's ships was transacted at the Thames Court, and in all this Mr. Harriott showed much zeal. He continued as magistrate down to 1815, and much of his original correspondence still exists in the office of the Court. Mr. Harriott was buried in the churchyard at Rochford, Essex, and in the church a mural tablet was erected to his memory. Mr. Mead said he thought it right to draw public attention to the picture, which was that of a former resident magistrate. It was through his instrumentality that the body of police for the protection of vessels on the river, and now known as the Thames Police, was organised. The portrait was given by the Rev. Maurice William Pitman, whose great pride it was to be the grandson of their esteemed predecessor.

Westmoreland Law Society.—We are informed that at a general meeting of the members of the profession, held at the Magistrates' Room, Town Hall, Kendal, on October 17 last, the following resolutions were unanimously passed, viz.: (1) 'That in the opinion of this meeting it is desirable to form a law society for the county of Westmoreland;' (2) 'That Messrs. John Bolton (clerk of the peace), J. B. Wilson, and A. Milne, be associated with Mr. Chorley in formulating the proposed objects and rules of the society, and that such proposed objects and rules be referred to a further general meeting of the profession to be held as soon as practicable;' (3) 'It was proposed, subject to confirmation, that no entrance fee be charged for membership, and that the annual fee for membership be one guinea.' The primary objects of the proposed society are as follows: To uphold and preserve the rights and privileges of the profession; to promote its advancement; and to prevent abuses in and encroachments upon it. It has been suggested that the following amongst other matters might receive the society's attention: (1) The formation of a law library of standard textbooks and, if possible, reports. Members being permitted to use the books at their offices (and in the case of members residing at a distance from the library, to have them transmitted), subject to the rules of the society. (2) To provide a room for the library, and use of members, if funds permit. (3) To settle a form of conditions of sale applicable to the county of Westmoreland. Meetings of the members will be held, at such times as may be settled by the rules of the society, to discuss the carrying out of the objects before mentioned, all matters of interest, and any subjects which members may wish to bring before the society.

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## BIRTHS.

On Oct. 26, at Saltburn-by-the-Sea, Yorkshire, the wife of Dr. Lennard, Barrister-at-Law, of a daughter.

On Oct. 26, at Grovelands, St. Leonard's Road, Exeter, the wife of Cecil R. M. Clapp, Esq., M.A., LL.M. Cantab., Solicitor, of a daughter.

## MARRIAGES.

On Oct. 14, at St. Marylebone Parish Church, London, Wm. Parker Budgett, Esq., of Cheddar, Somersetshire, to Susan Mary, the fourth daughter of the late Wm. F. Cooper, Esq., Solicitor, of St. John's Wood.

On Oct. 21, at Christ Church, Lancaster Gate, W., Gerald Edmund, eldest son of Edmund Routledge, Esq., of 40 Clanricarde Gardens, W., to Florence Emily, youngest daughter of Frederick Cockburn, the Queen's Coroner and Attorney, and a Master of the Supreme Court of Judicature, of 39 Clanricarde Gardens, W.

On Oct. 22, at St. Paul's, Knightsbridge, James Aikin, Barrister-at-Law, youngest son of Stewart Pixley, J.P., D.L., of 21 Leinster Gardens, Hyde Park, to Beatrice Ada, youngest daughter of John Higson, J.P., of Oakmere Hall, Hartford, Cheshire.

## DEATHS.

On Oct. 22, at his residence, Rugby House, Worthing, formerly of London and Hong Kong, Ambrose Parsons, Solicitor, last surviving son of George Parsons, of Worthing, in his 77th year, after a few days' illness.

On Oct. 25, at 1 Stafford Terrace, Kensington, Mary Ann Stonor, the beloved wife of his Honour Judge Stonor.

On Oct. 25, at St. Andrew's, Lyme Regis, William Morgan Benett, aged 78, formerly a Master of Her Majesty's High Court of Justice, and of 2 Chester Terrace, Regent's Park, and Fritham, New Forest.

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# The Law Journal.

*SATURDAY, NOVEMBER* 7, 1891.


## 'OBITER DICTA.'

At a time when the magnates of the University of Cambridge are being convulsed by the question whether the expediency of continuing Greek as a compulsory subject of education ought to be so much as inquired into, it may not be amiss to refer to the manner in which the Legislature dealt with the teaching of Greek and Latin in grammar schools, so far back as 1840, by 3 & 4 Vict. c. 77, the 'Act for improving the condition and extending the benefits of grammar schools.' The very lengthy preamble recites that there are many endowed schools for education wholly or principally in grammar; 'that the term "grammar" has been construed by Courts of equity as having reference only to the dead languages—that is to say, Greek and Latin;' that such education, at the period when such schools were founded, was supposed not only to be sufficient to qualify boys or youths for admission to the universities with a view to the learned professions, but also necessary for preparing them for the superior trades and mercantile businesses; that, 'from the change of time and other causes, such education, without instruction in other branches of literature and science, is now of less value, whereby such schools have, in many instances, ceased to afford a substantial fulfilment of the intentions of the founders;' and 'that the system of education in such grammar schools ought therefore to be extended and rendered more generally beneficial in order to afford such fulfilment.' The statute then proceeds to empower Courts of equity to make orders for extending the system of education to other useful branches of literature and science in addition, or even, under certain restrictions, in lieu of the Greek and Latin languages.

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Barristers in all countries throughout the civilised world will read with interest the sequel to the recent rescript of the Emperor of Germany on the subject of Berlin crime, in which 'especial reference was made' (we quote from the *Times* report of October 30) 'to the conduct of members of the bar, who, in defence of prisoners, resorted to proceedings which tended to thwart the interests of justice.' A Court of Honour of the bar of Berlin has considered the conduct of two barristers who appeared for the defence in a trial for murder. They were charged with having accused the presiding judge of partiality, with having in an unjustifiable manner induced the prisoners to refuse any avowal of guilt, and with having abused the rights of defence. Of these charges the Court acquitted them. But they were also both charged with having, by drinking champagne in open Court, violated the rules of conduct governing members of the bar; while one was accused of having sent in an irregular manner to the judge's house for legal documents, and another of having observed an improper manner of intercourse with the prisoners. These charges were declared proved, both barristers were reprimanded, and he who had sent in an irregular manner to the judge's house for legal documents was also fined 500 marks. To what extent these punishments were merited it is, of course, impossible to say without having the evidence before us; but whether the charges against or offences of the reprimanded barristers were small or great (and some of them at least wear the appearance of triviality), the fact that the Court of Honour was set in motion by the imperial rescript is a very serious one. In this, and we believe in most other countries, the bar is an independent self-governing organisation, with which the Executive Government does not interfere.

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*Pedley & May* v. *Morris* (Notes of Cases, p. 143) is a remarkable but, we think, correct extension of the doctrine of *Munster* v. *Lamb*, 52 Law J. Rep. Q. B. 726, that what an advocate says in Court is privileged, and the case is one of very great interest to solicitors. The action was by solicitors against a solicitor for libel by written objections necessary to be lodged under Order LXV., rule 27, sub-rules 39 and 40, for the purpose of taxation of the plaintiffs' bill of costs, and the defence was that

the words complained of were published by the defendant only as objections lodged in the taxation referred to, and only in his capacity as solicitor and advocate. The High Court has held that the defendant's objections were the same as objections made before the master, and were therefore made in a judicial proceeding so as to come within *Munster* v. *Lamb*, not only in the letter (which we doubt) but in point of principle. We think the judgment right, though we should not be sorry to have the opinion of the Court of Appeal taken. It seems to us that the plaintiffs misconceived their proper remedy, which was to apply to have the matter alleged to be libellous struck out from the 'written objections' under sub-rule 39, by analogy to the procedure for striking out scandalous matter from a pleading under Order XIX., rule 27. The Court has a general jurisdiction to expunge scandalous matter in any proceeding.

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If any licensed person permits drunkenness on his premises, *or* sells any intoxicating liquor to any drunken person, he is liable, under section 13 of the Licensing Act, 1872, to the penalties therein mentioned. In *Edmunds* v. *Jones* (Notes of Cases, p. 143) the High Court has affirmed a conviction of a licensed person for permitting drunkenness on his premises upon proof that a person came upon the licensed premises drunk, and that some whisky was sold to him while upon the premises. It is beyond doubt that some offence under section 13 of the Act of 1872 had been committed, but we cannot help thinking that the Court was wrong in upholding the conviction in this case, which ought to have been a conviction for selling liquor to a drunken person, with which offence it does not appear that the licensed person was charged. In *Martin* v. *Pridgeon*, 28 Law J. Rep. M. C. 179, it was long ago held that a person summoned to answer for one of the offences, of which drunkenness is an ingredient, cannot be convicted of another, and it seems to us that *Martin* v. *Pridgeon* is in point, and was correctly decided. It may be pointed out that, if the charge of selling to a drunken person is correctly made, it is difficult for the licensed person to escape it, for it was held, in *Cundy* v. *Le Cocq*, 53 Law J. Rep. M. C. 125, that to constitute this offence knowledge of the condition of the person served is not necessary, and that the existence of a *bonâ fide* mistake as to his condition is no answer to the charge.

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*Truth* earnestly hopes 'that the very earliest opportunity will be taken to repeal' 21 Geo. III. c. 49, by which Sunday entertainments for money are prohibited under heavy penalties. It appears that Sunday concerts in aid of certain hospitals at Bradford have been put down by the Lord's Day Observance Society by an invocation of this statute to their aid, and *Truth* urges that, from a religious point of view, 'the statute is as indefensible as would be a law enforcing the rite of circumcision,' and asks, 'What would be the effect of this precious Act of George III. upon some of the Roman Catholic churches, where the services include a sacred concert, and where a charge is made for admission?' This question seems to have been answered in *Baxter* v. *Langley*, 38 Law J. Rep. M. C. 1, in which the services of certain 'recreative religionists' were held not to be within the statute, and Mr. Justice Byles pointed out that admission to any religious service for payment did not come within it. The statute, however, was held to apply to the Brighton Aquarium in *Terry* v. *The Brighton Aquarium Company* and *Warner* v. *The Brighton Aquarium Company*, 44 Law J. Rep. M. C. 175, and these cases were followed by a pretty strong agitation for its repeal, with the result that Parliament, after considerable discussion, passed the Remission of Penalties Act, 1875 (38 & 39 Vict. c. 80), empowering the Crown to remit the heavy penalties which might be incurred under the Act, notwithstanding the right of the common informer to sue for them. Under this Act certain penalties were remitted in 1880, shortly after the decision in *Girdlestone* v. *The Brighton Aquarium Company*, 48 Law J. Rep. Exch. 373, to the effect that judgment recovered by a friendly informer was of no avail to the defendant company. But how far Mr. Secretary Matthews would be inclined in 1891 to follow the course pursued by Mr. Secretary Cross in 1880, and remit any penalties which might be recovered from the promoters of the Bradford Sunday Concerts, it is hard to say.

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In the case of *Midwinter* v. *Midwinter and Edwards* (Notes of Cases, p. 142) the question arose whether the Court had jurisdiction to order an inquiry as to the property of a guilty wife against whom a decree *nisi* had been made for dissolution of her marriage, but before the final decree was pronounced. Curiously enough this point does not appear to have ever been previously judicially determined, although it must frequently have occurred in practice. The wife was entitled to property settled to her separate use without power of anticipation, and the innocent husband sought to have a settlement out of that property for the benefit of himself and the children of the marriage. With a view to such settlement being ordered and executed immediately after the decree was made absolute, he asked for a preliminary inquiry as to the property and the settlement to be made. The argument was that, unless the settlement were made immediately after the decree absolute, the respondent might forthwith marry again, when the restraint on anticipation would revive and prevent a settlement being made. Mr. Justice Jeune had decided that the application was premature, and refused to order an inquiry. The Court of Appeal, however, took a different view of the matter. Their lordships were unanimously of opinion that the Court had complete jurisdiction to direct such an inquiry before the final decree was pronounced, so as to enable the Court to inform itself as to what it could or could not do when the time for doing something arrived. The Court would then be entitled to order the wife to make a settlement so soon as she was in a position to do so by the fact of being divorced. But the husband was required to give security for the costs in case no decree absolute should be made.

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The question turned upon the provisions of section 45 of the Matrimonial Causes Act, 1857, section 6 of the Matrimonial Causes Act, 1860, and Rules 95 and 101 of the Divorce Rules and Regulations. Section 45 of the Act of 1857 empowers the Court, in any case in which it pronounces a sentence of divorce or judicial separation for adultery of the wife, if the wife is entitled to any property, to order such a settlement as it shall think reasonable to be made of such property or any

part thereof for the benefit of the innocent party and of the children of the marriage or of either of them. Section 6 of the Act of 1860 enacts that any instrument executed pursuant to any order of the Court, under the Act of 1857, at the time of or after the passing of a final decree of divorce or judicial separation, shall be deemed valid and effectual in law, notwithstanding the existence of the desirability of coverture at the time of the execution thereof. The rules referred to provide how applications for such settlements are to be made. As it was very urgently put by Lord Justice Bowen, unless the Court is to do injustice to the innocent party, and place at the mercy of chance the interests of the innocent children, it is essential so to read section 45 of the Act of 1857, as to prevent the necessity of delay between the final order for a settlement and the sentence which the Court pronounces of a final divorce. The inquiry necessary for the purpose of the settlement may take weeks to carry out. And we agree in thinking that there must be inherent power in the Court to provide at any time during the suit for the proper collection of such materials, and at such times as may be necessary to enable effective orders to be made. Justice and the protection of innocent persons require that such orders should be made promptly.

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THE case of *Brandon* v. *M'Henry*, 60 Law J. Rep. Q. B. 448, lays down a very broad proposition which appears to merit some examination. It was a decision under the Bankruptcy Act, 1869, but as the corresponding clause in the Act of 1883 is in substantially the same terms, the question is still one of practical importance. The plaintiff, who was a judgment creditor of the defendant, tendered a proof in the defendant's bankruptcy, not on the judgment but on the amount of the original contract debt. The trustee rejected the proof, and, though the plaintiff took the first steps in an appeal against this rejection, he subsequently abandoned his appeal. Afterwards the bankruptcy was annulled, and the plaintiff then issued execution upon the judgment. On an application by the defendant to set aside the execution, both the Divisional Court and the Court of Appeal held that in the circumstances the judgment could no longer be enforced; the rejection of the proof for substantially the same debt being an act done by the trustee within the meaning of the statute (Act of 1883, section 35), and therefore valid and binding on the parties after the annulment of the bankruptcy. As Lord Esher roundly expressed it, the effect of the section is that the claim so rejected cannot be enforced after the bankruptcy is annulled. But it may be doubted whether this sweeping proposition does not go beyond anything required by the facts of the case or contemplated by the learned judges. The proof was rejected by the trustee on the single ground that there was no debt due from the bankrupt to the person claiming as creditor. Suppose, however, that a claim for which a proof is tendered, though a genuine debt, is of a nature not provable in bankruptcy (such as a litigant's claim for costs in certain cases), and that it is rejected by the trustee on this ground. If the estate afterwards realises twenty shillings in the pound and the bankruptcy is accordingly annulled, why should the bankrupt be relieved from liability and the creditor be barred of his right because he has adopted the mistaken and abortive course of tendering a proof for a claim which is not provable? The words of the judgments in *Brandon* v. *M'Henry*, unguarded as they are, mean this if they mean anything; but it is to be hoped that they will hereafter be explained to be subject to some such qualification as this: Where a proof is rejected by the trustee, and the bankruptcy is subsequently annulled, the rejection remains valid, and the claim for the amount sought to be proved for is consequently barred, *provided the claim is of such a nature that if it were a genuine debt it would be provable in the bankruptcy.*

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THE reception of the Licensing Committee's report on music, dancing, and theatre applications heard by them on the 1st and 7th inst. was the occasion of some extraordinary demonstrations at a recent meeting of the London County Council. Mr. M'Dougall and his friends attended in considerable force, and strenuous opposition was offered to several licenses which the committee recommended, including one which would enable rooms at a well-known restaurant in Regent Street to be let for wedding breakfasts and private balls. Notwithstanding these protests the license was granted by a majority of two to one, and it is extremely doubtful whether the sections in the new Act relied on by the objectors can be held to apply to private dancing. In other cases where counsel appeared to support the objections of four members of the County Council (some of whom were present and voted) the opposition was successful. Mr. Fardell, chairman of the licensing committee, is reported to have said that 'the course which had been pursued that day was calculated entirely to overthrow their rules of procedure.' The outside public will, no doubt, agree with his opinion, and a revolt against the well-meant but puritanical censorship of public amusements is the probable result to be looked for.

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So long a time has elapsed since 'the Claimant' passed into obscurity that, notwithstanding his occasional appearances—now few and far between—in the character of an 'unfortunate nobleman' appealing for pecuniary assistance, any public interest in his fortunes is exhausted. But there are, it seems, still some people to be found who feel an interest if not in 'the Claimant' himself, yet at any rate in his wife. This unfortunate celebrity (if she can be said to have reached that rank) is an inmate of the South Stoneham Union, Hants. Having obtained leave of absence one day last week she was taken for a drive by the wife of a local publican, when, the pony falling, Mrs. 'Tichborne' was thrown out and was considerably cut and bruised. Having recovered consciousness she was taken back to the workhouse, where it is hoped she will regain her usual health. The boldest imposture of the present century—and probably the most expensive—has had as ignominious an ending as a realistic novelist could desire.

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THE 'Confirmation Committees' have taken their cue from the Quarter Sessions Courts of Appeal in licensing matters, and very few new licenses have been confirmed. Whether the system works well in counties is open to doubt, and it is certainly somewhat an anomalous state of things when magistrates who do not know a locality or the surrounding circumstances over-

ride the unanimous decision of magistrates who do. The case to which a correspondent draws attention in another part of our columns seems a peculiarly hard one; but, under the existing licensing law, there is clearly no remedy and no appeal except to public opinion.

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From the annual report of the Hardwicke Society, just issued, it appears that the society is in a very flourishing condition. The average attendance during the session 1890-91 was fifty-four, being the highest on record, while at one meeting (we presume at that which General Booth attended) there were present 170, 'which is nearly double the attendance at any previous recorded meeting in the history of the society.' Copies of the rules of the society are now ready for issue to members upon application to the secretaries, Mr. John M. Gover, 1 Garden Court, and Mr. Walter S. Shaw, 3 Harcourt Buildings. The rules are also to be seen at the Inns of Court libraries.

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## 'LAW JOURNAL REPORTS' FOR NOVEMBER.

The November number of the Law Journal Reports carries the Chancery cases from page 657 to 744; those in the Queen's Bench Division from 633 to 664, and the Magistrates' cases from 145 to 160. The volume concludes with several tables of great practical use and convenience which cover 76 pages. The first is a list of the Public General Acts arranged in the order of their passing; the second is a similar list of statutes, which, being public Acts of a local character, are placed among the Local and Personal Acts. It will be noted that the imperial character of the metropolis is recognised by the inclusion of the Public Health (London) Act in the former category. The third is a list of the Local and Private Acts, of which there are no fewer than 223; the next is a list of the Local and Private Acts arranged in classes. A further table shows in a concise form the effect of the session's legislation. This table is divided into two parts—Table A, showing the effect of the statutes passed last session on former Acts, and the character of the Acts passed, and Table B., exhibiting the reverse process by a list of Acts of former sessions in chronological order repealed and amended by Acts of 54 & 55 Vict. The last item is an analytical index in alphabetical order of the Public General Acts.

In the twenty-five cases in the Chancery Division, *In re Tredwell* (C. A.) shows the effect of the remarriage of a widow entitled to income during widowhood on the interests of pecuniary legatees. *Blackman* v. *Fysh* settles a number of questions—dear to the conveyancer's heart—of forfeiture, gift over, contingent remainder, and class of children entitled under a will. *In re Mervyn* is also a case of will construction involving questions of class gift, maintenance, remoteness. *Vine* v. *Raleigh* (C. A.) decides that certain trusts under a settlement were within and certain others outside the Thellusson Act. In *The Westmoreland Green and Blue Slate Company* v. *Feilden* (C. A.) it was held that an action lies by the liquidator in the name of the company against a contributory for calls made before the winding-up, notwithstanding that the liquidator has obtained a balance order in the winding-up for payment of the same moneys under section 101 of the Companies' Act, 1862. *Crawford* v. *Forshaw* (C. A.) deprived a renouncing executor of the right to select the charities among which a residue was to be divided. *In re Tyler* (C. A.) affirmed that the rule against perpetuities had no application to a bequest to a charity with a condition annexed to keep testator's tomb in repair. *Bolton* v. *Bolton* (C. A.) decided that an undertaking by a suitor to submit to the order of the Court with respect to a ward came to an end when she attained twenty-one. *Pirie* v. *Goodall* was a trade-mark case deciding that 'Parchment Bank' applied to note-paper was not 'fancy words' within the Act of 1883. The term 'brand' in section 64 of the Act was held to include water-mark. In *Smith* v. *Smith* six months' interest in lieu of notice was given to mortgagees of a reversionary interest, who were paid off on the reversion falling into possession. According to *In re Wilks*, inchoate proceedings by a joint tenant to sever the tenancy interrupted by his death was held insufficient to sever the tenancy. According to *Wilson* v. *The Queen's Club*, the effect of a lease granted by a mortgagor in possession under section 18 of the Conveyancing Act, 1881, is to bind the mortgagee so as to prevent interference with any easement to which the lessee is entitled as against the lessor. *In re The Cordova Union Gold Company* declares that an agreement to pay for a share in a company by instalments was terminated by a winding up. *Turnell* v. *Sanderson* defines the limits of an arbitration clause in partnership articles. In *G.* v. *L.* it was discovered that there is still such a person as the serjeant-at-arms attending the Court. The case was one of contempt of Court by the mother of a ward. *The London Printing and Publishing Alliance* v. *Cox* (*Lim.*) (C. A.) was a decision on copyright as affecting a picture. *In re Cheesman* (C. A.) lays down that there is no rigid rule defining the special circumstances in which an order will be made to tax a solicitor's bill of costs after payment. In *Carter* v. *Silber* a husband, married before he was twenty-one, was held entitled to repudiate a settlement made under misconception on his marriage. *The General Auction, Estate, and Monetary Company* v. *Smith* states that the rule that directors whose regulations are silent on the subject of borrowing have an implied power to borrow for the purposes of the business is not affected by *Baroness Wenlock* v. *The River Dee Company*, L. R. 36 Chanc. Div. 675, note. *In re La Compagnie Générale d'Eaux Minérales et de Bains de Mer* was a case of wrongful service out of the jurisdiction of an originating notice of motion to rectify the register of trade-marks. *In re Llewellin* postponed a solicitor's lien to the rights of a mortgagor to his deeds who had paid off and obtained a release from his mortgagee. *Ainley* v. *The Kirkheaton Local Board* is a decision on the Public Health Act, 1875, ss. 15, 17, 21, 157. *The Walthamstow Local Board* v. *Staines* (C. A.) was on sections 150, 257, and 268 of the same statute. *In re The Poor Lands Charity, Bethnal Green*, decides that the jurisdiction of the Charity Commissioners under the Charitable Trusts Act, 1860, does not cease with the withdrawal of an application for a scheme. In *Salomons* v. *Knight* (C. A.) it is stated that an interlocutory injunction will not be granted in restraint of a libel unless injury is likely to be caused to the plaintiff's person or property by the continuance of the publication.

In the Queen's Bench Division eleven cases are reported. *In re An Arbitration between John Knight and the Tabernacle Permanent Building Society* (C. A.) de-

cided that section 19 of the Arbitration Act, 1889, was not inconsistent with section 36 of the Building Societies Act, 1874. *In re An Arbitration between Williams and Stepney* (C. A.) involved sections 2 and 25 and the schedule of the Act of 1889. The meaning of 'submission' to arbitration in the Act of 1889 is defined in *The Caerleon Tinplate Company* v. *Hughes*. *Taws* v. *Knowles* (C. A.) was a case of extinction of easement in consequence of the devise of adjoining properties to different persons. *The Bishop of Bangor* v. *Parry* decided that a lease of charity land for a period exceeding twenty-one years without the consent of the Charity Commissioners was void under the Charitable Trusts Amendment Act, 1855, s. 29. In *Heinemann* v. *Hale* (C. A.) a writ of summons issued against a foreign partnership in the name of a firm was held irregular, and the service thereof on a partner within the jurisdiction was set aside on application made before appearance. In *The London Bank of Mexico and South America* v. *Apthorpe* (C. A.) income-tax was declared payable on the whole profits of an English business partly carried on abroad. The question in *Comfort* v. *Betts* (C. A.) was what constituted an absolute assignment of debts under the Judicature Act, 1873, s. 25, subs. 6. In *Levasseur* v. *Mason & Barry* (C. A.) the operation of a receivership order against a French company was considered. *Wenman* v. *Lyon* (*Honeywill, claimant*) decided that a memorandum of agreement for a marriage settlement was exempt from registration as a marriage settlement under the Bills of Sale Act, 1878, s. 4. In *Burt* v. *Gray* it was held that a sublessee of part of leased premises is not entitled to relief as against the original lessor under the Conveyancing Act, 1881, s. 14, subs. 2, 3.

In the six Magistrates' Cases *Hotchins* (*appellant*) v. *Hindmarsh* (*respondent*) was a case under the Sale of Food and Drugs Act, 1875, ss. 6, 25. *The City and South London Railway Company* v. *The London County Council* (C. A.) involved the extent of the statutory powers of the company. In *Regina* v. *Leresche* (C. A.) the point was what constituted desertion by a husband so as to justify an order for alimony. *Osborne* v. *The Skinners' Company* settled a question under the Housing of the Working Classes Act, 1890. In *Ex parte Schofield* (C. A.) a conviction for a nuisance was held to be a 'criminal cause or matter' within the Judicature Act, 1873, s. 47, on which there was no appeal to the Court of Appeal. *Kearley* v. *Tonge* decided that the Sale of Food and Drugs Act, 1875, does not make a master responsible for the unauthorised acts of his servant.

## SERVICE OUT OF THE JURISDICTION.—II.

(*Continued from p.* 675.)

2. Besides satisfying the Court of the existence of a cause of action within the jurisdiction—a subject with which we dealt exhaustively in the preceding paper—the plaintiff had to show by affidavit (*a*) that the defendant had been personally served, or (*b*) that reasonable efforts had been made to effect such service, and that the writ had come to the defendant's knowledge. The evidence necessary to satisfy this requirement is very fully discussed in Mr. Justice Day's work on 'The Common Law Procedure Acts,' pp. 12, 13, to which we refer the reader.

3. The third point on which a plaintiff, desirous of proceeding under section 18 or section 19 of the Common Law Procedure Act, 1852, had to satisfy the Court was that the defendant had wilfully neglected to appear, or was living out of the jurisdiction of the Court in order to defeat or delay his creditors. This was a presumption to be raised from the particular facts of each case. It was not a fact to be drily stated, but the affidavit was required to set forth circumstances sufficient to justify the judge in drawing the required inference. If the plaintiff's affidavit were satisfactory to the Court, he was allowed to proceed, under section 28, to final judgment. The only fetter upon his action was the following proviso contained in section 18: 'Provided always that the plaintiff shall, and he is hereby required to, prove the amount of the debt or damages claimed by him in such action, either before a jury upon a writ of inquiry or before one of the masters of the . . . Superior Courts in the manner hereinafter (*i.e.* by section 94) provided, according to the nature of the case as such Court or judge may direct, and the making such proof shall be a condition precedent to his obtaining judgment.'

Execution upon a judgment thus obtained might be registered under 23 & 24 Vict. c. 38, and made available against the defendant's property in this country. (Day, *ubi sup.* p. 15.)

Such was the procedure with regard to service out of the jurisdiction, prior to the Judicature Acts, in actions at common law.

The practice of the Court of Chancery was somewhat different, and depended upon different enactments.

The earliest statute dealing with the subject was a short Act of 2 Wm. IV. c. 33, enabling the Court of Chancery in 'any suit which has been or shall be instituted' in such Court, 'concerning lands or tenements or hereditaments situate . . . within that part of the United Kingdom called England or Wales,' to direct the service of process upon any defendant in such suit then residing in any part of the United Kingdom or the Isle of Man (section 1). Along with any subpœna served under this Act a copy of the prayer of the complainant's bill was directed to be served, and no process for contempt was to be entered without the special order of the Court (section 3).

The next statute in order of time was that of 4 & 5 Wm. IV. c. 82. Its material provisions were as follow: (1) 2 Wm. IV. c. 33 was extended to (*a*) all suits instituted in the Court of Chancery concerning any charge, lien, or judgment on lands, tenements, or hereditaments in England or Wales, or concerning any money invested in any Government or other public stock, or public shares in public companies or concerns, or the dividends or produce thereof; and (*b*) any defendant in such a suit resident in any place *out* of the United Kingdom of Great Britain and Ireland (section 1). (2) The procedure under this Act was this: The application for an order had to be made by motion in open Court, supported by affidavits identifying the defendant and his place of residence, and specifying (*a*) the means whereby the proposed service might be authenticated; and (*b*) especially whether there were any British officers, civil or military, appointed by or serving under the Crown, at or near the place of such residence. The Court might order service of the subpœna either upon the party himself or upon the receiver, steward, or other person receiving or remitting the rents of the land or premises forming the subject-matter of such suit. In cases where the Court was satisfied that the defendant could not be found or was keeping out of the

way to avoid being served with process, substituted service of the subpœna might be ordered (sections 1 and 2).

The powers of the Court of Chancery were subsequently enlarged by the Consolidated Orders, 1860, No. 10, rule 7, which enabled it to order the service of a copy of a bill on a defendant out of the jurisdiction 'in any suit,' and in *Drummond* v. *Drummond*, L. R. (1866) 2 Chanc. Div. 32, it was held by the Court of Appeal, affirming the decision of Vice-Chancellor Stuart in the same case (L. R. (1866) 2 Eq. 335) and overruling the decisions of Lord Westbury in *Cookney* v. *Anderson*, 1 De G. J. & S. 365, and *Foley* v. *Maillardet* (*ibid.* 389), that the words 'in any suit' were not confined to suits relating to land, stocks, or shares in England within 2 Wm. IV. c. 33 and 4 & 5 Wm. IV. c. 82. The *ratio decidendi* in this case was that under 3 & 4 Vict. c. 94, s. 1, the General Orders of the Court of Chancery, unless objected to within a limited time by a vote of either House of Parliament, were to 'be of like force and effect as if the provisions therein contained had been expressly enacted by Parliament.' Briefly stated, therefore, the practice in Chancery with reference to service out of the jurisdiction had, prior to the Judicature Acts, passed through three stages of development: (1) Before the statutes of William IV. service out of the jurisdiction could indeed be effected, but it was of little use, since, if the defendant failed to appear, nothing more could be done (*Fernandez* v. *Corbin*, 2 Sim. 544; *Cookney* v. *Anderson*, *ubi supra*. (2) 2 & 3 Wm. IV. c. 33 and 4 & 5 Wm. IV. c. 82 were passed in order to make such service effectual in the cases to which they applied. (3) The Consolidated Order, 1860, No. 10, r. 7, made the purview of these statutes coextensive with the practice in equity.

In the next paper we shall deal with the law as to service out of the jurisdiction under the Judicature Acts and the Rules of the Supreme Court.

(*To be continued.*)

# Reviews.

## HIGHMORE ON THE STAMP ACTS.

*The Stamp Act*, 1891, *and the Stamp Duties Management Act*, 1891. With an Introduction and Notes, and a Copious Index. By NATHANIEL JOSEPH HIGHMORE, of the Middle Temple, Barrister-at-Law, Assistant Solicitor of Inland Revenue. London: Stevens & Sons (Lim.). 1891.

THE Acts which we have here before us, passed to consolidate the law relating to the stamp duties payable upon instruments, and to the management of stamp duties generally, come into operation on January 1 next, and will introduce a very beneficial change, as hitherto the stamp laws have been in a state of woeful confusion. Mr. Highmore briefly traces the history of the previous law in a useful introductory chapter. The stamp law, previously scattered over a large number of Acts, was to some extent consolidated in 1870. Since then, however, the law had again become complicated, one of the reasons being that the great majority of the enactments on the subject were to be found in Acts of Parliament dealing not with stamp duties only, but with the Customs and Inland Revenue generally. Prefixed to the present work is a comparative table showing the correspondence between the Stamp Act, 1891, and the antecedent law. The Acts are carefully annotated, and the changes in the law are noted in their appropriate places. The work will be a useful guide to those who desire to understand the present state of the stamp laws.

## THE LEGAL DIARIES.

*The Solicitors' Diary, Almanack, and Directory for* 1892. London: Waterlow & Sons (Lim.)

*The Legal Diary and Almanack*, 1892. London: Waterlow Brothers & Layton (Lim.)

THESE two useful publications are now ready for their respective patrons. Both are so excellent that it is hopeless to attempt to give the palm to the one in preference to the other. Each of them contains the usual diary printed on excellent paper, and, in addition, several hundred pages of miscellaneous information, including a complete law list, a digest of the Acts of last session, a general index to the statutes at large, a table of stamp duties, &c. It is difficult, in fact, to think of anything you would expect to find in publications of this character which does not find a place within their covers.

# Correspondence.

## CONFIRMATION COMMITTEES.

SIR,—May I draw your attention to the accompanying report (see p. 699) which appears in a Hampshire paper? It speaks volumes as to the working of the present system, which allows magistrates who have no knowledge, or at best a very superficial knowledge, of the requirements of a district to refuse, without explanation, a *bonâ fide* application which was *unopposed on both hearings*, and was, moreover, strongly recommended by the bench who granted the license. The chairman of the confirmation committee was Mr. Melville Portal.

Nov. 2. SANATORIUM.

## GREEK AT CAMBRIDGE.

SIR,—The recent decision of the senate of Cambridge is no less than a lamentable disaster to middle-class education throughout England. The result will undoubtedly tend to render the universities yet more exclusive than heretofore—the resort of the wealthy and leisured classes rather than the goal of the intellectual and studious of the whole community. Thousands of middle-class youths who cannot enter into commerce or the profession till nineteen or twenty years of age would be incalculably benefited were facilities afforded them of studying from seventeen till nineteen at Oxford or Cambridge. So long as two dead languages are retained as compulsory subjects in the examination (and the eighteen months' university teaching for the B.A. degree remains as six months yearly for three years rather than nine months yearly for two years), the just claim of the middle classes on the universities will be barred, and secondary education remain at the dead level of the present day.

The battle of life must now be fought on truly practical lines, and in the forefront of the fray are to be

found the scions of commerce and of industry. The highest educational advantages are as their birthright, and no pedantic obstruction should be allowed to debar them from the full enjoyment of their just inheritance.

Middle-class parents ought to make their opinions clearly known on this important subject without delay. The universities of Oxford and Cambridge are rightly regarded as national institutions, and it savours of the fashion of a bygone age to find that a proposal for inquiry into the advisability of a slight change in the curriculum should provoke such vigorous hostility and meet with overwhelming defeat from the votes of only one of the faculties of which the university is composed —the Theological faculty. To the clergy Greek is undoubtedly an essential study—as is arithmetic to traders—but that is no reason for excluding from a university career the many thousand sons of science, commerce, and manufacture.

The endowments of the two universities, now amounting to nearly 650,000*l.* per annum, were left solely for the educational advancement of those who needed help, not for the wealthy. How this amount (which nearly equals the total revenues of all our City companies) is expended I shall endeavour to show at a public meeting to be held shortly at Exeter Hall, Strand, and at which I invite the presence of all who realise the imminent danger arising from this recent retrograde step taken by the senate of Cambridge University.

JAMES HAYSMAN.

International University College,
London, N.W.

## MAGISTRATES' CLERKS.

SIR,—I remember seeing in your paper about ten months ago a note of Mr. Justice Wills' remarks at Liverpool (I believe) about clerks to county justices conducting cases at quarter sessions and assizes. I have also read recently in the *Times* the recent appeal at quarter sessions in the alleged game poisoning case, in which a partner of the clerk to a county bench was allowed to conduct a prosecution. Can you ventilate the matter in some way in the LAW JOURNAL as to the 'usages and rights' (I take these words from a letter now before me in which a clerk to county justices seeks to justify his conduct and the conduct of others) of magistrates' clerks to act as solicitors for and take fees from persons coming before their own bench of magistrates—in fact, conducting their cases.

The matters to which I now particularly allude are applications for transfers of licenses. It is getting quite a common practice for clerks to magistrates to prepare these applications, taking, in addition to the prescribed fees, private fees or costs from the parties applying for preparing and serving such notices, as well as proving the service.

The writer of the above-mentioned letter accuses me of being 'ignorant of the usages and rights of solicitors who hold certain appointments.'

I contend that any such usage is most certainly to be condemned, and that any such claim of right ought to be peremptorily determined once for all. Justices' clerks ought, in my humble opinion, to be perfectly impartial and unbiassed; and how can they hope to be so if they are privately paid? I can vouch for the fact that magistrates' clerks in several counties do this work openly.

AN OLD SUBSCRIBER.

# Unreported Cases.

## SOLICITORS' CASES.

ON October 30, in the Queen's Bench Division, before Mr. Justice Day and Mr. Justice Wright, *In the Matter of a Solicitor and In the Matter of the Solicitors Act*, 1888, Mr. F. W. Hollams appeared for the Incorporated Law Society, and read the report of the statutory committee, from which it appeared that the solicitor in question received as solicitor 1,000*l.* of a client, and fraudulently induced the client to lend him the sum in question on the representation that he would give him a mortgage on some land at West Leigh, near Leicester. As a matter of fact he never gave such mortgage, and in fraud of the client's claim deposited the deeds of the land over which he promised to give a mortgage with his bankers as security for an overdraft of 1,700*l.*—Mr. T. Willes Chitty appeared for the solicitor, and said that he did not deny that his conduct was reprehensible, but he had committed no offence against the law unless he happened to be a solicitor. He obtained the money on an agreement to give a mortgage, and then wrongfully deposited the deeds with his bankers. All the solicitor told his client was absolutely true, though he subsequently behaved improperly. The solicitor was admitted in 1874, and held the office of clerk to the guardians and assistant-superintendent registrar.—The Court reserved their judgment until after the adjournment.—On returning to the Court, Mr. Justice Day gave the judgment of the Court as follows: In this solicitor's case we entertain no doubt. It is a case of a very grave wrong. The solicitor induced his client to trust him with 1,000*l.* on the faith of giving him a security on particular property. The money was never so secured. Judging from the dates, it is clear that he never intended so to secure it. He at once pledged the property to his bankers for other money. This is the case of a solicitor who obtains money by fraud. It is true he could not be indicted, because of the technical rule that the representations must be misrepresentations as to an existing fact. Upon the facts it is clear he never intended to give the security, and, whether or not he obtained the money by fraud, he fraudulently misappropriated it. It is a case of gross fraud. A solicitor is an officer of the Court, and is authorised as such to take business. The Court will exercise a careful supervision over such, both for the sake of the reputation of the solicitors' profession and for the protection of the public. It is a duty it owes both to the public and itself. The solicitor must be struck off the rolls. The order of the Court, therefore, was that Lionel Percy Chamberlain, of Pocklington's Walk, Leicester, be struck off the rolls.

*In the Matter of Charles W. Davies, an Unqualified Person*, Mr. F. W. Hollams, who appeared on behalf of the Incorporated Law Society, applied for a writ of attachment against Charles W. Davies for a contempt of Court in acting as a solicitor, being an unqualified person, under the following circumstances: It appeared an action had been commenced against a Mr. Gustavus Las Casas in September last year. A few days after Las Casas had been served with the writ he met Davies at a public-house and mentioned the fact to him, who offered to defend the action. Las Casas accordingly gave Davies a retainer and 10*s.* The retainer purported to retain Mr. A. B. Creeke, jun., of 21 Lime Street, E.C., and was dated September 18, 1890. On the same day Davies entered an appearance in the name of A. B. Creeke. On September 25 Las Casas received a letter from Davies, under the name of Creeke, enclosing a copy of the appearance and an application to strike out the appearance as illusory and irregular, and declining to act any further in the matter.

Las Casas then put the papers in the hands of a solicitor, who wrote for an explanation. Mr. Creeke called in consequence, and said that Davies had entered the appearance, and had done so in other cases. The matter was brought by the solicitor before the Incorporated Law Society, who now brought the matter before the Court.—The Court, after consultation, directed a writ of attachment to issue.

## COUNTY COURTS.

PLAINT IN EQUITY—JURISDICTION—CONSENT.

At the Totnes County Court, on Monday, October 19, his Honour Judge Edge referred to the case of *Harvey* v. *Kerby*, which was heard at the previous Court. It was an equity suit involving a question of title. His Honour said it was an action outside the ordinary jurisdiction of that Court, and was brought before him by consent of parties, who had also agreed, under section 123 of the County Courts Act, 1888, that his decision should be final. It appeared that by an indenture of June 17, 1889, plaintiff had conveyed to him a farm called 'Simmons and Guests,' with (*inter alia*) the 'closes, pieces, or parcels of land belonging thereto,' and which were estimated to contain about twenty-nine acres, and which were more particularly described in a schedule and by a plan annexed to the deed. By this plaint plaintiff alleged that several pieces of land were and are part and parcel of the farm, though they were not named on the schedule or coloured on the plan, and he sought to have it so declared by the decree of the Court; but, in the alternative, he said that if they were not so part and parcel it was intended by all parties that they should be conveyed, and he asked to have the deed rectified accordingly. The purchase-money was 3,000*l.*, and as the ordinary jurisdiction of the Court was limited in such cases to 500*l.*, the consent he had referred to was signed before the action was brought. He heard the case at considerable length, and had carefully considered the evidence laid before him, and the cases cited by the learned counsel, and should have been prepared to deliver judgment; but in the course of considering the case a grave doubt had arisen in his mind as to whether he had any jurisdiction as a judge to hear the case or to use the power of the Court to enforce any decree he might make, notwithstanding the consent given by all the parties. It was a proceeding on the equity side of the Court, and it would appear that though by section 64 of the County Courts Act he had unlimited jurisdiction, by consent, in all actions assigned to the Queen's Bench Division of the High Court, no such jurisdiction could be given him in equity cases. He knew of no reason why such a distinction between common law and equity actions should have been made, but it certainly did seem that the distinction was made by the section, and it was certainly not under that section that he could exercise the powers of the Act. Section 61 did not seem to help him, and he did not know of any that did. The only way out of the difficulty seemed to him for the parties to make a joint application under section 68 to a judge of the Chancery Division of the High Court for an order authorising that Court to proceed in the action notwithstanding the excess in value of the subject-matter of the action. It would, of course, be idle to give any decision which could not properly be entered upon the record of that Court, and which would not bind the parties. He, therefore, deferred giving judgment until the Churston Court, in order that the parties might consider the position of affairs.—Duke for the plaintiff; Coleridge for the defendants.

THE London and Lancashire Fire Insurance Company announces that Mr. J. Spencer Balfour, M.P., has joined the head office board of that Company.

## THE LONDON COUNTY COUNCIL.

THE usual weekly meeting of the Council of the Administrative County of London was held on November 3, at the County Hall, Spring Gardens, Sir John Lubbock, M.P. (the chairman), presiding.

THE INCIDENCE OF TAXATION.

The local government and taxation committee presented a long report, which had been prepared by a sub-committee, containing an elaborate exposition of the law on the subject of rating as applicable to London, and an examination of various principles connected with it, and of various methods proposed for its reform. The committee, at the conclusion of their report, summed up the propositions which seemed to them to be correct as follows:—

1. Some portion of the burden of the rates should be thrown on owners as distinct from occupiers.
2. All owners, of whatever tenure, whether for years, or for life, or in fee, should bear their due share.
3. Each owner should be charged upon the present amount of annual benefit accruing to him from the property assessed.
4. Each owner should pay part of the rate collected from the occupier by means of a deduction from his rent, according to the method used in the case of the property tax.
5. Owners should contribute to the rates, not only in respect of improvements but of other purposes.
6. Owners should pay, not different proportions of rates levied for different objects, but a fixed proportion of the whole.
7. A fair proportion should be charged upon owners.
8. Half is suggested as a fair proportion.
9. The council should suggest principles only, without attempting a detailed plan.
10. New taxes may be imposed without regard to private contracts.
11. Contracts which contain no stipulations that the occupier shall pay rates need not be regarded.
12. Future contracts by lessees to pay otherwise than as the law directs should be made void.
13. Future increases of old rates may be treated as new taxes.
14. Rates existing at the date of a contract should be left under the operation of the contract.
15. Rates or increase of rates imposed after the date of the contract and before the change of law require special treatment.
16. Some compromise is necessary, as suggested by the committee of 1870, but it should be more speedy and wider in its operation.

Their present recommendations were:—

(*a*) That the council do accept this report as an exposition of many questions relating to local taxation in London, and as propounding principles of reform worthy of the attention of Parliament.

(*b*) That the report, if adopted by the council, and the accompanying papers be sent to the Local Government Board, the vestries and district boards, the City Commissioners of Sewers, the boards of guardians, the London School Board, and the Asylums Board.

Lord Hobhouse, as chairman of the special sub-committee, moved the acceptance of the report as an exposition of many questions relating to local taxation in London, and as propounding principles of reform worthy of the attention of Parliament. He emphasised the great importance of the subject to the ratepayers, and urged that, although the council was not a legislative body, they were bound to take up this matter, because what body with such powers did not feel bound when asked to incur such expenditure to take into consideration the ability of the ratepayers to pay? It frequently happened that im-

portant improvements had to be postponed because of the heavy burdens already imposed upon the people. It was therefore the duty of the council to study the subject, to explain it as well as possible, to suggest where the law was faulty, and to indicate such reforms as seemed desirable. The most helpful course to adopt would be to look the difficulties fairly and squarely in the face, and thus the committee had submitted their recommendations. Local needs should be met to a great extent out of the value of local property, and persons who received the benefits of local property should contribute to its needs each in their fair share. At present the owners as compared with the occupiers did not pay their fair share, and that led to appreciable and practical mischief. In conclusion, he stated that the idea of the committee's plan was taken from Mr. Goschen, but they had enlarged it, and had made what he believed to be the first attempt to work it out in figures, and with reference to the different cases, so as to show what its real and exact operation would be.

As the subject was considered most important and one which ought to be thoroughly debated, it was agreed to take it up at a special meeting of the council to be held on Friday, the 13th inst.

## THE BANKRUPTCY ACT, 1883.

I, HARDINGE STANLEY, BARON HALSBURY, Lord High Chancellor of Great Britain, by virtue of the Bankruptcy Act, 1883, and all other powers enabling me in that behalf, do hereby, until further order, assign the Honourable Mr. Justice Vaughan Williams to be the Judge of Her Majesty's High Court of Justice, by whom, or under whose direction, pursuant to the 94th section of the said Act, all the matters in that section mentioned shall be ordinarily transacted and disposed of.

HALSBURY, C.

The 23rd day of July, 1891.

## SUMMARY JURISDICTION ACTS.

### RULE AND SCHEDULE OF ADDITIONAL FORMS UNDER THE SUMMARY JURISDICTION ACTS.

### RULE.

The forms in the schedule hereto, or forms to the like effect, may be used with such variations as circumstances may require for the purposes of the Reformatory Schools Act, 1866, the Industrial Schools Act, 1866, the Industrial Schools Act Amendment Act, 1880, and the Elementary Education Act, 1876, and this rule may be cited as the Summary Jurisdiction Rule, 1891.

### SCHEDULES.

#### THE REFORMATORY SCHOOLS ACT, 1866.

*Conviction.*

In the [County of Petty Sessional Division of ].

Before the Court of Summary Jurisdiction sitting at , the day of , 189 .

A.B., of , hereinafter called the defendant, being under the age of sixteen years (having been born, so far as has been ascertained, on the day of , 18 ), is this day convicted for that he, on the day of , at , within the aforesaid did [here state the offence].

And it is adjudged that the defendant for his said offence be imprisoned in Her Majesty's Prison at and there kept [to hard labour] for the space of ; and, in pursuance of the Reformatory Schools Act, 1866, the said defendant (whose religious persuasion appeared to the Court to be ) is sentenced to be sent at the expiration of the term of imprisonment aforesaid to the reformatory school at in the county [or borough] of , the managers whereof are willing to receive him [or to some certified reformatory school to be hereafter and before the expiration of the term of imprisonment aforesaid named in this behalf], and to be there detained for the period of , commencing from and after the day of [the date of the expiration of the sentence].

J.P. (L.S.)

Justice of the Peace for the [county] aforesaid.

#### THE REFORMATORY SCHOOLS ACT, 1866.

*Order of Detention.*

In the [County of ].

Before the Court of Summary Jurisdiction sitting at the day of , 189 .

To each and all of the constables of and to the governor of Her Majesty's prison at .

A.B. (hereinafter called the defendant), being under the age of sixteen years, to wit, of the age of (having been born, so far as has been ascertained, on the day of , 189 ), was this day, before the Court of Summary Jurisdiction sitting at , convicted for that he, on the day of , did [stating the offence as in the conviction].

And it was adjudged that the defendant should for his said offence be imprisoned in Her Majesty's prison at , and there kept [to hard labour] for the space of ; and in pursuance of the Reformatory Schools Act, 1866, the said defendant (whose religious persuasion appeared to the Court to be ) was thereby sentenced to be sent, at the expiration of the term of imprisonment aforesaid, to the reformatory school at in the county of (the managers whereof are willing to receive him therein), [or to some certified reformatory school to be before the expiration of the said term of imprisonment named in that behalf], and to be there detained for the period of commencing from and after the day of [the date of the expiration of the sentence].

You the said constables are hereby commanded to convey the defendant to the said prison and deliver him to the governor thereof, together with this warrant; and you, the governor of the said prison, to receive the defendant into your custody in the said prison, there to imprison him and keep him [to hard labour] for the space of . And you, the said governor, are further commanded to send the defendant, at the expiration of his term of imprisonment aforesaid, as and in the manner directed by the Reformatory Schools Act, 1866, to the reformatory school at aforesaid [or to the reformatory schpol named by an order indorsed hereon], together with this order.

J.P. (L.S.)

Justice for the Peace for the [county] aforesaid.

*Nomination of School indorsed on the Order of Detention.*

In pursuance of the Reformatory Schools Act, 1866, the undersigned, of Her Majesty's justices of the peace for the [county] of , hereby name the reformatory school at in the of as the school to which the within-named defendant (whose religious persuasion appears to me to be ) is to be sent as within [add where required in lieu of the school within named].

Dated the day of 189 .

J.P. (L.S.)

THE INDUSTRIAL SCHOOLS ACT, 1866, THE ELEMENTARY EDUCATION ACT, 1876, AND THE INDUSTRIAL SCHOOLS ACT AMENDMENT ACT, 1880.

*Order of Detention in a Certified [Day] Industrial School.*

In the [County of , Petty Sessional Division of ].

Before the Court of Summary Jurisdiction sitting at , the day of , 18 .

Whereas [here insert that one of the following recitals appropriate to the case];

And whereas the religious persuasion of the said child appears to the Court to be that of .

It is hereby ordered that the said child shall be sent to the certified [day] industrial school at , to be there detained [during school hours] until .

J.P.

Justice of the Peace for the [county] aforesaid.

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RECITALS.

A.

[29 & 30 Vict. c. 118, s. 14.]

Whereas A.B., of , a child apparently under the age of fourteen years (having been born, so far as has been ascertained, on the day of , 18 ), has been found begging or receiving alms [or begging or receiving alms under the pretext of selling or offering for sale (here state article—*e.g.* matches)] [or being in a street or public place for the purpose of begging or receiving alms] [or of begging or receiving alms under the pretext of selling or offering for sale (here state article)].

B.

[29 & 30 Vict. c. 118, s. 14.]

Whereas A.B., of , a child apparently under the age of fourteen years (having been born, so far as has been ascertained, on the day of , 18 ), has been found wandering, and not having any home [or settled place of abode, or proper guardianship, or visible means of subsistence].

C.

[29 & 30 Vict. c. 118, s. 14.]

Whereas A.B., of , a child apparently under the age of fourteen years (having been born, so far as has been ascertained, on the day of , 18 ), has been found destitute, being an orphan [or having a surviving parent who is undergoing penal servitude (or imprisonment)].

D.

[29 & 30 Vict. c. 118, s. 14.]

Whereas A.B., of , a child apparently under the age of fourteen years (having been born, so far as has been ascertained, on the day of , 18 ), has been frequenting the company of reputed thieves.

E.

[43 & 44 Vict. c. 15, s. 1.]

Whereas A.B., of , a child apparently under the age of fourteen years (having been born, so far as has been ascertained, on the day of , 18 ), has been lodging, living, or residing with common or reputed prostitutes [or in a house resided in or frequented by prostitutes for the purpose of prostitution].

F.

[43 & 44 Vict. c. 15, s. 1.]

Whereas A.B., of , a child apparently under the age of fourteen years (having been born, so far as has been ascertained, on the day of , 18 ), has been frequenting the company of prostitutes.

G.

[29 & 30 Vict. c. 118, s. 15.]

Whereas A.B., of , a child apparently under the age of twelve years (having been born, so far as has been ascertained, on the day of , 18 ), has been charged before the Court with the offence of , which is punishable by imprisonment [here state lesser punishment], but has not been in England convicted of felony, or in Scotland of theft.

H.

[29 & 30 Vict. c. 118, s. 16.]

Whereas the parent [or step-parent, or guardian] of A.B., of , a child apparently under the age of fourteen years (having been born, so far as has been ascertained, on the day of , 18 ), represents that he is unable to control the said child, and that he desires the said child to be sent to a certified industrial school.

I.

[29 & 30 Vict. c. 118, s. 17.]

Whereas the guardians of the poor of union [or of the parish of , wherein relief is administered by a board of guardians] [or the board of management of the district pauper school] have represented to the Court that A B., a child apparently under the age of fourteen years (having been born, so far as has been ascertained, on the day of , 18 ), maintained in the workhouse [or pauper school] of the said union [or said parish], [or in the said district pauper school], is refractory [or is the child of parents, one of whom has been convicted of a crime or offence punishable with penal servitude or imprisonment], and that it is desirable that the said child should be sent to a certified industrial school.

K.

[39 & 40 Vict. c. 79, s. 12 (1).]

Whereas an attendance order under section 11 of the Elementary Education Act, 1876, was made against the child A.B., of (born, so far as has been ascertained, on the day of , 18 ), and who is under the said Act prohibited from being taken into full-time employment, on the ground that his parent habitually and without reasonable excuse neglected to provide efficient elementary instruction for him, and the said attendance order has not been complied with, without any reasonable excuse within the meaning of the said Act, and whereas [the parent has satisfied the Court that he has used all reasonable efforts to enforce compliance with the said order] [or the said non-compliance was not the first non-compliance with the said order].

L.

[39 & 40 Vict. c. 79, s. 12 (2).]

Whereas an attendance order under section 11 of the Elementary Education Act, 1876, was made against the child A.B., of (born, so far as has been ascertained, on the day of , 18 ), on the ground that he was found habitually wandering [or not under proper control] [or in the company of rogues, vagabonds, or disorderly persons] [or reputed criminals] and the said attendance order has not been complied with, without any reasonable excuse within the meaning of the said Act, and whereas [the parent has satisfied the Court that he has used all reasonable efforts to enforce compliance with the said order] [or whereas the said non-compliance was not the first non-compliance with the said order].

Dated August 5, 1891.

(Signed) HALSBURY, C.

## CIRCUITS OF THE JUDGES.

The following judges will remain in town: The Lord Chief Justice of England, Denman, J., Hawkins, J., Mathews, J., Wills, J., and Charles, J.

| Autumn Assizes, 1891 | South-Eastern | Western | Oxford | North-Eastern | Midland | North and South Wales and Chester | Northern |
|---|---|---|---|---|---|---|---|
| Commission days | Pollock, B. | Cave, J. | Day, J. | A. L. Smith, J. Wright, J. | Grantham, J. | Vaughan Williams, J. | Lawrance, J. Collins, J. |
| *Nov.* | | | | | | | |
| Saturday . . 7 | — | — | Reading | — | — | — | — |
| Wednesday . 11 | — | — | — | — | Aylesbury | — | — |
| Thursday . . 12 | Cambridge | — | — | — | — | — | — |
| Friday . . 13 | — | Devizes | Oxford | — | — | — | Carlisle |
| Saturday . . 14 | — | — | — | — | Bedford | — | — |
| Monday . . 16 | Bury S. Edmunds | — | — | — | — | — | — |
| Tuesday . . 17 | — | Dorchester | Worcester | — | Northampton | — | Lancaster |
| Friday . . 20 | — | Wells | — | — | — | — | — |
| Saturday . . 21 | Norwich | — | — | Newcastle | — | — | Manchester |
| Monday . . 23 | — | — | Gloucester | — | Leicester | — | (2) |
| Wednesday . 25 | — | — | — | — | — | Carnarvon | — |
| Thursday . . 26 | — | Bodmin | — | Durham | — | — | — |
| Friday . . 27 | — | — | — | — | Lincoln | Ruthin | — |
| Saturday . . 28 | Chelmsford | — | Monmouth | — | — | — | — |
| Monday . . 30 | — | — | — | — | — | Chester | — |
| *Dec.* | | | | | | | |
| Tuesday . . 1 | — | Exeter | — | — | Nottingham | — | — |
| Wednesday . 2 | — | — | Hereford | — | — | — | — |
| Thursday . . 3 | Hertford | — | — | York | — | — | Liverpool |
| Monday . . 7 | Maidstone | Winchester | Shrewsbury | — | Derby | — | (2) |
| Tuesday . . 8 | — | — | — | Leeds | — | Carmarthen | — |
| Thursday . . 10 | — | — | Stafford | (2) | — | Brecon | — |
| Friday . . 11 | — | — | — | — | Warwick | — | — |
| Saturday . . 12 | — | — | — | — | — | Cardiff | — |
| Tuesday . . 15 | Lewes | Bristol | — | — | — | — | — |

*** Civil business will be taken only at Manchester, Liverpool, and Leeds.

## LAW STUDENTS' SOCIETIES.

DEBATING.—The ordinary weekly meeting of this society was held at the Law Institution, Chancery Lane, on Tuesday, November 3, Mr. Woodhouse in the chair. The subject for discussion: 'That, as taxation and representation are an essential constitutional principle of this country, women who pay taxes should have the same political rights as men,' was opened by Mr. Herbert Smith.—Mr. Watson opposed.—The debate having been declared open, the following gentlemen spoke: in the affirmative—Messrs. Arnold and Harcourt; in the negative—Messrs. Stevens, Wheeler, G. G. Douglas, and Bower.—Mr. Herbert Smith replied.—On the motion being put to the meeting, it was lost by a majority of four.—The subject for discussion at the next meeting of the society, on Tuesday, November 10, is: 'That the case of *Jones* v. *The Merionethshire Permanent Benefit Building Society*, L. R. (1891) 2 Chanc. Div. 587, was wrongly decided.

LIVERPOOL.—At a meeting of this association on Monday, the 2nd inst., Mr. F. M. Hull in the chair, a debate was held on the following subject for discussion: 'A.'s donkey and B.'s donkey run in an open race, and A.'s donkey comes in first and B.'s donkey second out of a large number. B. goes to A. and gives him 1*l.* not to start his donkey on the next race. A. promises. B. then backs his donkey to the amount of 20*l.*, the race is run, but A. starts his donkey contrary to the agreement, and it again wins. B.'s donkey again coming in second, B. has to pay the 20*l.* he had laid on his donkey, and claims from A. the 20*l.* so paid. Is he entitled to recover?' Mr. Bagshaw opened in the affirmative, which was also supported by Messrs. Todd, Bradley, and Archer. Mr. Stone opened in the negative, which was also supported by Messrs. Martin, Crellin, Lloyd, Freer, Byrne, and Gittins. The question was decided in the negative by a majority of 8.

## NOTICES FOR THE WEEK.

ROTA OF REGISTRARS.

MONDAY, November 9.—Court of Appeal No. 2: Mr. Lavie. Mr. Justice Chitty: Mr. Beal. Mr. Justice North: Mr. Pemberton. Mr. Justice Stirling: Mr. Clowes. Mr. Justice Kekewich: Mr. Leach. Mr. Justice Romer: Mr. Farmer.

Tuesday, November 10.—Court of Appeal No. 2: Mr. Carrington. Mr. Justice Chitty: Mr. Pugh. Mr. Justice North: Mr. Ward. Mr. Justice Stirling: Mr. Jackson. Mr. Justice Kekewich: Mr. Godfrey. Mr. Justice Romer: Mr. Rolt.

Wednesday, November 11.—Court of Appeal No. 2: Mr. Lavie. Mr. Justice Chitty: Mr. Beal. Mr. Justice North: Mr. Pemberton. Mr. Justice Stirling: Mr. Clowes. Mr. Justice Kekewich: Mr. Leach. Mr. Justice Romer: Mr. Farmer.

Thursday, November 12.—Court of Appeal No. 2: Mr. Carrington. Mr. Justice Chitty: Mr. Pugh. Mr. Justice North: Mr. Ward. Mr. Justice Stirling: Mr. Jackson. Mr. Justice Kekewich: Mr. Godfrey. Mr. Justice Romer: Mr. Rolt.

Friday, November 13.—Court of Appeal No. 2: Mr. Lavie. Mr. Justice Chitty: Mr. Beal. Mr. Justice North: Mr. Pemberton. Mr. Justice Stirling: Mr. Clowes. Mr. Justice Kekewich: Mr. Leach. Mr. Justice Romer: Mr. Farmer.

Saturday, November 14.—Court of Appeal No. 2: Mr. Carrington. Mr. Justice Chitty: Mr. Pugh. Mr. Justice North: Mr. Ward. Mr. Justice Stirling: Mr. Jackson. Mr. Justice Kekewich: Mr. Godfrey. Mr. Justice Romer: Mr. Rolt.

LORD MORRIS.—Lord Morris has arrived at 18 Grosvenor Place from Ireland to attend the judicial sittings of the Privy Council.

## CALENDAR OF THE COUNTY COURTS.

FROM NOVEMBER 9 TO NOVEMBER 14.

| No. of Circuit | His Honour | Nov. 9 | Nov. 10 | Nov. 11 | Nov. 12 | Nov. 13 | Nov. 14 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Birkenhead | — | Warrington | Leigh | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | Middlesbrough | York | Thirsk | Helmsley | Knaresborough | Ripon |
| 16 | Judge Bedwell | Hull | Scarborough | Hull | Hull | Hull | — |
| 28 | Judge Jordan | Rugeley | Longton | Hanley | Hanley | Tunstall | Stone |
| 47 | Judge Bristowe | — | Lambeth | Greenwich | Lambeth | Lambeth | — |
| 54 | Judge Metcalfe | Weston-supr-Mare | Wells | Axbridge | — | — | — |
| 55 | Judge Machonochie | — | Dorchester | Bridport | Weymouth | Blandford | — |
| 57 | Judge Paterson | — | Taunton | Langport | Bridgwater | Williton | Wellington |
| 58 | Judge Edge | East Stonehouse | East Stonehouse | East Stonehouse | East Stonehouse | East Stonehouse | Tavistock |

## ADDITIONAL CAUSE LIST.

HIGH COURT OF JUSTICE.—QUEEN'S BENCH DIVISION.

*Michaelmas Sittings*, 1891.

### ADDENDA TO THE CROWN PAPER.

Middlesex (Brentford)—Burstall *v.* Griffiths
Middlesex (Bow)—Building Estates, &c. Co. *v.* Johnson (Charing Cross Bank, claimants)
Worcestershire (Worcester)—Martin *v.* Smith (Smith, claimant)
Middlesex (Edmonton)—Clydesdale Iron Co. *v.* Burton (Burton, claimant)
Metropolitan Police District—Dyke *v.* Gower
England—Regina *v.* Keinath
Middlesex (Bow)—Garrard & Co. *v.* Lunn & Sons and Cooney & Co.
Kent (Greenwich)—Vincent *v.* Vincent
Warwickshire—Regina *v.* Baker, Esq., and another, Justices, &c., and Clarke
Cheshire—Wallasey Local Board *v.* Gandy Belt, &c. Co.
Sunderland—Tindle *v.* Davison
Essex (Colchester)—Everitt and another *v.* Scott
Yorkshire (Leeds)—Barnes *v.* London, Edinburgh, &c. Assurance Co.
Surrey (Chertsey)—Fletcher *v.* Winslade
Kent (Bromley)—Kick *v.* Dockrell (Dockrell, claimant)
Southampton—Bartholomew *v.* Wiseman and another
Leicestershire (Melton Mowbray)—Armsby *v.* Great Northern Railway Co.
Yorkshire (North Riding)—Dent *v.* Overseers of Commondale
Kent (Maidstone)—Leaver *v.* Hooker
Devonshire (East Stonehouse)—Dawe *v.* Fairweather and another
Metropolitan Police District—Wellstead *v.* Paddington Vestry
England—Regina *v.* Stevens
Lincolnshire (Grantham)—Scoley *v.* Thompson's Ancaster Quarries Co.
Glamorganshire—Regina *v.* Jenkins, Esq., and others, Justices, &c. (ex parte Morgan)
Southampton—West Cowes Local Board *v.* Gustar
Yorkshire (Leeds)—Danish Dairies, &c. Co. *v.* Midland Railway Co.
Montgomeryshire—Regina *v.* Bayard
London—Pike *v.* London General Omnibus Co.
Middlesex (Brompton)—Langford *v.* Ellis
Monmouthshire (Newport)—Hurn *v.* Leyshon
Essex (Southend)—Hawkins *v.* Rutter
Liverpool—Caffley *v.* Nelson and others
Montgomeryshire—Regina *v.* Licensing Justices for Hundred of Newtown
Durham—Spark *v.* M'Donald and another
Durham—Same *v.* Same
Metropolitan Police District—Regina *v.* Plowden, Esq., Metropolitan Police Magistrate, and White
London—Sayer *v.* London Street Tramways Co.
Metropolitan Police Magistrate—Board of Works, Wandsworth District *v.* Bird
Northumberland—Regina *v.* Head, Esq., and others, Justices, &c., and Alexander
Somersetshire—Regina *v.* Rogers, Esq., and another, Justices, &c. (ex parte Dyke)
Surrey (Croydon)—Erwin *v.* Collins and another
Cheshire—Woolley *v.* Meredith
Glamorganshire—Regina *v.* Justices of Glamorgan (ex parte Applegate)

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means: it is first-rate, and has been of the *utmost service* to me.' Post free, 4*d*. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, FRY, L.J., and LOPES, L.J.

THURSDAY, OCTOBER 29.

*Blackburn* v. *Blackburn* (appeal of defendants from judgment of Smith, J., dated May 4, in London, after trial without a jury at Leeds).—*Cur. adv. vult.*

*West Ham Guardians of the Poor, Essex* v. *Barton-upon-Irwell (Lancashire) Guardians of the Poor* (Q. B. *Crown Side*) (appeal of West Ham Guardians from judgment of Day, J., and Lawrance, J., dated May 13, affirming sessions order subject to case).—Dismissed.

*Moir* v. *Williams* (Q. B. *Crown Side*) (appeal of respondents from judgment of the Lord Chief Justice and Mathew, J., dated May 12, reversing decision of magistrates as to surveyor's fees).—Part heard.

FRIDAY, OCTOBER 30.

*In re W. Allison, ex parte Debtor* (appeal of Debtor from receiving order, dated September 14, made by Mr. Registrar Giffard on application of Lepard & Smith).—Dismissed.

*In re W. & J. Fraser, ex parte Debtors* (appeal of Debtors from order of Mr. Registrar Brougham, dated July 22, disapproving scheme and refusing to rescind receiving order).—Dismissed.

*In re J. R. Rowbotham & Co., ex parte Debtors* (appeal of debtors from receiving order, Dated September 25, made by Mr. Registrar Giffard on application of London and Suburban Bank (Lim.)).—Dismissed.

*In re Jameson and another, ex parte Debtors* (appeal of Debtors from receiving order, dated August 7, made by Mr. Registrar Hope on application of Bullock, Lade & Co.).—Dismissed.

SATURDAY, OCTOBER 31.

*In re Allan M'Innes, ex parte Bumstead & Co.* (appeal of Bumstead & Co. from order of Divisional Court, dated June 23, reversing the decision of judge of County Court at Manchester against alleged fraudulent preference).—Allowed.

*Tottenham (admix. &c.)* v. *New Guston Company (Lim.)* (appeal of plaintiff from judgment of Day, J., dated June 16, at trial without a jury in Middlesex).—Part heard.

MONDAY, NOVEMBER 2.

*James* v. *Link* (appeal of defendant from order of Denman, J., and Charles, J., dated July 27, affirming order giving liberty to sign judgment unless payment into Court within limited time).—Varied.

TUESDAY, NOVEMBER 3.

*Blackburn* v. *Blackburn* (appeal of defendants from judgment of Smith, J., dated May 4, in London, after trial without a jury at Leeds; heard October 29).—Dismissed.

*Cleaver and others* v. *Mutual Reserve Fund Life Association* (appeal of plaintiffs from order of Denman, J., and Wills, J., dated July 20, directing entry of judgment for defendants on points of law raised in pleadings).—*Cur. adv. vult.*

*Tognarelli* v. *Warburton* (appeal of plaintiff from return to writ of inquiry before the Under-sheriff of York and a jury at Sheffield, dated July 17, for assessment of damages and for new writ of inquiry).—Allowed.

WEDNESDAY, NOVEMBER 4.

*Edge* v. *Johnson* (application of plaintiff for judgment or new trial on appeal from findings and judgment dated July 22, at trial before Denman, J., with a jury, in Middlesex).—*Cur. adv. vult.*

*Jenkins* v. *Bushby* (application of defendant for new trial on appeal from verdict and judgment dated June 27, at trial before Wright, J., and a special jury at Cardiff).—Part heard.

## APPEAL COURT II.

Before LINDLEY, L.J., BOWEN, L.J., and KAY, L.J.

THURSDAY, OCTOBER 29.

*Failsworth, Moston, Woodhouse, and District Bill Posting Company (Lim.)* v. *Travis* (appeal of defendant from judgment of the Vice-Chancellor, dated April 27, for perpetual injunction against interference with plaintiff company's business within three mile radius).—Dismissed.

*Rayner* v. *Hood (encroachment on frontage)* (appeal of plaintiff from judgment of the Vice-Chancellor, dated June 2, dismissing action for injunction against erecting or pulling down buildings).—Allowed.

FRIDAY, OCTOBER 30.

*London, Chatham and Dover Railway Company* v. *South-Eastern Railway Company* (appeal of defendants from order of Kekewich, J., dated April 10, on application to vary official referee's report).—Part heard.

SATURDAY, OCTOBER 31.

*London, Chatham and Dover Railway Company* v. *South-Eastern Railway Company*.—Part heard.

MONDAY, NOVEMBER 2.

*London, Chatham and Dover Railway Company* v. *South-Eastern Railway Company*.—Part heard.

TUESDAY, NOVEMBER 3.

*London, Chatham and Dover Railway Company* v. *South-Eastern Railway Company*.—Part heard.

*Towers* v. *Monk* (appeal of defendants from order of Collins, J. [for Kekewich, J.], dated September 16, 1891, restraining use of tramways on plaintiff's land).—Order on terms arranged.

*Hepworth* v. *Hepworth* (appeal of defendant from order of Collins, J. [for Stirling, J.], dated September 2, restraining sale of goods not manufactured by plaintiff under same name).—Dismissed.

*Guanta Railways, Harbour and Coal Trust Company (Lim.)* v. *La Société Française des Houillères du Neveri and others* (appeal of plaintiffs from order of Collins, J. [for Kekewich, J.], dated September 9, giving leave to take proceedings in France).—Dismissed.

*Mona Hotel (Lim.)* v. *Page* (appeal of the company from order of Collins, J. (for North, J.), dated August 19, refusing immediate sale and delivery of possession by receiver to purchaser).—Order varied.

*Revell* v. *Read* (appeal of plaintiff from order of Jeune, J. (for Chitty, J.), dated September 23, directing motion to restrain dismissal of schoolmaster to stand over until trial).—Arrangement made to advance hearing of cause.

*Stamford, Spalding, and Boston Banking Company (Lim.)* v. *Merriman* (appeal of defendants from order of Chitty, J., dated July 21, refusing to discharge chamber order for further answer to interrogatories).—Dismissed.

*Haslett* v. *Hutchinson* (appeal of defendant from order of Kekewich, J., dated August 15, restraining defendant until trial from representation that agreement at an end).—Part heard.

## HONOURS AND APPOINTMENTS.

MR. E. W. OLIVER, solicitor, of 41 Finsbury Pavement, has been appointed a Commissioner to administer Oaths in the Supreme Court of Judicature. Mr. Oliver was admitted in 1880.

Mr. F. Brinsley-Harper has been appointed a Commissioner to take Affidavits for the Province of Quebec, Canada. Mr. Brinsley-Harper was admitted in March, 1891.

Mr. William Swinfen Cottrell (of the firm of Cottrell & Son, Birmingham) has been appointed a Notary Public.

LONDON SITTINGS AT GUILDHALL.—Court I.: At the commencement of the sitting of the Court on November 3, a part-heard case was unexpectedly settled, and none of the parties in any subsequent case being present, the Court was obliged to adjourn. On resuming at 12 o'clock Mr. Justice Wills said that an hour and a half of the Court's time had been lost through parties whose cases were in the paper not being prepared to proceed. It appeared that a notice that jurors in waiting were not required to attend till 12 o'clock had been taken to apply to parties also; but it must be clearly understood that such a notice, which was merely for the convenience of jurors, had no further application, and parties must be prepared for their cases being called on before the jury then in the box, and in future if the parties were not prepared the case would be struck out.

WINCHESTER. — CONFIRMATION COMMITTEE. — The Stone Point Hotel and Boarding House.—Mr. Bell, of Southampton, on behalf of Mr. C. H. H. Candy, applied for the confirmation of a provisional license for the above contemplated hotel and boarding-house, to be erected on a spot midway between the Point and Lepe Coastguard station. There was no population there save the coastguard, nor was there any public-house. The premises were intended purely for a boarding-house for people to use for a seaside resort, and a resting-place for hard-worked people like himself; or rather, perhaps, it would be better to say, the heavily worked clerk of the peace, to have a rest from Friday to Monday. The chairman of the local bench highly approved of the provisional license, and the owner of the land, Mr. Drummond, himself a magistrate, did not oppose, but approved of the application of Mr. Candy, who intended to embark capital there. Evidence was adduced to show that the site was a very convenient one, and that the hotel would meet a real want, and was constantly asked for. The bench declined to confirm the license.

PRACTITIONERS can now purchase at Stevens & Sons (Lim.), 119 and 120 Chancery Lane, London, the last editions of the following Digests at greatly reduced prices—viz.: Fisher's Common Law, 7 vols., 5*l.* 5*s.*; Chitty's Equity Index, 9 vols., 5*l.* 5*s.*; Consolidated Supplement, by Mews, 1 vol., 15*s.*; and Dale and Lehmann's Digest of Overruled Cases, 1 vol., 25*s.*; or the whole 18 vols. together for 10*l.* These Digests are now brought within the reach of all, and practitioners can hardly afford to do without them.—ADVT.

COMMERCIAL FAILURES.—According to *Kemp's Mercantile Gazette*, the number of failures in England and Wales gazetted during the week ending October 31 was eighty-seven. The number in the corresponding week of last year was seventy-two, showing an increase of fifteen, being a net increase in 1891 to date of eighty-nine.

GRAY'S INN MOOT SOCIETY.—A moot will be held in Gray's Inn Hall on Tuesday, November 10, at 7.30 P.M., before George Candy, Esq., Q.C. Question: 'That the decision of the House of Lords in *Sharp* v. *Wakefield* was erroneous.' All members of the Inns of Court are invited to attend. Those willing to argue at this or subsequent moots should write to the Hon. Secretary of the Gray's Inn Moot Society.

THE JUDICIAL BENCH.—Lord Justice Lopes will have completed the fifteen years' service on the bench on Saturday, November 7, entitling him to a retiring pension, and it is rumoured that the learned judge will shortly thereafter tender his resignation to the Lord Chancellor. Mr. Justice Hawkins has just completed his fifteen years' occupancy of the bench; but we understand that his lordship has not the least intention at present of resigning his post.

UNITED LAW SOCIETY.—The second meeting of the session was held at the Inner Temple Lecture Hall, on Monday, October 26, and there was a good attendance.—Dr. Herbert Smith opened the debate: 'That women ought to enjoy the fullest electoral franchise;' and Mr. Common opposed the motion.—The discussion was continued by Messrs. Moyle, Kains-Jackson, Marcus, Le Maistre, Walton, Fox, Bagram, M'Millan, and S. Williams; and the motion, on being put to the vote, was negatived by a majority of five.—The next meeting for debate will be held on November 9, the subject for discussion being: 'That the case of *Medawar* v. *The Grand Hotel Company*, L. R. (1891) 2 Q. B. Div. 11, was wrongfully decided.'

LINCOLN'S INN FIELDS.—A meeting to consider a proposal to obtain a private Act of Parliament for opening the gardens of Lincoln's Inn Fields to the public was held by the provisional committee of the project at their offices, 17 Parliament Street, Westminster, on October 29. The programme of business was to receive a statement from the hon. secretary as to the promises of support received; to consider as to proceedings by private bill in the coming Session of Parliament; to consider the provisions of such bill, if promoted; and to decide as to giving the necessary Parliamentary notices in the month of November. It was, however, resolved that the meeting should be private, and the committee, therefore, conducted their deliberations with closed doors.

THE LONDON SITTINGS.—On November 2, a case having been called on in which it appeared that one of the counsel was engaged at the London Sittings, and it was asked that the case should stand over, and there being another case in which the leading counsel on one side was also engaged to open a case, Lord Coleridge said: As sittings were going on in London (where, however, many of the cases appeared to come from Middlesex), he would be desirous of doing anything he could to assist counsel engaged in causes there and here. In former times, sittings in London and Middlesex did not go on at the same time, and though in old times—when he was at the bar—it had been tried, it was found so very inconvenient that it was discontinued. As, however, it was now revived, anything reasonable would be done to assist the bar. It is well known in the profession that only a part of the cases in the list at Guildhall are really London cases, and fewer still are commercial or mercantile, and great inconvenience is caused by solicitors and counsel, especially in cases which have nothing to do with the City, being engaged at Guildhall.

WILL.—The will, dated March 10, 1885, with a codicil made August 15, 1885, of Mr. Alexander Andrew Knox, J.P., late of 125 Victoria Street, from 1860 to 1878 one of the magistrates of the metropolitan police courts, who died on October 5 last, leaving personal estate valued at 7,525*l.*, has been proved by the sole executrix, his wife, Mrs. Susan Toten Knox, to whom the testator leaves all his property.

CUSTOMS OFFICERS' HOURS OF DUTY.—The Commissioners of Her Majesty's Customs have decided on the adoption of a step which will practically revolutionise the conditions under which their officers perform their duties. It is intended to introduce a system of relays, so that no man shall work longer than forty-eight hours a week in summer or forty-two hours per week in winter, the latter season to comprise the months of November, December, January, and February. Should the service demand, however, that an officer shall remain on duty more than eight or seven hours per day, according to the season, instead of being paid overtime, as now, he is to be granted a corresponding time off. The new scheme is already in operation at Liverpool and other northern ports, but the men complain that they either do not get their time off at all, or else at such hours and in such manner as to make it useless to them. A meeting will shortly be held to protest against any interference with the present system of duty in London.

LORD SELBORNE ON THE STUDY OF GREEK.—The Earl of Selborne has replied as follows to a correspondent who requested his opinion on the subject of the Greek question in the universities: 'As you wish to know my opinion as to the study of Greek in the universities, I have no difficulty in saying that it ought, in my opinion, to be as much encouraged there now as at any former time, and that the universities are, of all places of education in the kingdom, those in which the duty of cultivating and promoting it is most incumbent. Apart from all other considerations, the fact that the New Testament is written in Greek would alone appear to me to be a sufficient reason for that opinion. It is, I consider, a great misfortune that the Hebrew language is known to so few persons as it is. I think some serious evils have resulted from it, which would be vastly increased if the Greek language also were understood only by a small number of qualified scholars. As to the cases in which the requirements of Greek may be properly dispensed with in favour of students whose special aptitude is for other subjects of study, and who may be trusted to pursue those other subjects in earnest, I am perfectly content to rely on the judgment of the university authorities.'

## BIRTHS.

On Oct. 23, at 16 Sussex Gardens, Eastbourne, the wife of W. J Smith, Esq., Puisne Judge of the Supreme Court of Cyprus, of a daughter.

On Oct. 28, at 1 Haringay Park, Crouch End, the wife of Clement John Lawrence, Solicitor, of a son.

On Oct. 29, at Gayton House, Harrow-on-the-Hill, the wife of E. R. Bartley Dennisa, Barrister-at-Law, of a son.

On Oct. 29, at 24 Belsize Grove, N.W. (her father's residence), the wife of Alfred A. Baker, of Lincoln's Inn, Barrister-at-Law, of a daughter.

On Oct. 30, at 119 Abbey Road, St. John's Wood, Fannie (*née* Lyons), the wife of Edward M. Lazarus, Solicitor, of a son.

## DEATHS.

On Oct. 28, at Westgate Terrace, South Kensington, Sophie, wife of R. O. B. Lane, Q.C.

On Oct. 30, at 46 Cranmer Road, Brixton, suddenly, of heart disease, Henry Edward Mayo, second and only surviving son of John Ryall Mayo, Solicitor, of 33 Kennington Park Road, aged 44.

On Oct. 31, at his residence, Stattenborough, Norwood, Adelaide, South Australia, Joseph Eldin Moulden, senior partner in the firm of Moulden & Sons, Solicitors, Adelaide, in his 80th year.

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# The Law Journal.

*SATURDAY, NOVEMBER* 14, 1891.


## 'OBITER DICTA.'

The temporary absence from the bench, through illness, of Mr. Justice Stirling will be universally regretted. The learned judge is suffering from an attack of eczema, brought on, presumably, by a chill, but we are glad to learn that though confined to the house he is progressing favourably. He will not be well enough to resume his duties until next week; but as he is certainly one of the most conscientious judges on the bench, the profession may rest assured that he will not be absent from his post a single hour longer than is absolutely necessary.

Lord Coleridge's speech to the new Lord Mayor on Monday will, it is to be feared, cause the enemy to blaspheme. When the highest permanent exponent of the law so pointedly gives to would-be litigants *Mr. Punch's* advice to another class of the Queen's subjects, the cynical layman will be more and more inclined, with an arid smile, to take the advice. 'It may be,' said his lordship, 'the men of London may prefer to have their causes settled quietly and inexpensively by some sensible and honourable man, who knows the nature of the business and may be trusted, to the enormous expenditure and endless delay which often follow the litigation of questions in Courts of law; and I must say that I think a man must have a most uncommon devotion to the "science of the law" if he prefers that questions which Lord Mansfield and Lord Ellenborough left unsettled should be settled at his expense at a cost of hundreds or thousands of pounds, when his own individual case, which of course interests him beyond all other cases, may be decided by some sensible mercantile arbitrator in whom he has faith and confidence.' Such language from the Lord Chief Justice, sixteen years after the great reform in our system which was supposed to have been effected by the Judicature Act, implies the existence of a grave scandal. Bentham held, and it is said that so conservative a mind as Lord Langdale's shared the opinion, that the administration of justice should be gratuitous. It is difficult to see how that result could be achieved without bringing even greater evils than expensive law, as there would be a temptation to magnify every trivial difference into an occasion of litigation.

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'When Oliver Cromwell tried to reform legal abuses,' said on a famous occasion the late majestic Lord Justice James, 'he was obliged to abandon the task and to say, "These sons of Zeruiah be too hard upon me." But we do not mean to succumb to their devices.' But the blame of an unnecessarily complicated and costly legal system, which in the long run is as injurious to the legal profession as a whole as it is to the rest of the community, cannot rightly be imputed to 'the sons of Zeruiah' alone. Reform must proceed on the old lines, and improvement is made occasionally, as by Mr. Finlay's Act, in the way of diminishing the number of steps in an action. In this country the knowledge of law is confined to actual members of the profession. The work of Parliament is excessive, and what it does is for the most part done hastily and in a slipshod manner. Legal procedure is, of all subjects which can occupy the legal brain, one of the least attractive; and practising lawyers are too busy with the details of their profession to take a broad and critical survey of the whole existing state of things. What is wanted, and what it is to be feared is not likely to appear, is a man of powerful mind and sufficient leisure to recast the system by diminishing cost, doing away as far as possible with interlocutory proceedings and accelerating the hearing of the real question, lowering the Court fees, and such other means as are possible. Cheap law means more law: and, if a disputed claim could be settled judicially, as it ought to be, for a fraction of the amount at issue, instead of costing, as it frequently does, a sum much greater than that amount, the legal profession would derive more benefit from the change than any other class.

Not very long ago at the Mansion House the Lord Chancellor was jubilant over the transfer, made possible by the Act of last session, of the hearing of civil causes to the City. At the Guildhall the other day he was compelled virtually to admit the failure of the experiment, and to suggest a further amendment of the law by making it impossible for London jurymen to be taken from their business to try questions between people in Somersetshire, Cornwall, or Northumberland. We cannot help suspecting that Lord Coleridge was animated by playful personal malice to the Lord Chancellor in respect of his little Act of last session. We are glad to see that the *Times* has devoted a weighty leading article to the improvement of our system of procedure. The leading journal points out what has frequently been the subject of comment in these columns—viz. the enormous time which elapses between the first hearing of a cause and the final adjudication in the House of Lords. In *The Mogul Steamship Company* v. *M'Gregor, Gow & Co.* the first application was in July, 1885, and even now the decision of the House of Lords is in suspense. This monstrous delay, as we have over and over again insisted, could be prevented by a rearrangement of the existing staff of judges, and one cause be removed which in weighty matters discourages commercial men from having recourse to our Courts. But the Lord Chancellor, it is to be feared, is not a very earnest law reformer. It was not worth while to pass an Act to enable an ex-Lord Chancellor to sit elsewhere than in the House of Lords, whilst four highly-paid Lords of Appeal are allowed to lead lotus-eating lives on 250 out of the 365 days in the year.

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The Great Northern Railway Company, so it is stated, will shortly abolish second-class fares and carriages, and it is believed that more than one other large railway company will also follow the example set by the Midland Railway Company many years ago. To what extent are railway companies quite free to make such alterations? Upon reference to the numerous special Acts under which the maximum fares for passengers are authorised, we believe that only a single one of them (which we will mention presently) can be found which does not contain three separate sets of maximum fares for passengers conveyed in first-class, second-class, or third-class carriages respectively. Taken by themselves, these special Acts do not, we think, bind the companies to divide passengers into three or even two grades, so that, as far as the special Acts are concerned, the companies might abolish all distinction of classes at their pleasure, and run omnibus carriages without any distinction of classes whatever. But the Railway and Canal Traffic Act, 1854, which is enforceable by the Railway and Canal Commission, provides that every railway company shall according to its powers afford all reasonable facilities for receiving, forwarding, and delivering of 'traffic,' which term includes passenger traffic. Under the special Acts passenger traffic is clearly divided into three parts, and it seems to us that to entirely abolish all facilities for carrying one part is at any rate a theoretical contravention of the Railway and Canal Traffic Act. *A propos*, it may be pointed out that the recent revisions of railway charges, which have been carried out by nine special Acts passed in the late session, concern rates for goods alone, and in respect of passenger fares the Acts of more than one company will be found to stand greatly in need of revision. The South-Eastern maximum, for instance, is $3\frac{1}{2}d.$ per mile for every passenger, without any distinction of class; whereas the Great Northern maximum is $2d.$ for first class, $1\frac{1}{2}d.$ for second class, and $1d.$ for third class, while in the case of 'express' trains the maximum rises to $3d.$ per mile (see 6 Wm. IV. c. 75, s. 129—South-Eastern; and 13 & 14 Vict. c. 61, s. 13—Great Northern).

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The Lord Chancellor has now definitely committed the Government to a Criminal Law Evidence Bill, by which all accused persons are to be enabled to give evidence. We have very frequently (see *e.g.*, *ante*, pp. 387 and 447) commented on one or other of the regular succession of *Government bills* which have been submitted to Parliament with this object during the last thirteen years; and we have also drawn attention (see Law Journal for 1890, p. 443) to the all-important fact that it is Irish opposition, and Irish opposition alone, that now prevents a measure of this kind being passed into law. For ourselves, we see no reason whatever why, if the Irish or Scotch members do not wish such a bill to extend to Ireland or Scotland, Ireland or Scotland, or both as the case may be, should not be excluded from its operation. The most cursory perusal of the many entries in the Index to the Statutes under the three *separate* headings of 'Evidence,' 'Evidence (Scotland),' and 'Evidence (Ireland),' will show the reader a multitude of cases in which separate statutes relating to evidence have been passed for the three countries of the United Kingdom.

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Notwithstanding the opposition from more quarters than one in the House of Commons, the Statute Law Revision Bill, as originally introduced by Mr. Smith, has been passed with little alteration, and become the Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67), occupying eighty-seven pages of the Statute-book, and repealing 405 statutes wholly or in part, of which 336 are statutes of the present reign. The first of the statutes repealed is 1 & 2 Geo. IV. c. 48, 'to amend the several Acts for the regulation of attornies and solicitors,' which is wholly repealed, and the last, 13 & 14 Vict. c. 114, which is only repealed in part. By far the majority of the repeals are partial only—*e.g.* of 'the Act to abolish the punishment of death in cases of forgery' (7 Wm. IV. and 1 Vict. c. 84), only sections 1 and 2 are repealed, and section 1 is repealed only 'so far as relates to the punishment of offences formerly punishable under 2 & 3 Wm. IV. c. 123.' Sir Horace Davey has rescued from the general repeal of preambles the very important preamble to section 90 of the Railways Clauses Consolidation Act, 1845, the 'equality clause' which sets forth the reasons for compelling railway companies for charging all their customers alike, and the preamble to section 4 of 7 & 8 Vict. c. 85, which sets forth that 'it is expedient that the policy of revision or purchase shall in no manner be prejudged, but should remain for the future consideration of the Legislature upon grounds of general and national policy,' will still appear upon the Statute-book. It is expressly provided, as in former Revision Acts, that 'the repeal of any words or expressions of enactment shall not affect the binding force, operation, or construction of any statute or of any part of a statute, whether as respects the past or

the future,' and that if any repealed enactment has been applied by Order in Council to any inferior Court of civil jurisdiction, 'such enactment shall be construed as if it were contained in a local and personal Act specially relating to such Court and shall have effect accordingly.'

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A SUB-LESSEE of part of premises leased is not entitled to relief against forfeiture in an action of ejectment by the lessor. So it was held in *Burt* v. *Gray*, 60 Law J. Rep. Q. B. 634, and the opinion of the two learned judges Mr. Justice Mathew and Mr. Justice Williams, who decided the case, appears to have been that a sublessee of the whole of the premises leased would have no better *locus standi* to apply for relief than a sublessee of part. The action was one of a very common type, being by the assignees of the lessor of twenty-four houses under a proviso for re-entry upon breach by the lessees of their covenant to repair. 'The property having been sublet in three separate lots, the three sublessees were joined as defendants,' whereupon one of them 'whose sublease comprised eight houses, *all of which were in good repair*, had applied at chambers for relief under section 14, subsection 3, of the Conveyancing Act, 1881.' By subsection 2 of this well-known enactment, 'where a lessor is proceeding to enforce a right of forfeiture, the lessee may in the lessor's action, if any, or in any action brought by himself, apply to the Court for relief,' while by subsection 3, for the purposes of this section, 'a lease includes an original or derivative underlease, and a lessee includes an original or derivative underlessee.' The Court thought that the Act was not intended to create a privity where there was no privity before, and Mr. Justice Mathew observed that to apply the Act to a sublease of part 'would lead to most inconvenient results, as if an order granting relief were made in favour of the sublessee of the one part of the premises comprised in a lease, the property which was the subject-matter of the lease would become dislocated.' But how about the inconvenience to the part sublessee, who, for no fault of his own, may lose just what it was the object of the Act to secure to him? On both points we cannot help thinking that the decision is wrong. Grammatically the interpretation of 'lessee' will include the case of the sublessee and the part sublessee also, while it seems to us to be quite plain that they are both within the spirit of the Act. We presume that early next session the attention of the Legislature will be called to the point by the introduction of a bill to amend the Conveyancing Act.

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IF a man has power to lease for twenty-one years only, and he leases for more than twenty-one years, is the lease good for the twenty-one years, or is it void altogether? This was the kind of question which Mr. Justice Charles had to decide in *The Bishop of Bangor* v. *Parry*, 60 Law J. Rep. Q. B. 646, and he has decided that the lease is void. The question arose on the construction of the Charitable Trusts Amendment Act, 1885, s. 29, by which 'it shall not be lawful' for charity trustees, otherwise than with the authority of Parliament, *or* of a Court of competent jurisdiction, *or* according to a regular scheme, *or* with the approval of the Charity Commissioners, to grant any lease for any term exceeding twenty-one years. Charity trustees had, without the sanction of any of these authorities, made a lease for forty-five years; but it was contended that such a lease would take effect within the lawful limit of twenty-one years.' Against this contention the House of Lords' case of *The Magdalen Hospital* v. *Knotts*, 48 Law J. Rep. Chanc. 579, was cited—a case quite fatal and conclusive, unless it could be distinguished. Now in *The Magdalen Hospital* v. *Knotts* the restraining statute was 13 Eliz. c. 10, the words of which are as positive as they are archaic, for they enact that any lease in contravention of that statute is 'to be utterly void and of none effect to all intents, constructions, and purposes, any law, custom, or usage to the contrary notwithstanding.' But Mr. Justice Charles, though recognising the difference between this forcible language and the milder phrases of the Legislature of 1855, could not see any legal distinction between the two. The point is a very important one, and looking to the rule of construction that every document is to be construed 'ut res magis valeat quam pereat,' we are slightly inclined to doubt the correctness of the decision. But we have no doubt that the further point taken for the defendant—that though the lease might be void the covenant for quiet enjoyment might subsist—was properly treated by the learned judge as unsound.

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IN the November number of the LAW JOURNAL REPORTS we report three cases on the Arbitration Act, 1889 (52 & 53 Vict. c. 49), and two of them are of great importance. In *The Tabernacle Building Society Case*, 60 Law J. Rep. Q. B. 632, the Court of Appeal had to consider the meaning of that puzzling section 24, by which the Act is to apply to every arbitration under any Act passed before its commencement, 'except so far as it may be *inconsistent*' with such other Act. The Building Societies Act, 1874, s. 36, enacts that the determination of the arbitrator under that Act is to be final, but that the arbitrator may, at the request of either party, state a case for the High Court. The Arbitration Act, 1889, by section 19, enacts that any arbitrator may at any stage of a reference, and shall, if so directed by the Court or a judge, state a similar case. Are these two enactments inconsistent? Baron Pollock at chambers held that they are not, the High Court held that they are, and now the Court of Appeal has held that they are not, and ordered arbitrators under the Building Societies Act to state a case. On a careful perusal of the two sets of judgments, we cannot but think that the Court of Appeal is wrong, for the reasons given by Mr. Justice Wills. 'May' and 'must' cannot stand together. We hope that the building societies will take the case to the House of Lords. In the second case, *The Caerleon Tinplate Company* v. *Hughes*, 60 Law J. Rep. Q. B. 640, the High Court has held that a 'submission,' to come within the Act, must be in writing and signed by both parties as their agreement, so that in an action for the price of goods sold, where the bought-note signed by the defendants provided for arbitration, while the sold-note signed by the plaintiffs did not, there was no submission within the meaning of the Act. *Ex parte Munro*, 45 Law J. Rep. Q. B. 416, decided on the Attorneys and Solicitors Act, 1870, appears to be quite in point, and the judgment in that case shows the reasons for the decision in *The Caerleon Tinplate Company* v. *Hughes*. There must be a complete agreement in writing, signed by both parties, for the Act to apply.

*Ecce iterum crispinus.* We have more than once denounced (see *ante*, pp. 1, 15) the abominable system, as Mr. Justice Wills described it, under which the clerks to county justices (or some of them) conduct prosecutions, whereas clerks to borough justices are disqualified from doing so by section 169 of the Municipal Corporations Act, 1882, re-enacting section 102 of the Municipal Corporations Act, 1835. 'An Old Subscriber' (see *ante*, p. 693) now again summons us to the attack, and asks us to 'ventilate the matter in some way' by examining the alleged 'usages and rights' by which clerks to justices 'act as solicitors for and take fees from persons coming before their own bench,' particularly in connection with transfers of licenses. That there is a usage to this effect is undoubted, and we have no hesitation in again stigmatising it as an abominable usage, which ought to be abolished. That the clerks to the county justices have any rights in the matter so as to give them a claim to compensation when the principles of the Municipal Corporations Act, 1882, are applied to counties, we utterly deny. Perhaps some clerk to county justices will favour us with the grounds on which this alleged right is founded. Meanwhile we would recommend 'An Old Subscriber' to request his representative in the House of Commons to ask the Home Secretary whether he intends to introduce a bill to assimilate the county to the borough practice in this matter, and if not, why not? If our memory serves us right, some member of the present Government has already admitted the present state of things to be 'theoretically indefensible.'

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THE common law disqualification of a judge on the ground of interest, so emphatically asserted by the House of Lords in *Dimes* v. *The Grand Junction Canal Company*, 3 H. L. 759 (in which Lord Chancellor Cottenham was the interested judge), has been once more judicially recognised in *Regina* v. *Gaisford*, Notes of Cases, p. 148, with the result that an order of a justice of the peace upon a surveyor of highways to clear away soil from a highway was quashed on the ground that the justice had himself taken a part in originating the proceedings, and also that he was pecuniarily interested as a ratepayer. It should be pointed out, however, that the disqualification of justices for interest has been partially removed by two statutes—firstly, by 16 Geo. II. c. 18, whereby justices, though ratepayers, may make orders as to numerous matters therein specified, of which *repair of the highways* is one; and, secondly, by the Justices of the Peace Act, 1867 (30 & 31 Vict. c. 15), whereby justices may act though members of a body liable to contribute to, or be benefited by, any fund to the account of which certain penalties which they may impose would be carried. In the case of judges of the Supreme Court, all disqualification on the ground of rateability is absolutely removed by 40 Vict. c. 11. The common law disqualification has had statutory expression as to justices of the peace by the Railways Clauses Consolidation Act, 1845, and the Licensing Acts (see Act of 1872, s. 60), and as to the Railway Commissioners by the Regulation of Railways Act, 1873, and the Railway and Canal Traffic Act, 1888.

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A QUESTION of very general interest was raised in the recent case of *Wenman* v. *Lyon*, 60 Law J. Rep. Q. B. 666—viz. whether a memorandum of agreement, not under seal, for a marriage settlement was a 'marriage settlement' within the meaning of section 4 of the Bills of Sale Act, 1878 (41 & 42 Vict. c. 31). The Court of Appeal, affirming the decisions of the County Court judge and of the Divisional Court, were clearly of opinion that it was, and that, consequently, such a memorandum did not require to be registered under the Act. It would have been a curious anomaly that an agreement for a marriage settlement should require registration as a bill of sale, while a settlement does not.

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AN important question upon the construction of the Arbitration Act, 1869, was determined by the Court of Appeal in *In re An Arbitration between Williams and Stepney*, 60 Law J. Rep. Q. B. 636. By section 2 of the Act, 'a submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in schedule 1 to this Act so far as they are applicable to the reference under the submission,' and by one of these provisions the costs of the reference and award are to be in the discretion of the arbitrators. The question raised in the above case was whether section 2 and the schedule were applicable to an arbitration begun after, but under an agreement entered into before, the commencement of the Act. A Divisional Court, consisting of Mr. Justice Mathew and Mr. Justice Day, held that they were not, and that consequently the arbitrators had no power to award costs, there being nothing in the agreement enabling them to do so. The Court of Appeal, however, took a contrary view, holding that section 25 applied the provisions of the whole Act, including section 2 and the schedule, to the arbitration in question. Having regard to the language of section 25, it is very difficult to doubt that the latter is the true construction, for that section provides that the Act 'shall not affect any arbitration pending at the commencement of this Act, but shall apply to any arbitration commenced after the commencement of this Act under any agreement or order made before the commencement of this Act.' As was forcibly pointed out by Lord Justice Kay, the effect of the argument for the respondent was to introduce the words 'except section 2' into section 25.

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THE question whether the Divorce Court has jurisdiction to grant permanent alimony to a wife against whom a decree for judicial separation has been made at the suit of the husband, came before the Court of Appeal in *Goodden* v. *Goodden* (Notes of Cases), and was decided in the affirmative. If the decree had been founded upon misconduct of the husband, it was conceded that such a grant could have been made. But as, in the present case, it was on the ground of the wife's cruelty that the judicial separation had been ordered, the argument urged on behalf of the husband was that the Court had no jurisdiction to compel him to pay her alimony. The question turned upon the several statutes under which the present Divorce Court was constituted. In construing these statutes, however, the Court must have regard to the jurisdiction existing before they were passed. As the Court of Appeal observed, the granting or refusing of alimony, after a divorce *a mensa et thoro*, seems to have been a matter upon which the Ecclesiastical Courts exercised a large discretion. It

may not, their lordships remarked, have been customary to grant it to a wife who was in fault; but to say that there was no jurisdiction to do so seemed to them unreasonable.

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The Matrimonial Causes Act, 1857, contains no words expressly negativing the jurisdiction; but the argument against it was founded chiefly upon section 17 of that Act, which provides that application for judicial separation may be made by either husband or wife, and the Court may decree judicial separation accordingly, 'and where the application is by the wife may make any order for alimony which shall be deemed just.' The Court of Appeal considered that it would be giving extraordinary and unnatural force to the language of section 17 to say that it took away or even negatived the jurisdiction of the Court to grant alimony where the decree for judicial separation was made on the husband's petition; and in their opinion that was not the true effect of the provision. They saw no reason to doubt that the Ecclesiastical Courts had jurisdiction to grant permanent alimony in a case like the present, and they could not construe the Divorce Acts as depriving the Divorce Court of a like jurisdiction.

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The appointment of Sir John Gorst, Q.C., M.P., to be Financial Secretary to the Treasury is a distinct recognition of his possession of ability and qualifications outside the ordinary sphere of a lawyer. The success of Sir John in his new position will be heartily desired by all members of his profession irrespective of party politics.

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Notwithstanding the Solicitor-General's letter to Mr. Bramwell Booth, there is a distinct improvement in the position of affairs at Eastbourne, and a growing determination to enforce the observance of law and order. The early decision of the points of law which, it is stated, will be raised in the pending action may probably tend to restore peace and quietness to the unfortunate borough. Mr. Justice Hawkins, to whom the matter was mentioned in Court a few days ago, was quite 'himself again' in his caustic remarks, especially when he 'declined with thanks' the suggestion that his lordship might return to Lewes to try the action.

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The recent proceedings of the London County Council with reference to certain music and dancing licenses, to which we alluded in our last issue, have not been allowed to go unchallenged. Mr. Finlay, Q.C., has obtained rules *nisi*, and the whole question, therefore, of the right of certain councillors to engage counsel to advocate their special views and objections will be discussed and decided. In the interests of the persons aggrieved and of the general public, it is very important that a question of this kind should be speedily and definitely settled.

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The Lord Chancellor was in his happiest vein at the Lord Mayor's banquet on the 9th inst. The advice which his lordship gave to provincial litigants, 'to wash their dirty linen at home' (though, as a fact, he only hinted this 'unpleasant simile' and substituted less forcible language), was undoubtedly sound. The Courts in the City of London are intended for the trial of important commercial questions arising in the City, and not for merely personal disputes between litigants in Cornwall or Northumberland. But the notorious uncertainty of cases being properly and patiently tried at assizes may explain a good deal of the practice of which the Lord Chancellor complains. Perhaps this explanation, which we believe is the correct one, had not occurred to Lord Halsbury. At any rate, we respectfully commend it to his consideration.

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## DUTY ON SETTLEMENTS OF PERSONAL PROPERTY.

An interesting case involving an important principle with regard to the liability to duty of settlements of personal property has recently been reported. We allude to the case of *The Attorney-General* v. *Chapman and another*, 60 Law J. Rep. Q. B. 602. The case came before the Court on an information by the Attorney-General, and was met by a demurrer, so that the neat point involved was summarily disposed of, there being no dispute about the facts. The story may be told with sufficient fulness in a very short compass. A Mrs. Fitzgerald had, under a marriage settlement, executed in 1843 a general power of appointment exercisable in certain events over a sum of consols subject to her own and her husband's life interest. The proceeds of certain real estate became subject to the same trust. She executed the power by a deed in 1848 in favour of her niece Elizabeth Chapman, and died in 1888. The question was whether the property so appointed was liable to duty under the Acts which we shall now proceed to consider.

The Customs and Inland Revenue Act, 1881, s. 38, subs. (*c*), imposes liability to duty on 'any property passing under any past or future voluntary settlement made by any person by deed or any other instrument not taking effect as a will, whereby an interest in such property for life is reserved to the settlor.'

Now, what is a voluntary settlement? This is to some extent explained by section 11 of the Customs and Inland Revenue Act, 1889. It enacts that the description of property marked (*c*)—*i.e.* the property referred to in the section which we have previously quoted—is to be construed as if the expression 'voluntary settlement' included any trust whether expressed in writing or otherwise in favour of a volunteer, and if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person. The Court had no difficulty in determining, by the help of this definition and the decision in *In re Cameron and Wells*, 57 Law J. Rep. Chanc. 69, that Elizabeth Chapman must be treated as a volunteer. The second, and much more difficult, point was, whether the life interest was reserved to the settlor by the settlement under which Elizabeth Chapman took an interest. It was contended that the property in question passed under the deed of appointment, and that as that deed reserved no interest, the provisions of the Act of 1881 did not apply. This point was disposed of in favour of the Crown, by the consideration that the expression 'passed under' is not a term of art like 'estate in fee' or 'remainder' and a host of others, but

a comprehensive term which would include a case where the disposition was effected not by the original deed but by a subsequent execution of a power created by it. A deed of appointment, as was pointed out, owes its vitality to the instrument creating it. What was the object of the Act? It was to ensure that the equivalent of legacy duty should be paid in cases where otherwise devices might be resorted to which would practically enable the person beneficially interested to make a will without liability to legacy duty. Here if Mrs. Fitzgerald had had the property in the ordinary way and had given it to her niece, legacy duty would be payable. Practically she had the same thing in the shape of a general power of appointment. 'It would,' said Mr. Justice Wills, 'be a hardship upon persons who have to pay legacy duty if, because the whole beneficial interest in the property existed in the form of the right to exercise a general power of appointment to take effect on the death of the donee of the power, no duty equivalent to legacy duty should be payable upon the devolution of the property to the person to whom it was appointed.'

A somewhat novel, and certainly ingenious, argument was pressed upon the Court in the present case on behalf of the defendants in resisting the claim of the Crown. The Customs and Inland Revenue Act applies to the whole of the United Kingdom. The observation of Lord Campbell in *Lord Saltoun* v. *The Advocate-General*, 4 Macq. 659, 671 (a case decided on the Succession Duty Act, 1853), was cited to the effect that in such cases the intention of the Legislature must be understood to be that the like interests in property taken by succession should be subjected to the like duties wheresoever the property might be situated. 'The technicalities of the laws of England and Scotland,' said Lord Campbell, 'where they differ must be disregarded, and the language of the Legislature must be taken in its popular sense.' It was accordingly contended that the language of the Act of 1881 must be taken in its popular sense, and without reference to the doctrine of the English law as to interests under powers on the ground that the Scotch law on the subject was different and that the Act was intended to apply to the whole of the United Kingdom. To this the answer was made that on three successive occasions the House of Lords had applied to the Succession Duty Act (16 & 17 Vict. c. 51), which applies to the whole of the United Kingdom, the principle that the interest created by the power must be treated as arising under the deed creating the power. The contention accordingly failed, and judgment was given in favour of the Crown.

## SERVICE OUT OF THE JURISDICTION.—III.

(*Continued from p.* 692.)

THE Rules of Court, made under the Judicature Act, 1875, dealt with service out of the jurisdiction in a somewhat summary manner. Order XI., rule 1, provided that 'service out of the jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the Court or a judge whenever the whole or any part of the subject-matter of the action is land or stock or other property situate within the jurisdiction, or any act, deed, will, or thing affecting such land, stock, or property, and whenever the contract which is sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any such action, or for the breach whereof damages or other relief are or is demanded in such action was made or entered into within the jurisdiction, and whenever there has been a breach within the jurisdiction of any contract wherever made, and whenever any act or thing sought to be restrained or removed or for which damages are sought to be recovered was or is to be done or is situate within the jurisdiction.'

An examination of the practice under this rule falls beyond the purview of the present papers. The only point of historical interest connected with it is the omission of the clause in section 18 of the Common Law Procedure Act, 1852, which exempted British subjects* residing in Scotland or Ireland from the provisions as to service out of the jurisdiction. For a very short time this omission passed unnoticed. Then it was observed, there was an outcry by the Scotch and Irish members, and Order XI., rule 1 (*a*) was framed for the protection of Scotchmen and Irishmen. The sequel is well described in the judgment of Mr. Baron Huddleston in *Lenders* v. *Anderson*, 53 Law J. Rep. Q. B. 104; L. R. (1883) 12 Q. B. Div. 57. 'Rule 1 (*a*),' said his lordship, 'directed that the judge, in exercising his discretion as to granting leave to serve the writ out of the jurisdiction, should have regard to the amount or value of the property in dispute or sought to be recovered, and to the existence in the place of residence of the defendant, if resident in Scotland or Ireland, of a local Court of limited jurisdiction, having jurisdiction in the matter in question, and to the comparative cost and convenience of proceeding in England or in the place of such defendant's residence. It was also provided that no such leave was to be granted without an affidavit stating the particulars necessary for enabling the judge to exercise discretion in manner aforesaid, and in practice leave was not granted under this rule without an affidavit showing that there was no such local Court as mentioned in the rule, and that it was cheaper or more convenient to try the case in England. It was thought that this provision might satisfy the Scotch and Irish members, but it seems probable that pressure was brought to bear upon them in order that those whom they represented might again enjoy the privilege of being only liable to be sued in their own country according to the principle *actor sequitur forum rei*.'

These rules were therefore prepared, and the law as to service out of the jurisdiction was settled, almost on its present basis, by the Rules of the Supreme Court, 1883, Order XI. The provision in that Order that is material for the purposes of these papers, is as follows:—

'Service out of the jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the Court or a judge whenever (*a*) the whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits); or (*b*) any act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within the jurisdiction is sought to be construed, rectified, or set aside in the action; or (*c*) any belief is sought against any person domiciled or ordinarily resident within the jurisdiction; or (*d*) the action is for the administration of the personal estate of any deceased person who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property situate within the juris-

* According to Mr. Justice Day, one who was not a British subject might be proceeded against by English process under section 19 though resident in Scotland or Ireland (Common Law Procedure Acts, p. 15, note *).

diction) of the trusts of any written instrument of which the person to be served is a trustee, which ought to be executed according to the law of England; or (*e*) the action is founded on any breach or alleged breach within the jurisdiction wherever made, which according to the terms thereof ought to be performed within the jurisdiction, unless the defendant is domiciled or ordinarily resident in Scotland or Ireland; or (*f*) any injunction is sought as to anything to be done within the jurisdiction or any nuisance within the jurisdiction is sought to be prevented or removed whether damages are or are not also sought in respect thereof; or (*g*) any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction' (rule 1). The subsidiary rules will be considered in their proper place.

Now, in dealing with the modern law as to service out of the jurisdiction, we propose, as far as possible, to avoid the ground that is so admirably covered by the 'Annual Practice,' and to leave all questions of mere procedure resolutely alone. We will discuss first the general scope of Order XI. and the kinds of process to which it applies, and then each of the clauses above quoted, and, lastly, the origin and provisions of the new rules relating to *service on firms* in so far as these are relevant to the consideration of the law of service out of the jurisdiction.

With regard to *the general scope* of Order XI., the following preliminary rules may be laid down:—

1. 'Service out of the jurisdiction is an interference with the ordinary course of the law, for generally Courts exercise jurisdiction only over persons who are within the territorial limits of their jurisdiction. . . . *Apart from statute a Court has no power to exercise jurisdiction over anyone beyond its limits*' (*per* Lord Justice Cotton in *In re Busfield*, 55 Law J. Rep. Chanc. 467; L. R. (1886) 32 Chanc. Div. 131).

2. Order XI. is exhaustive, and is intended to, and does in fact supersede the old practice.

In *In re Eager* (52 Law J. Rep. Chanc. 56; L. R. (1882) 22 Chanc. Div. 86)—a case decided under the Judicature Rules, 1875—and *In re Busfield* (*ubi sup.* at p. 123), a vigorous and ingenious effort was made to establish a contrary doctrine. In *In re Eager*, an action (*Eager* v. *Johnstone*) had been brought by an infant for the administration of certain real and personal estate, and, if necessary, for appointment of new trustee. The defendant was trustee and executor of the will, and was charged with breaches of trust. The plaintiff applied for leave to serve the writ of summons on the defendant, who was a British subject residing in Scotland. In *In re Busfield* an application was made for leave to serve an originating summons on a trustee and executor temporarily resident at Avignon. In both cases it was admitted that Order XI. did not directly apply. Breach of trust was obviously not included in any of the clauses of rule 1, and, although an originating summons had been held to be an *action* within the meaning of the Judicature Act, 1873, s. 100 (*In re Fawsitt*, 54 Law J. Rep. Chanc. 1,131; L. R. (1885) 30 Chanc. Div. 231), the Court of Appeal had in that very case held it to be 'a civil proceeding commenced otherwise than by writ,' and Order XI. authorised only the service of a writ, or notice of a writ, of summons. The argument in favour of the application was, therefore, in both cases put in something like the following way: In *Drummond* v. *Drummond*, 36 Law J. Rep. Chanc. 153; L. R. 2 Chanc. 32, Lord Chelmsford and Lord Justice Turner had held that, by virtue of the Consolidated Orders, 1860, Order X., rule 7, the Court of Chancery had power to allow service out of the jurisdiction 'in any suit of equity.' That decision had been given in spite of the fact that the statutes of William IV. limited the right to order service out of the jurisdiction to *certain specified suits*, and the practice which it inaugurated had lasted till the enactment of the Rules of the Supreme Court in 1883. The same liberal interpretation, therefore, which the Court of Appeal in Chancery had put upon the statutes of William IV. should now be put on the Rules of 1883. Our readers hardly need to be reminded that the *ratio decidendi* in *Drummond* v. *Drummond* was the fact that 3 & 4 Vict. c. 94, gave to the General Orders in Chancery the binding effect of an Act of Parliament. But, however that may be, the argument for the applicant both in *In re Eager* and in *In re Busfield* was unsuccessful, and it was held by Jessel, M.R., in the former case, and by Mr. Justice Chitty and the Court of Appeal in the latter, that Order XI. is exhaustive, and that the old practice is no longer applicable.*

(*To be continued.*)

# Reviews.

## INNES ON TORTS.

*The Principles of the Law of Torts.* By L. C. Innes, some time one of the Judges of Her Majesty's High Court of Judicature, Madras. London: Stevens & Sons (Lim.). 1891.

The author of this treatise commences his preface with a statement which will probably be received with considerable unanimity by those who can form an opinion on the subject. 'There are few,' he says, 'I conceive who have had anything to do with the law, whether as injured parties, as students, or as practical lawyers, who have not felt that some of the most insoluble problems of the science are to be found in that branch of it called "the law of torts."' The next sentence is one, however, which may give rise to considerable diversity of opinion. Our author considers that the treatment of the subject of torts in the previous works of authority on the subject is defective in one particular, which he seems to regard as a sufficient apology for proposing to add one more to the numerous text-books on torts. The defect of these treatises, according to Mr. Innes, is that the authors have failed to maintain a sufficient distinction between the instrumentality, including the mental attitude and the subsequent conduct by which an injury is effected and the several classes of injury resulting from the means so employed. Is this point a sufficient justification for a new work on this difficult but trite subject? By itself it certainly does not appear to us to be sufficient, and accordingly we are obliged to regard the work from a somewhat different standpoint and ask whether the work before us

* In *In re Bullen Smith* (1888, 57 L. T. 925)—an action commenced by originating summons for the purpose of deciding the question of the domicile of a testator—Mr. Justice Kay gave leave to issue a writ and to serve the writ, and also notice of motion, out of the jurisdiction, in order to have a declaration deciding the question, the evidence on the summons to be used on the motion

is a substantial additional literature on the subject of torts. Many points in the work are well put, though we confess we think they might have been much better put in simpler language. In one of the illustrations which are given (p. 104) we find 'A., seeing a tiger in B.'s menagerie, without B.'s knowledge, gets hold of the keys, opens the door, and lets the tiger out among a crowd of people; B.'s instrumentality in the tiger ceases.' A similar defect, as it appears to us, is to be found in a great deal of the language which Mr. Innes has employed to convey his meaning. His work, however, is in many respects able and instructive. On some pages we have observed that cases are given without any references to the reports.

## THWAITES ON CRIMINAL LAW.

*A Guide to Criminal Law.* Intended for the Use of Students for the Bar Final and for the Solicitors' Final Examinations. By CHARLES THWAITES, Solicitor. Third Edition. London: George Barber. 1891.

THIS useful work, which has, we are glad to see, given an excellent proof of its value by attaining to the honour of a third edition, is divided into three parts. The first contains advice to students as to what books they ought to read; the second, a general sketch of the elementary principles of criminal law; the third, a series of questions and answers by which the student may test his knowledge. Good specimens of Mr. Thwaites's work will be found at page 5, where he considers the question how far in cases where a tort amounts to a crime the right to recover compensation for the private injury is subordinated to the duty of vindicating the public wrong; and at pages 7 and 8, where the distinctions between misdemeanours and felonies are considered. Again, at page 9, the requisites of a crime are discussed, and attention is drawn to a recent case where it was laid down that purity of motive will not purge an act of its criminal character, though it is an important element for the judge's consideration in awarding punishment. At page 11 and the following pages the principal cases of exemption (more or less) from criminal responsibility are enumerated. The work concludes with some seventy pages of questions (with answers to them), including those which have been set at the Bar Final since the commencement of 1872. The student will find Mr. Thwaites's book very useful.

## RUMSEY ON EXECUTORS.

*A Legal Handbook for Executors and Administrators.* Intended for the use of the Practitioner and the Layman after the Grant of Probate or Administration. With all the Necessary Forms, Tables of Stamp Duties, &c. By ALMARIC RUMSEY, Barrister-at-Law. London: Swan Sonnenschein & Co. 1891.

THE object of this work is to point out clearly and succinctly the rights and duties which devolve upon executors and administrators in respect of payment of debts and legacies and otherwise dealing with the property of deceased persons. Mr. Rumsey assumes that the grant of probate or administration has been already obtained, whereby the executor or administrator is clothed with his full powers. The subject of the management of the property is, as the author points out, a separate subject from that of obtaining the grant from which the authority to manage it is derived, and the subjects have been indeed assigned to separate Divisions of the High Court of Justice. On the other hand, it may be urged that an executor or administrator would prefer to have all the law affecting his position comprised in one single volume. Probably, however, the balance of convenience is in favour of the plan here adopted. The work is a useful one. Mr. Rumsey does not omit to give a series of practical suggestions for the benefit of executors and administrators. He also supplies them with a good many forms, advising the layman to copy the words with strict accuracy, as the law is 'sometimes extremely rigid.' He tells a story of a reverend friend who made a mistake in drawing an instrument which was happily cured by another into which he was lucky enough to fall. Few, however, can hope to be so fortunate.

## BEACH ON PRIVATE CORPORATIONS.

*Commentaries on the Law of Private Corporations, whether with or without Capital Stock, also of Joint Stock Companies and of all the various Voluntary Unincorporated Associations organised for pecuniary Profit or mutual Benefit.* By C. T. BEACH, jun., of the New York Bar. In Two Volumes. Chicago: T. H. Flood & Co. 1891.

THESE two handsome volumes contain a thorough examination of the American law, with fairly frequent references to the English law of the subject which they deal with. The scope of the work, which contains, for instance, the law of religious associations and clubs, is, therefore, as we are informed in the preface, 'somewhat wider than that of any other' of the books on companies. The arrangement and the style are good, but the notes are in many cases far too long. We are somewhat disappointed also to find no comments upon the Directors' Liability Act of 1890 or *The Mogul Steamship Case*, 58 Law J. Rep. Q. B. 465, but extracts from the judgments in the *Mogul Steamship Case* are plentifully given, and perhaps an English reader has hardly a right to expect to find the Directors' Liability Act at all. On the other hand, the mention of forged transfers, which has just leaped into paramount importance on this side of the Atlantic, is dealt with quite as well as in any English work we know of.

## THE LAWYER'S COMPANION AND DIARY.

*The Lawyer's Companion and Diary*, 1892. Edited by E. LAYMAN, Barrister-at-Law. London: Stevens & Sons (Lim.); Shaw & Sons.

A BOOK of this kind, which has been before the profession for a period of forty-six years, may be presumed to satisfy all possible requirements, and we have no hesitation in saying that in the case of the 'Lawyer's Companion' the presumption is warranted by results. We cannot attempt to enumerate here the many subjects upon which information is given, inasmuch as the index or table of contents occupies five closely printed pages. The Law List, upon which special care is bestowed, is, we believe, thoroughly reliable, and the fact that the whole work is edited by a barrister is a sufficient guarantee of the accuracy of the miscellaneous information which is here collected. The new edition will be welcomed by the numerous lawyers who have been accustomed to rely upon its predecessors.

# Correspondence.

## THE DUTIES AND RESPONSIBILITIES OF AUDITORS.

SIR,—The subjoined 'Opinion' of a colonial barrister will be of interest to solicitors and accountants on this side of the water, though it may add nothing to their knowledge of the subject. This opinion was obtained some years ago with a view to ascertain what liability, if any, attached to auditors for omitting to discover certain non-entries and defalcations by the book-keeper of a trading company in Australia. These defalcations were concealed for a time by the deliberate omission of sundry debit entries. The legal action suggested in the 'Opinion,' 'in order to test the liability of auditors,' was not taken. MARS.

OPINION.

The duties and responsibilities of auditors have not been, so far as I am aware, the subject of any judicial decision, but, on principle, I should say that gentlemen undertaking such duties warrant that they possess ordinary skill for their proper performance, and that they will exercise due and ordinary care in discharging them. There seems to be a wide difference of opinion as to what those duties consist of, and possibly if evidence was given as to any *universal usage* here, in support of the views of the auditors in question, they might be held not liable, but, in the absence of very strong evidence to that effect, I should say, on principle, that it was part of their duty to see that all debit entries were duly made; and that, in failing to detect the omission to enter some of the debit entries, they either displayed gross ignorance or want of such ordinary care as they ought to have bestowed on their work. I think, consequently, that an action can be maintained against them by the company. In such action the original certificate ought to be produced.

A much more difficult question arises on the question of damage. In the first place, the amount of money embezzled before the audit cannot certainly be recovered. It is a question between nominal damages and the amount embezzled afterwards. Under any circumstances, substantial damages cannot be recovered, unless it plainly appears that, if the auditors had pointed out the omissions of the debits, the manager would at once have instituted inquiries which would have resulted in the discovery of the embezzlements, and that, on such discovery, he would have discharged the defaulting clerk. Even if this is made perfectly clear, it is a very doubtful question whether the subsequent damages would not be too remote. Damages, to be recoverable, must be 'so far the actual consequences of the breach that they must have been in the minds of both the contracting parties at the time of the breach.' (Per Mr. Justice Brett, in *Smith* v. *Green*, 45 Law J. Rep. C. P. 28; L. R. 1 C. P. Div. 95.) Also see that case as to what kind of damages come within that definition. Whether the commission of further felony by a third party can be said to be the actual consequence of the non-detection of former felonies by the same person would be the question here, and, on full consideration of all the cases, the inclination of my opinion is that such damages would be too remote. (See judgment of Lord Justice James in the case of *In re The United Service Company*, L. R. 6 Chanc. Div. (App.) 1,217.)

Considering the whole circumstances of the case, I should think that it will be worth the company's while to bring an action, in order to test the liability of auditors and to ascertain their duties, although it is by no means certain that even nominal damages could be recovered; and, as I have said before, I think that, probably, substantial damages could not be so recovered. I may add that an additional obstacle to recovering more than nominal damages arises from the fact that no security seems to have been taken for the fidelity of the defaulting clerk. If it can be shown that this is the usual practice in this colony for persons in a similar position, it would undoubtedly be a strong argument that the loss was not 'the actual consequence' of the auditors' default. Still, as I said before, I should think that it would be worth the company's while to test the question.

## MANORIAL FEES.

SIR,—Can any of your readers inform me whether any process exists for compelling the steward of a manor to deliver a detailed statement of the fines and fees charged by him upon admittance?

The custom of the steward of the manor is to deliver a statement giving a total only without any details, and the only answer he gives is, "Oh, we never give details!" R. B. LOWNDES.

Cheltenham: Nov. 11.

## BAR STUDENTS' EXAMINATIONS.

MICHAELMAS, 1891.

AT the general examination of students of the Inns of Court held at Lincoln's Inn Hall on October 13, 14, 15, and 16, the Council of Legal Education have awarded to the following students certificates that they have satisfactorily passed a public examination:—

ADAM, ALFRED, of the Middle Temple.
ALDERSON, EDWARD H., of the Inner Temple.
APPIAH, ARTHUR H., of Lincoln's Inn.
ASAAM, KOFI, of the Inner Temple.
BARBER, SYDNEY H., of the Inner Temple.
BURCHELL, JAMES, of the Inner Temple.
CHAPLIN, FRANCIS D. PERCY, of Lincoln's Inn.
COX, HENRY S., of the Inner Temple.
DAVIES, WILLIAM C., of the Inner Temple.
DONERAILE, EDWARD VISCOUNT, of the Inner Temple.
EASTON, JAMES M., of the Inner Temple.
ENNIS, GEORGE F. M., of the Middle Temple.
EVANS, MORGAN O., of Lincoln's Inn.
FEARON, FRANCIS H., of the Middle Temple.
FLETCHER, ERNEST E., of Lincoln's Inn.
GLASGOW, RICHARD P., of the Middle Temple.
GLEDHILL, JAMES, of the Middle Temple.
GODSAL, HERBERT, of the Inner Temple.
GRAHAM, WILLIAM, of the Inner Temple.
HARRISON, HENRY A., of the Inner Temple.
HEYWOOD, WILLIAM R., of the Middle Temple.
HUNT, JOHN, of the Middle Temple.
HURRY, ARNOLD E., of the Inner Temple.
JACKMAN, EDWARD C., of the Middle Temple.
JOHNSTON, JAMES A., of the Inner Temple.
KENT, IRVING, of the Inner Temple.
LEA, THOMAS S., of Lincoln's Inn.
LINES, WILLIAM E., of the Middle Temple.
LUSCOMBE, JOHN T., of the Inner Temple.
LYNCH, GEORGE D., of Lincoln's Inn.
MACDONALD, KENNETH L., of the Inner Temple.
MACKAY, JOSIAH K., of the Middle Temple.
MACMAHON, JOHN B. B., of the Middle Temple.
MADDISON, ALFRED L., of the Inner Temple.
MALLET, EUGÈNE H., of the Middle Temple.
MANNING, JOHN W., of Lincoln's Inn.
MENENDEZ, MANUEL R., of the Inner Temple.
MONIER-WILLIAMS, CYRIL F., of Lincoln's Inn.
MONTGOMERY, ARTHUR H., of the Inner Temple.

MOOKERJEE, SATIS CHANDRA, of Lincoln's Inn.
MULLENS, WILLIAM H., of the Inner Temple.
NEPEAN, EVAN A., of the Inner Temple.
NORBURY, CHARLES G., of the Middle Temple.
PRABH DIAL, of Gray's Inn.
PROUD, NICHOLAS F. H., of Lincoln's Inn.
ROBERTS, CLARENCE A. I., of Lincoln's Inn.
ROPER, HUBERT L., of the Inner Temple.
ROSE, HUGH M., of the Middle Temple.
SANDERS, ROBERT A., of the Inner Temple.
SELLS, ARTHUR W., of the Inner Temple.
SHERIFF, PERCY M. C., of the Middle Temple.
SILLS, GEORGE T., of Lincoln's Inn.
SIMPSON, EDWARD P., of the Inner Temple.
SMITH, FREDERIC C., of the Inner Temple.
SMITH, FREDERICK S., of the Inner Temple.
SMITH, LINDSEY, of the Middle Temple.
SOLAIMAN, MOHAMED, of the Middle Temple.
STOKES, GEORGE J., of Lincoln's Inn.
TERRELL, FRANCIS A. H., of Lincoln's Inn.
TROTTER, CECIL C., of the Inner Temple.
WALEY, JOHN F., of Lincoln's Inn.
WOOD, CHARLES N., of the Inner Temple.
WRAGGE, ROBERT H. V., of Lincoln's Inn.
YARROW, GEORGE E., of Gray's Inn.
YOUNG, JOHN J. B., of the Inner Temple.

Of the eighty-five candidates examined, sixty-five passed.

The following students passed a satisfactory examination in Roman law:—

Shaikh Mahomed Abdul Zafar, of the Inner Temple; William Addo, of the Middle Temple; Kitoyi Ajasa, of the Inner Temple; Mir Aun Ali, of Lincoln's Inn; Hakim Aminuddin, of Gray's Inn; Todar Mal Bhandari, of the Middle Temple; Arthur S. T. G. Boscawen, of the Middle Temple; Christian L. Botha, of the Middle Temple; Egerton S. Brown, of the Inner Temple; Arthur J. E. Bucknor, of the Middle Temple; Nanabhoy Nowrojee Burjorjee, of the Middle Temple; Travers Buxton, of Lincoln's Inn; Megalos Alexander Caloyanni, of Lincoln's Inn; Henry Boyd Carpenter, of the Inner Temple; Thomas Casson, of the Inner Temple; William A. Casson, of the Middle Temple; Henry V. H. Cawthra, of the Inner Temple; Ahobilastreckristna Chakravarti, of the Middle Temple; Leonard Cooper, of the Middle Temple; Francis Henry Cripps-Day, of the Middle Temple; George Bancroft Dawson, of the Middle Temple; William H. Duckworth, of the Inner Temple; Joseph V. A. Esnouf, of the Middle Temple; Joseph E. Faulks, of Gray's Inn; Edward V. Fleming, of Lincoln's Inn; John B. Gilliat, of the Inner Temple; Harold Hodge, of the Middle Temple; William F. S. Hodgson, of the Inner Temple; John R. Holmes, of the Middle Temple; Syed Motabbar Hossain, of the Middle Temple; George M. Howard, of the Middle Temple; Mohamed Nujmul Huda, of the Middle Temple; Mahmoodul Huq, of the Middle Temple; Edward S. Johnson, of the Inner Temple; William A. Jolly, of Lincoln's Inn; James M. Lainè, of the Middle Temple; Charles L. Lawrence, of the Inner Temple; Walter E. Lloyd, of the Inner Temple; Syed Abdul Majid Shah, of Lincoln's Inn; Manekji Pestanji Modi, of the Inner Temple; Pandit Mohan Lal, of Lincoln's Inn; Henry B. Moore, of Gray's Inn; John Morison, of the Middle Temple; Ernest E. J. Morrison, of Gray's Inn; William A. Mount, of the Inner Temple; Pandit Mul Raj, of Lincoln's Inn; Hirokichi Mutsu, of the Inner Temple; Ananias H. Nash, of the Middle Temple; Cecil E. Owen, of the Middle Temple; Ernest A. Parkyn, of the Inner Temple; Ernest V. Parodi, of the Inner Temple; Ardeshir Dhungibhoy Patel, of the Inner Temple; William P. Phelps, of the Inner Temple; Charles E. Pinfold, of the Middle Temple: Frank L. Puxley, of the Inner Temple; Abus Sabah Mohammad Zeaur Rahman, of the Inner Temple; Sardar Ab Dul Rahman Khan, of the Middle Temple; Edward O. Roberts, of Gray's Inn; Reuben W. Roberts, of the Inner Temple; Herbert W. Rowsell, of the Inner Temple; Clement I. Salaman, of the Inner Temple; Arathoon Seth, of Lincoln's Inn; Shway Tha, of the Middle Temple; Prabhu Dás Singha, of the Middle Temple; Arthur M. Talbot, of the Inner Temple; Frederick C. Tomlinson, of Lincoln's Inn; Edward W. Wakefield, of the Inner Temple; Edward J. L. Whitaker, of Lincoln's Inn; John B. White, of the Inner Temple; Abraham L. Whittaker, of the Inner Temple; Walter Wickham, of the Middle Temple: Ernest E. Wild, of the Middle Temple; and Harry Worthington, of the Inner Temple.

Of the eighty-two candidates examined, seventy-three passed.

(Signed) NATH. LINDLEY,
Chairman.

Council Chamber, Lincoln's Inn:
Oct. 30, 1891.

## LAW AND PROFESSIONAL NOTES.

By T. F. UTTLEY, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### THE STATUTE AS TO CORRUPT PRACTICES.

THE recent trial at the Central Criminal Court, London, of a Salford coal merchant for an alleged attempt to bribe a Salford corporation gas manager, affords some points of great interest to practitioners. The indictment had been laid under subsection 2 of section 1 of the Public Bodies (Corrupt Practices) Act, 1889. The counsel for the prosecution pointed out that the subsection of section 1 of the Act (52 & 53 Vict. c. 69) related to the giving, offering, or promising of a bribe which might consist of coin or any other advantage whatsoever. The charge was that he (the coal merchant) had 'corruptly' (a word which governed the whole section) offered this consideration for the purpose of obtaining an undue advantage. It did not matter whether the bribe was given beforehand or afterwards, as long as that bribe was given with the view to the obtaining of business by an unfair advantage and by unfairly operating on the mind of a servant of the corporation. It did not matter whether this was a promise or offering. It was in this case an offering, because, much to his credit, the gentleman to whom the offer was made indignantly repudiated it. The offence which the Act had in view was that of 'corruptly offering a gift to a person as an inducement to or reward for an officer or servant of a public body doing or forbearing to do something in respect of a matter in which such public body is concerned.' The statute took good care to go the full length in pointing out that it referred to any reward whatever, either for the future or the past, in respect to any transaction whatsoever, actual or proposed. These words 'actual or proposed' were most important. The jury had, therefore, to consider whether this was a transaction, actual or proposed, in which a public body was concerned. The counsel for the defence, however, maintained that the offence, whatever it was, which the defendant committed, was not such an offence as was contemplated by the Act of Parliament. The preamble of the Act stated that it was expedient to provide against bribery and corruption of and by the members and officials of corporations. Section 2 provided that any person who corruptly offered any gift or reward or advantage whatever, whether for the benefit of the person to whom the offer was made or for any other person, as an inducement to any official of a public body to do anything contrary to his duty, or abstain from doing anything which it was his duty to do, should be guilty of a misdemeanour. His contention was that this pointed to a class

of offence wholly distinct from that which the defendant had committed. There was another point, and that was as to the reason why the responsible officers of the Crown had hesitated to grant their fiat for that prosecution. It was not for him to express an opinion as to what the reason for that hesitation was, but he was justified in thinking that it might be because there was some doubt as to whether any offence had been committed which came within the scope of the Act. The Recorder, in addressing the jury, said that the Act under which the prosecution was instituted was intended to protect the public from the consequences that flowed from the bribery of public officers, and after discussing the evidence, pointed out that whether it was a corrupt offer to influence their gas-engineer in connection with the coal tender was a question of fact not of law. An inquiry which was addressed by the jury to the recorder is of interest. It was asked if the gift was offered for services already rendered did the defendant come within the scope of the Act? The recorder replied if it was exclusively an acknowledgment of some indulgence shown to him in the contract then expiring, it would not come within the meaning of the words 'promise or offer any gift for doing or forbearing to do anything in respect of any matter or transaction.' If simply intended as an acknowledgment of past kindness and courtesy it would not come within the scope of the statute. Ultimately the jury disagreed, and were discharged.

### A BANKRUPT'S SALARY.

There is a clause in the Bankruptcy Act of 1883 which permits the trustee, where a bankrupt is in the receipt of a salary, to apply to the Court for an order for payment to the trustee of such salary, or any part thereof, to be applied by him as the Court may direct. Under this section an application to the Court was recently made for the payment of a portion of the salary of a calico printer at Manchester to the trustee on behalf of his creditors. A receiving order was made in the spring of the year, and the usual statement of affairs had been filed. The affidavit of the trustee showed that the debtor was in receipt of a salary of 11*l.* per week as manager of a print works, that he was married, and had a wife and six children. The debtor's wife had also an income of over 120*l.* per annum. The trustee's advocate suggested that an order should be made upon the bankrupt for payment to the trustee of 200*l.* a year out of such salary. The debtor's advocate urged that the bankrupt could contribute nothing out of his salary. The order was, however, for the amount asked for by the trustee. Those interested in the point should note also the following authorities: *Ex parte Wicks*, 50 Law J. Rep. Chanc. 620; L. R. 17 Chanc. Div. 70; *Ex parte Webber*, 56 Law J. Rep. Q. B. 209; L. R. 18 Q. B. Div. 111; *In re Hutton*, 54 Law J. Rep. Q. B. 53; L. R. 14 Q. B. Div. 301; *Ex parte Huggins*, 51 Law J. Rep. Chanc. 935; L. R. 21 Chanc. Div. 85; *In re Mirams*, 60 Law J. Rep. Q. B. 397; L. R. (1891) 1 Q. B. Div. 594; *In re Gold*, 8 Mor. 45.

### ADULTERATION.

A somewhat interesting point arose not long since at the Middlewich Petty Sessions. The landlord of an inn was summoned for selling Irish whisky adulterated with water. An inspector under the Food and Drugs Act had sent his assistant to the public-house to purchase a pint of Irish whisky for analysis. The inspector subsequently entered the house, and, considering that the whisky just purchased was not sufficient for his purpose, ordered another gill. It was urged for the defence that the law required that a person purchasing any article for analysis should, immediately after the purchase was completed, inform the seller of the intention to have the same analysed by the public analyst. Here there were two distinct purchases, and the question was whether the inspector informed the landlord after each purchase that the whisky was for analysis. If he carried out the provisions of the Act after the second purchase only, it was evident the prosecution must fall to the ground. The bench decided, after conferring, that intimation of intention to analyse was given to the seller before the purchase was completed according to the Act, and the case was dismissed. The proceedings were, of course, taken under section 14 of 38 & 39 Vict. c. 63, and it is laid down in the text-books that it is not sufficient to state the article is purchased for the purpose of analysis; the purchaser must add the words 'by the public analyst,' the use of these words being a condition precedent to conviction. It is, however, only necessary for the seller to have notice that the sample is taken for analysis, to be made by an official person, so that he may see the sample is fairly taken, and the substitution of the words 'county analyst' is substantially a sufficient notice.

### THE LAW AS TO ELECTRIC LIGHTING.

Some nine years ago the Electric Lighting Act, 1882, was passed, and according to its provisions, as comprised in section 4, subsection 1, no provisional order authorising the supply of electricity by any undertakers within the district of any local authority (not being themselves the undertakers) can be granted unless the notice of intention to apply for it has been served on the local authority of the district on or before July 1 of the year in which the application is made. In connection with this matter, however, there should be noticed the Board of Trade Rules (August, 1890) relating to the mode of procedure to be adopted by intending applicants for orders and licenses. The Board of Trade Rule V. apparently alters the above-mentioned date to November 1, but this, it must be observed, relates only to applications affecting a district in which there are already statutory electric light undertakings. The rule requires notice to be given to all such 'undertakings' within the area, whether local authorities or otherwise; and this notice is in addition to that required by the Act itself to be given to the local authority of the district. The distinction between the statute and the rules is worthy of note, for in view of the increasing popularity of the electric light too much importance cannot be attached to following the regulations laid down.

### MARITAL EVIDENCE.

At Stockport, not long since, two persons, male and female, but not husband and wife, were jointly charged with having forged a promissory note for payment of a sum of money with intent to defraud a money lender. It appeared that the female prisoner made application to the prosecutor for a loan, alleging that she did so on behalf of her husband. The male prisoner represented himself as the woman's husband and signed as such, whereas he was no relation to her. Subsequently, when these proceedings were instituted the real husband tendered himself as a witness, but the advocate for the defence objected, urging that a husband could not give evidence either for or against his wife, and as these prisoners were charged jointly, he (the real husband) could not give evidence against the fictitious husband, because it would affect the wife. The clerk, however, admitted the evidence, but as the prisoners were committed for trial at the assizes, this interesting point may be more fully argued there. Presumably the clerk, in admitting the evidence, had noticed the case of *Regina* v. *Thompson*, 36 J. P. 532, 667, and cases there cited, where it was held that the wife of one prisoner can be called as a witness for another prisoner with whom her husband is jointly indicted. This could doubtless be taken in the converse case. However, the further proceedings must be awaited. There are, however, statutory exceptions to the rule that a defendant cannot give evidence for himself or call his wife—

*e.g.* adulteration of food, drunkenness, intoxicating liquor laws, workmen, and so forth.

BANKING LAW.

At the beginning of the year a lecture was delivered by Mr. F. W. Dendy, solicitor, of Newcastle-on-Tyne, to the law students' society of that town. The lecture has since been printed in a handy pamphlet form, and has attracted much favourable notice. Mr. Dendy treats the subject in a very clear, yet practical style. Amongst the matters dealt with are — mercantile usage, bank-notes, bankers investments, bills of exchange, discounting bills, bankers' commission, overdrawn accounts, securities given by customers, and by guarantors, and many another useful item and hint upon banking topics. Those who have much to do with banking matters should not fail to peruse this lecture. Perhaps on some future occasion Mr. Dendy will expand it into a goodly volume to be read of all men.

## JUDICIAL APPOINTMENTS IN WALES.

MR. GLADSTONE has written as follows in reply to a communication on the subject of legal appointments in Wales:—

I must not presume to speak as one fully informed on the important subject of your letter, but my impressions are—(1) That Wales has suffered unjustly and gravely in this department; (2) that she is now sufficiently awakened and powerful through her representatives to set right and keep right whatever may still require it.

Dean Vaughan has written:—

The general principle can scarcely be gainsaid that it is desirable that the law should be administered as well as the Gospel preached by those who understand the language of the people. What practical difficulties may beset this application of the principle to particular cases I am scarcely competent to say.

The following letter, signed 'North and South Wales and Chester Circuit,' appeared in the *Times* on November 10:—

The letters from Mr. Gladstone and Dr. Vaughan which have appeared upon this important subject are indicative of the contrast between the characters of the two men. Mr. Gladstone ignores the possibility of practical difficulties in the way of appointing Welsh-speaking men to judicial offices. Dr. Vaughan suggests that such difficulties may exist. The difficulties do exist. No doubt we should be more thoroughly judged in Wales by Welsh-speaking County Court judges, but it is not a simple matter to get them. We must look for them on the North and South Wales and Chester Circuit. There is only one member of the Northern division of the circuit, Mr. Morgan Lloyd, Q.C., who possesses the standing which is an essential preliminary to a County Court judgeship, and at the same time an adequate knowledge of Welsh. In South Wales the requisite standing and knowledge of Welsh and law are possessed by Mr. B. F. Williams, Q.C., and Mr. Abel Thomas, M.P., but not, I think, by any other members of the Southern division. I doubt very much whether any one of these gentlemen would accept office as a County Court judge, since such office involves a great deal of work, much of which is petty, and a very moderate income. Moreover, we have as a County Court judge for the greater part of North Wales a gentleman whose capacity, knowledge of law, and sterling common sense are not surpassed by those of any of the common law judges. But the main point is that there is neither sense nor reason in complaining that Welshmen are not appointed to judicial offices, when, as a plain matter of fact, there are no eligible Welsh-speaking barristers to whom the offer of the office would be acceptable.

## SUCCESSFUL CANDIDATES.

THE following candidates (whose names are in alphabetical order) were successful at the Preliminary Examination held on October 21 and 22, 1891:—

Aldridge, Percy Sutton
Ansell, John Manley
Atkins, Arthur Shirley
Atkins, George James Murray
Bartlett, Edgar Browne
Bawtree, John Francis
Beavan, James Riley
Beesley, Eustace Barton
Beesley, Alfred
Blount, George Alfred Stanislaus
Bradley, William Herbert Cecil
Burdit, Walter
Butcher, Charles St. Aubyn
Calvert, Harry Percy
Cayley, Norman
Clarke, Herbert
Crispin, Gerald Charles Johnston
Davies, John
Du Maurier, Gerald Hurbert Edward Busson
Dyson, John
Eastham, Thomas
Edney, Harry William
Edwards, William Richard
Farr, William Edward
Fowler, Sydney John
Fox, George William
Fraser, John Alexander
Gibbons, Frederick
Greville, Herbert Edwin
Hall, Arthur
Hargrove, Herbert
Hart, Edward Fitzgerald
Havers, Thomas Gerald
Hick, Herbert
Hilbery, Leonard William
Hines, Charles William
Holt, Harry
Ingham, Harry Greaves
Jones, Eden Haythorne
Keen, Frank
Kevill, Thomas Halliwell
Klyne, Richard Edmund
Layton, Reginald George
Lickorish, Austin Aloysius
Liddle, Victor Bertram
Lucas, Samuel
Mander, Harry Iliffe
Mandnell, John Steele
Marris, Tom
Marsden, William Henry Milnes
Martin, William Harold
Martin, William Temple
Martyn, Thomas Edward
Morrell, George Henry
Morrison, Sydney Bruce
Moss, William James
Murphy, James
North, Leonard Alfred Lauraine
O'Donnell, Patrick Michael
Paterson, Athol Scott
Penn, Charles Edward
Perry, Arthur
Pope, William Rushton
Potter, Frederick Charles
Powell, Alfred
Powell, James Henry Richard
Quinn, Hugh Clement
Ram, Willett
Redhead, Claude Edward Allen
Richards, John
Robinson, John Henry
Russell, Robert Stanley
Samuels, Maurice Churchill
Shillitoe, Francis Rickman
Skinner, Robert Tierney
Smith, Harry Swayne
Spencer, Arthur Norton
Steward, Godfrey Pearson
Tahourdin, Harry Owen
Talbot, Herbert Percy
Teesdale, John Hermann
Tokeley, Arthur
Vincent, Charles Worsley
Vulliamy, Lionel Hastings
Warburton, Thomas Artingstall
Watkins, Humphrey Walter
Watson, Harold Henry
Watt, John Ralston
Williams, Edward Geoffrey
Williamson, Arthur Peel
Willison, Herbert
Wilson, John Aikman
Wood, Francis Cecil John

HOUSE OF LORDS APPEALS.—The judicial business of the House of Lords (sittings for judicial business during the prorogation) will be resumed on Thursday next. The present list consists of twenty-six cases, of which seventeen are English, two are Irish, and seven are Scotch appeals.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the utmost service to me.' Post free, 4*d*. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

## CALENDAR OF THE COUNTY COURTS.

FROM NOVEMBER 16 TO NOVEMBER 21.

| No. of Circuit | His Honour | Nov. 16 | Nov. 17 | Nov. 18 | Nov. 19 | Nov. 20 | Nov. 21 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Altrincham | Northwich | — | Birkenhead | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | Barnard Castle | Stockton-on-Tees | Darlington | Richmond | Guisborough | Northallerton |
| 16 | Judge Bedwell | Hull | Barnsley | — | — | — | — |
| 26 | Judge Jordan | Bursiem | — | Atherstone | — | — | — |
| 47 | Judge Bristowe | — | Lambeth | Woolwich | Lambeth | Lambeth | — |
| 54 | Judge Metcalfe | Bristol | Bristol | Bristol | Bristol | Bristol | — |
| 55 | Judge Machonochie | — | Christchurch | Bournemouth | Wimborne | — | Shaftesbury |
| 57 | Judge Paterson | Tiverton | Barnstaple | Bideford | Honiton | Chard | — |
| 58 | Judge Edge | Churston | Okehampton | — | — | — | — |

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, FRY, L.J., and LOPES, L.J.

THURSDAY, NOVEMBER 5.

*Jenkins* v. *Bushby* (application of defendant for new trial on appeal from verdict and judgment dated June 27, at trial before Wright, J., and a special jury at Cardiff).—Part heard.

FRIDAY, NOVEMBER 6.

*Ruth* v. *Commercial Docks Company* (application for stay of execution pending appeal from judgment of Lawrance, J., at trial).—Granted on terms.

*Jenkins* v. *Bushby*.—*Cur. adv. vult.*

SATURDAY, NOVEMBER 7.

No sitting.

MONDAY, NOVEMBER 9.

*Brown* v. *Kino* (appeal of defendant from order of Day, J., and Grantham, J., dated October 31, giving liberty to sign final judgment).—Dismissed.

*Bird* v. *Barstow* (appeal of plaintiff from order of Charles, J., dated July 25, at trial without a jury refusing to direct payment out of Court to plaintiff forthwith).—Allowed.

*Garcia* v. *Aviss Brothers* (appeal of defendant from order of Denman, J., and Wills, J., dated August 10, refusing to set aside order for Commissioner to examine witnesses except as to costs).—Dismissed.

*Imperial Tobacco Corporation of Persia* (*Lim.*) v. *Lees* (appeal of defendant from order of Wills, J., and Charles, J., dated August 12, affirming leave to defend on payment into Court or security, or in default sign judgment).—Varied.

TUESDAY, NOVEMBER 10.

*Moir* v. *Williams* (Q. B. *Crown Side*) (appeal of respondents from judgment of the Lord Chief Justice and Mathew, J., dated May 12, reversing decision of magistrates as to surveyor's fees).—Dismissed.

WEDNESDAY, NOVEMBER 11.

*Tottenham* (*admix. &c.*) v. *New Guston Company* (*Lim.*) (appeal of plaintiff from judgment of Day, J., dated June 16, at trial without a jury in Middlesex).—Dismissed.

*North Wales Gold Exploration Company* v. *Seaver and others* (appeal of La Caisse des Mines from judgment of Cave, J., dated May 2, at trial in Middlesex).—Part heard.

## APPEAL COURT II.

Before LINDLEY, L.J., BOWEN, L.J., and KAY, L.J.

THURSDAY, NOVEMBER 5.

*Dobson* v. *Proprietors of Leeds and Liverpool Canal Navigation* (appeal of defendant from judgment of the Vice-Chancellor, dated December 18, 1890).—Dismissed.

*London, Chatham and Dover Railway Company* v. *South-Eastern Railway Company* (appeal of defendants from order of Kekewich, J., dated April 10, on application to vary official referee's report).—*Cur. adv. vult.*

FRIDAY, NOVEMBER 6.

*Goodden* v. *Goodden* (appeal of petitioner W. C. Goodden from order of Jeune, J., dated August 12, allowing alimony; heard October 27).—Dismissed.

SATURDAY, NOVEMBER 7.

*Wenham Company* (*Lim.*) v. *Champion Gas Lamp Company* (appeal of defendants from judgment of Williams, J. (sitting as an additional judge of the Chancery Division), dated May 13).—Dismissed.

MONDAY, NOVEMBER 9.

*In re Cathcart.*—Part heard.

TUESDAY, NOVEMBER 10.

*Haslett* v. *Hutchinson* (appeal of defendant from order of Kekewich, J., dated August 15, restraining defendant until trial from representation that agreement at an end).—Allowed.

*In re Southampton Naval Works* (*Lim.*) *and Co.'s Acts. Atkinson* v. *Southampton Naval Works* (*Lim.*). *Hutton* v. *Southampton Naval Works* (*Lim.*) (appeal of plaintiff C. A. R. Hutton and defendants H. Bishop and others from part of order of Jeune, J., dated October 21, giving leave to use ship-yard, plant, and machinery).—Dismissed, subject to slight variation of order.

*In re Southampton Naval Works* (*Lim.*) *and Co.'s Acts. Hutton* v. *Southampton Naval Works* (*Lim.*) (appeal of defendants from similar order, as in Atkinson's action).—Dismissed, subject to slight variation of order.

*Greenwood* v. *Sutcliffe* (appeal of plaintiff from judgment of Stirling, J., dated May 7).—Part heard.

WEDNESDAY, NOVEMBER 11.

*Abdy* v. *Abdy* (appeal of petitioner M. T. Abdy from order of Jeune, J., dated August 11, for postponement of trial).—Dismissed.

*Greenwood* v. *Sutcliffe*.—Allowed.

*In re E. J. Sartoris, dec. Sartoris* v. *Sartoris* (*construction*) (appeal of the defendant A. G. F. Sartoris from judgment of Chitty, J., dated June 9).—Dismissed.

*Nuttall* v. *Hargreaves* (appeal of plaintiffs from judgment of Kekewich, J., dated May 6).—Part heard.

*James* v. *Smith* (appeal of plaintiff from judgment of Kekewich, J., dismissing action, dated November 12, 1890, and notice of contention by defendant).—Dismissed.

## NOTICES FOR THE WEEK.

### Rota of Registrars.

Monday, November 16.—Court of Appeal No. 2: Mr. Beal. Mr. Justice Chitty: Mr. Godfrey. Mr. Justice North: Mr. Jackson. Mr. Justice Stirling: Mr. Carrington. Mr. Justice Kekewich: Mr. Rolt. Mr. Justice Romer: Mr. Ward.

Tuesday, November 17.—Court of Appeal No. 2: Mr. Pugh. Mr. Justice Chitty: Mr. Leach. Mr. Justice North: Mr. Clowes. Mr. Justice Stirling: Mr. Lavie. Mr. Justice Kekewich: Mr. Farmer. Mr. Justice Romer: Mr. Pemberton.

Wednesday, November 18.—Court of Appeal No. 2: Mr. Beal. Mr. Justice Chitty: Mr. Godfrey. Mr. Justice North: Mr. Jackson. Mr. Justice Stirling: Mr. Carrington. Mr. Justice Kekewich: Mr. Rolt. Mr. Justice Romer: Mr. Ward.

Thursday, November 19.—Court of Appeal No. 2: Mr. Pugh. Mr. Justice Chitty: Mr. Leach. Mr. Justice North: Mr. Clowes. Mr. Justice Stirling: Mr. Lavie. Mr. Justice Kekewich: Mr. Farmer. Mr. Justice Romer: Mr. Pemberton.

Friday, November 20.—Court of Appeal No. 2: Mr. Beal. Mr. Justice Chitty: Mr. Godfrey. Mr. Justice North: Mr. Jackson. Mr. Justice Stirling: Mr. Carrington. Mr. Justice Kekewich: Mr. Rolt. Mr. Justice Romer: Mr. Ward.

Saturday, November 21.—Court of Appeal No. 2: Mr. Pugh. Mr. Justice Chitty: Mr. Leach. Mr. Justice North: Mr. Clowes. Mr. Justice Stirling: Mr. Lavie. Mr. Justice Kekewich: Mr. Farmer. Mr. Justice Romer: Mr. Pemberton.

The Charge against Mr. Kimber.—At the Guildhall, Canterbury, on November 9, Mr. Walter Monteagle Hasker applied to be bound over under the Vexatious Indictments Act, 1859, to prosecute Mr. Edmund Kimber, solicitor, of Walbrook, City, and Shooter's Hill, for alleged perjury, at the next Kent Assizes. The charge was dismissed, with costs, by the city bench at Canterbury on Friday last. The application was granted, and Mr. Hasker then entered into recognisances in 100*l.* to prosecute.

The Judicial Committee of the Privy Council resumed their sittings on November 4, after the Long Vacation. Their first list of causes for hearing contains twenty appeals, of which eight are from Bengal, two from Oude, two from Rangoon, and one each from Madras, Ontario, Mauritius, the North-West Provinces, the Central Provinces, Malta, Canada, and Bombay. There are also four judgments to be delivered in appeals heard before the Vacation, among them the case of *Read and others* v. *The Bishop of Lincoln*.

The Town Clerk of Leeds.—At a meeting of the Leeds County Council on November 9 a letter was read from the town clerk, Sir George W. Morrison, in which he much regretted that, according to medical testimony, he was at present suffering from mental strain, and did not feel equal to conscientiously discharging the duties of his office. He, therefore, deeply regretted to have to place his resignation in the hands of the council. It was decided that the letter should be considered at a special meeting of the council. Mr. George Morrison was appointed town clerk of Leeds in 1878, and was knighted in 1885.

## OBITUARY.

Mr. George Henry Haydon, barrister, late steward of Bethlehem Royal Hospital, died, after a short illness, at Putney on Monday, November 9, in his seventieth year. He was one of the earliest explorers of Australia, and his two books on his experiences of fifty years ago are rare and valuable. He at first settled in French Island, but later went to the mainland and made the first crossing from Melbourne to Gippsland. He was owner of land in the wilds which afterwards became Melbourne, which land was of little value when he left the continent. He returned to England, and after several changes settled down as steward to the Royal Hospital. He was well known as an art student, and at the Langham Sketching Club studied beside many late and present Academicians, being himself a good draftsman. He was a keen fisherman, and among his friends and fellow-fishermen were John Leech and Samuel Phelps. Charles Kean and George Cruikshank were often to be met at his house.

## BOOKS RECEIVED FOR REVIEW.

Brett's Leading Cases in Modern Equity. Second Edition. London: W. Clowes & Sons (Lim.).

Edwards' Compendium of the Law of Property in Land. Second Edition. London: Stevens & Haynes.

Essays in Jurisprudence and Legal History. By John W. Salmond, Barrister of the Supreme Court of New Zealand. London: Stevens & Haynes.

Griffiths' Married Women's Property Acts. Sixth Edition. By Archibald Brown, Barrister-at-Law. London: Stevens & Haynes.

Law of Trustees (The). By R. Denny Urlin, Barrister-at-Law. London: Effingham Wilson & Co.

Naval Warfare of the Future. By Thomas Warraker, Barrister-at-Law. London: Swan Sonnenschein & Co.

Paterson's Practical Statutes for 1891. London: Horace Cox.

Statutes of Practical Utility (The). By J. M. Lely, Barrister-at-Law. London: Sweet & Maxwell (Lim.): Stevens & Sons (Lim.).

The Powers of Private Police.—On November 11, in the Lord Mayor's Court, the case of *Copeland* v. *The Surrey Commercial Docks Company* (*Lim.*) was tried before the recorder (Sir T. Chambers, Q.C.) and a jury. The plaintiff, a carman in the employment of a corn merchant in Westminster Bridge Road, sued the defendants to recover damages for false imprisonment. Mr. A. H. Ruegg was counsel for the plaintiff; Mr. Horace Avory and Mr. Roskill for the defendants.—The plaintiff said that in July last he was arrested by a Mr. Lecocq, a chief inspector in the defendant's private police, on a charge of stealing two sacks of flour in conjunction with a man named Cooper. He was taken to the police-station, brought up before a magistrate, committed for trial, but was acquitted at the Old Bailey. It was argued for the plaintiff that Lecocq, being in the service of the defendants, was in the position of a private person, and therefore the defendants would have to prove that a felony had actually been committed, and that they had probable cause for thinking that the plaintiff had committed the theft.—For the defence, it was urged that the plaintiff was arrested by Detective Sergeant Tooley, of the M Division, and not by Lecocq. Even if Lecocq had arrested the plaintiff, the defendants were protected by the Harbours Clauses Act, which dealt with the employment of special police, and the clothing of them with the power and protection of ordinary police officers.—The jury found for the defendants.

## LAW STUDENTS' SOCIETIES.

DEBATING.—The ordinary weekly meeting of this society was held at the Law Institution, Chancery Lane, on Tuesday, November 10, Mr. Marshall in the chair. The subject for discussion, 'That the case of *Jones* v. *The Merionethshire Permanent Benefit Building Society*, 60 Law J. Rep. Chanc. 564; L. R. (1891) 2 Chanc. Div. 587, was wrongly decided,' was opened by Mr. Douglas, followed by Mr. Pettit.—Mr. Willson, followed by Mr. Johnston, opposed.—The debate having been declared open, the following gentlemen spoke: In the affirmative—Messrs. Daniell, Arnold, Walton, Squire, Pritchard, Pattinson, and Williams; in the negative—Messrs. Aston, Simon, Evershed, Bower, and Thirlby.—On the motion being put to the meeting, it was carried by a majority of two.—The subject for discussion at the next meeting of the society, on Tuesday, November 17, is: 'That the British occupation of Egypt is no longer justifiable or expedient.'

GRAND DAY AT LINCOLN'S INN.—The Treasurer, Mr. Napier Higgins, Q.C., and the benchers of Lincoln's Inn entertained at dinner on November 10, being the Grand Day in Michaelmas Term, the Marquis of Lorne, the Bishop of Rochester, Mr. John Morley, Mr. Justice Jeune, Mr. Justice Henn Collins, General Sir Daniel Lysons, Sir Frederick Abel, Surgeon-Major Hendley, the Rev. Dr. Paget, Mr. Bryant (president of the Royal College of Surgeons), and Mr. John Wolfe Barry. The benchers present on the occasion were Lord Justice Bowen, Sir William Robert Grove, Mr. Justice Denman, Mr. Justice Mathew, Mr. Justice Chitty, Sir Robert Stuart, Q.C., Sir Charles Russell, Q.C., M.P., Mr. Pember, Q.C., Mr. Hemming, Q.C., Mr Crackanthorpe, Q.C., Sir Horace Davey, Q.C., M.P., Sir Andrew Scoble, Q.C., Mr. Horton Smith, Q.C., M.P., Mr. Gibbs, Q.C., C.B., Sir Edward Clarke, Q.C, M.P. (the Solicitor-General), Lord Macnaghten, Mr. Forbes, Q.C., Mr. W. W. Karslake, Q.C., Mr. Rigby, Q.C., Mr. Cecil Russell, Mr. Cozens-Hardy, Q.C., M.P., Mr. Pembroke Stephens, Q.C., Mr. Lockwood, Q.C., M.P., Mr. Elton, Q.C., M.P., Mr. Kennedy, Q.C., Mr. Bush, Q.C., Mr. Cutler, Q.C., Mr. Leonard H. Courtney, M.P., Lord Morris, Mr. Kenelm E. Digby, Mr. Muir Mackenzie, Q.C., and the Rev. Dr. Wace, preacher.

WEIGHTS AND MEASURES.—A report has been issued as a Parliamentery paper by the Board of Trade, referring to their proceedings and business under the Weights and Measures Acts, 1878 and 1889. This shows that 139 local authorities have, since the last year's report, taken the formal steps necessary for carrying out the provisions of section 9 of the Act of 1889, requiring them to make general regulations for the guidance of their inspectors; and that forty-six local authorities have made bye-laws for regulating the retail sale of coal by weight. Periodical examinations have been held by the board at London, Bristol, Edinburgh, and Manchester, of persons appointed to act as inspectors of weights and measures, and 136 persons have obtained certificates of qualification. In November last year a new denomination of measure of capacity of three gallons was authorised, and the board has duly verified the standard. Standards have been also verified at the office during the past year for the Governments of India, British Guiana, and St. Lucia, for the Royal Mint, and for the Ordnance Store Department. A number of inspectors of weights and measures in Ireland have attended at the Standards Office to undergo a course of technical instruction in their business. Arrangements have also been made by which certain standards and scales in use by the Admiralty, Inland Revenue, and the Paymaster-General are in future to be periodically inspected under the direction of the Department.

## HONOURS AND APPOINTMENTS.

MR. WILLIAM ATHELSTAN BLAXLAND has been appointed Solicitor to the London County Council, in succession to Mr. Reginald Ward, resigned. Mr. Blaxland was admitted in 1867, and was a member of the late firm of Jones, Blaxland & Son, of Lincoln's Inn Fields, until he was appointed in May, 1881, an assistant in the Solicitors' Department of the late Metropolitan Board of Works.

Mr. Joseph Samuel Rubinstein (of the firm of Leggatt, Rubinstein & Co.), of 5 Raymond Buildings, Gray's Inn, W.C., and 56 West Cromwell Road, Kensington, S.W., has been appointed a Commissioner for Oaths in matters depending in the Courts of the Colony of New South Wales. He is a Commissioner for Oaths for England, a Commissioner for Oaths and for taking Acknowledgments for New Zealand, and a Commissioner for Oaths for the Colonies of the Bahamas, Fiji, Gold Coast, Leeward Islands, South Australia, and Tasmania. Mr. Rubinstein was admitted in 1876.

Mr. Alfred William Hall (of the firm of Gard, Hall & Rook), of 2 Gresham Buildings, Basinghall Street, London, has been appointed a Commissioner to take Affidavits in the Supreme Court of South Australia. Mr. Hall was admitted in 1879.

Mr. Edward William Oliver, of 41 Finsbury Pavement, London, has been appointed a Commissioner for Oaths. Mr. Oliver was admitted in 1860.

THE BOARD OF CUSTOMS AND THE DOCKS.—With reference to the proposed changes in the Customs' hours of duty, the Board of Customs have sent round a circular to the dock directors, wharf proprietors, and shipowners of London which states that the Lords of the Treasury have decided that, after a date not yet fixed upon, goods shall be allowed to be landed from all vessels between the hours of 6 A.M. and 6 P.M. free of overtime, and requests that the various persons concerned will inform the board during what hours they propose to avail themselves of the privilege, so that a sufficient staff of officers may be provided to meet the extra amount of duty imposed upon the service. It is stated that the Docks' committee is averse to any change in the present system of duty, but the London Chamber of Commerce is greatly in favour of the proposed extension, as it will relieve shipowners of the extra expense which is incurred by overtime.

THE RECOVERY OF TITHES.—The first case for the recovery of tithes under the Tithes Act of last session came on on November 11 at Ruthin County Court before his Honour Judge Sir Horatio Lloyd. Mr. Robert Parry, of Llanarmon, brother of Mr. John Parry, chairman of the Anti-Tithe League, was summoned by the vicar of Llanarmon for his arrears of tithes.—Mr. Llewellyn Jones, barrister, defended, and Mr. Roberts, solicitor, Mold, appeared for the applicant.—Defendant resisted payment on the ground that he was not the owner of all the lands for which tithes were claimed, and that the vicar was not the owner of the tithes. The vicar of Llanarmon, the Rev. Evan Evans, produced the tithe-map, claiming that 7*s.* 11*d.* was due to him on two fields. Mr. Parry had previously paid him the tithes on the same lands.—For the defence Mr. Llewellyn Jones said that there was great confusion as to who was responsible for the tithes.—The judge said that he was not satisfied that the lands in question were occupied by the owner, and, therefore, he could not make an order to appoint the registrar receiver, the order to be suspended for fourteen days, with the usual Court fees.

THE LONDON AND LANCASHIRE FIRE INSURANCE COMPANY intimate that they have decided not to make any charge henceforth for the registering of share transfers.

SOLICITORS' BENEVOLENT ASSOCIATION.—The usual monthly meeting of the board of directors of this association was held at the Law Institution, Chancery Lane, London, on Wednesday, the 11th inst., Mr. John Hunter in the chair. The other directors present were Messrs. H. Morten Cotton, Samuel Harris (Leicester), J. H. Kays, Grinham Keen, Richard Pennington, R. Pidcock (Woolwich), Henry Roscoe, Sidney Smith, R. W. Tweedie, Frederic T. Woolbert, and J. T. Scott (secretary). A sum of 518*l.* was distributed in grants of relief, twenty-two new members were admitted to the association, and other general business was transacted.

SHAM COUNTY COURT SUMMONSES.—Judge Bagshawe, at Peterborough County Court, on November 11, said his attention had been called to a practice adopted by some firms of sending notices to debtors in imitation of County Court summonses. The notices were so framed, both in size and appearance, as to be well calculated to convey to the minds of careless people that they were County Court summonses. The words, however, 'Notice before proceedings,' were printed in very small type at the top. The officials of the Court informed him that many persons, acting under the impression that, on receipt of the notices, they had been put into Court, had brought the money to the Court. The practice was distinctly wrong, and in future, wherever he found plaintiffs had resorted to such means, he should disallow them all costs.

FRIENDLY SOCIETIES' COLLECTING-BOOKS.—A case of interest to managers and members of friendly societies was investigated before the Liverpool Recorder, at the City Sessions, on October 28. Mr. Francis H. Taunton, secretary of the Royal Liver Friendly Society, appealed against a decision of the Liverpool stipendiary magistrate, who last March fined him 20*s.* and costs for refusing to allow a member named Moffatt to inspect certain of the society's books, as provided by the Friendly Societies Act.—Mr. Moffatt said that in February last he applied at the society's offices to inspect certain collecting-books, so as to investigate suspected defalcations on the part of collectors who were relatives of officials. He was told that the committee of management had consulted eminent counsel, who advised that respondent had no legal right to inspect the books. The secretary was summoned and fined. Mr. Moffatt said that under section 14 of the Act any member, or any person, having an interest in the funds of the society, was entitled to see the books during reasonable hours.—In reply to the recorder, he said that he had applied only for the collecting-books, which he knew were in the office at the time.—For the appellant, Mr. Taylor said that the committee were contesting the case in the interests of the holders of these collecting-books and the members of the society. Until they had had a judicial decision on the point the committee thought they ought not to produce these books, and so disclose the private accounts of a member to every other member. The holders of the books, who had a kind of goodwill in them, objected to disclose their accounts and list of members to a person who might belong to another society, or to a rival collector. He submitted that the 'books' referred to in the section were exclusively the books written up at the head office, which thoroughly showed the financial position, investments, &c., of the society, and which Mr. Moffatt might examine.—Having heard evidence, the Recorder decided that any member of the society making application at a reasonable time and in a reasonable manner should have all the means at hand, provided he was willing to undertake the gigantic task of inspecting the books. He therefore confirmed the conviction, with costs.

WROTH SILVER.—The ancient custom of paying 'wroth silver' to the Duke of Buccleuch, as Lord of the Hundred of Knightlow, was observed before sunrise on Wednesday at Knightlow Hill, Warwickshire. In the cold grey dawn, and with a fine misty rain falling, the representatives of the various parishes and a few curious villagers gathered round the one remaining stone of the monastic cross, which formerly stood on the brow of the hill. The cross dates back probably to the reign of Edward III., and has at each angle a large fir tree, which, local tradition says, represents four knights who were killed and buried there. Mr. C. G. Bolam, the Duke of Buccleuch's Warwickshire land agent, commenced by reading the charter of 'wroth silver.' Each representative then dropped into the hollow, which time has conveniently worn in the head of the stone, the coins due from his parish. The payment is made by twenty-eight parishes of the old Hundred of Knightlow. Altogether the money amounts to but little more than 9*s.*, several parishes paying only 1*d.* each. The tribute, moreover, involves the duke in some expenses, as he always entertains the representatives upon the conclusion of the ceremony. At Knightlow Hill on Wednesday an adjournment was made to a neighbouring tavern, where a substantial breakfast was served. Upon the withdrawal of the cloth the health of the duke was toasted, in accordance with custom, in glasses of rum and milk. The late Duke of Buccleuch, some years ago, submitted the words 'wroth silver' to two antiquarians of considerable eminence, whose conclusions were that the payment was intended as an acknowledgment of the claim of the lord of the manor to the waste lands within the lordship of the hundred, and as a payment for permitting cattle to pass over certain roads and fields at various seasons of the year.

## BIRTHS.

On Sept. 30, at St. Kitts, W.I., the wife of Thomas Baynes, First Puisne Judge of the Leeward Islands, of a daughter.

On Nov. 6, at 54 Longridge Road, Earl's Court, the wife of Patrick E. Evans, Barrister-at-Law, of a son.

On Nov. 9, at 46 Palace Gardens Terrace, Kensington, the wife of Reginald B. D. Acland, Barrister-at-Law, of a son.

On Nov. 10, at 4 Portland Square, Carlisle, the wife of Anthony Nichol Bowman, Solicitor, of a son.

## MARRIAGES.

On Sept. 27, at Fish Creek, near Calgary, Arthur Gabriel Ruscombe Poole, son of A. R. Poole, Q.C., to Daisy, second daughter of the late E. J. Winterbottom, of Calgary.

On Oct. 3, at Kampton, Nagpore, Surgeon John Girvin, A.M.S., fifth son of the late Robert Girvin, of Halstead, Essex, and Liverpool, to Lily Marie, youngest daughter of the late Henry Jefferd Tarrant, Barrister-at-Law, Madras.

On Nov. 4, at Saltcoats Free Church, Robert Alexander Hill, Solicitor, Stirling and Bridge of Allan, to Marion Clark, youngest daughter of John Galloway, Esq., of Kilmeny, Ardrossan, Ayrshire.

## DEATHS.

On Oct. 17, of enteric fever, Jonathan Oakeshott, I.C.S., Judge at Mirzapur, India, third son of Jonathan Oakeshott, of Mount Park Crescent, Ealing.

On Nov. 3, at Houghtons, Great Baddow, the residence of her nephew, P. William Prior-Johnson, Elizabeth Smith Redman, eldest daughter of the late William Redman, Solicitor, of Bath, aged 85.

On Nov. 5, at his residence, Longrood, Bilton, Frederick Fuller, Solicitor, Rugby, eldest son of the late F. J. Fuller, of Maida Vale and Carlton Chambers, Regent Street, aged 71.

On Nov. 5, at his residence, Woodlands, Alderley Edge, near Manchester, John Alsop Petty, Solicitor, aged 79.

On Nov. 9, at Ettrick, Putney Common, George Henry Hayden, Barrister-at-Law, formerly of Bethlem Royal Hospital, in the 70th year of his age.

At 12 St. Augustine's Villas, Archway Road, Highgate, Mary Teresa Eldred, widow of the late Charles Joseph Eldred, Solicitor, of 8 Great James Street, Bedford Row, aged 66.

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# The Law Journal.

*SATURDAY, NOVEMBER* 21, 1891.

## 'OBITER DICTA.'

The block in the Chancery Division seems likely to increase rather than diminish. Mr. Justice Stirling and Mr. Justice North are both invalided, and it is uncertain when they will be able to resume their sittings. Unless one or more judges can be borrowed from the Queen's Bench Division, arrears on the Chancery side must needs accumulate rapidly.

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The Autumn Assizes have now commenced on all the circuits, with the result that eight judges have been withdrawn from the work of the Queen's Bench Division. The business of that division will therefore for the remainder of the sittings have to be carried on by seven judges, one of whom has to leave London on December 8 to attend the Leeds Assizes. Having regard to the fact that it is not much more than three weeks since the end of the Long Vacation, this is a most unsatisfactory state of things, and not at all calculated to inspire confidence in the speedy administration of justice.

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The progress of business in Court of Appeal No. I. has so far been decidedly slow. At the commencement of the sittings no less than sixty-four final appeals from the Queen's Bench Division had been set down for hearing. Of these, up to the present time, only ten have been disposed of. The New Trial Paper and the Interlocutory List were, no doubt, light, and some progress has been made with them. The same may be said of the Bankruptcy Appeals, but these lists are constantly being replenished, and, having regard to the fact that there are several Admiralty Appeals for hearing, it seems probable that a good deal of the appellate business of Court No. I. will have to go over Christmas.

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Referring to our remarks upon the *Tabernacle Building Society* case in last week's issue (*ante*, p. 703), we have, by the courtesy of Mr. Macoun, counsel for the building society, been furnished with a note of an application made by him on the 4th inst. to the Divisional Court, which explains the position of affairs with regard to an appeal to the House of Lords. Mr. Macoun's application was that a special case, stated by the arbitrators in pursuance of an order of the Court, might stand out of the paper pending the hearing of an appeal by the House of Lords raising the question whether the arbitrators were bound to state a case, or, in other words, whether the Arbitration Act, 1889, applies in such cases. He stated that the appeal was in a forward state. The Court, consisting of the Lord Chief Justice and Mr. Justice Wright, acceded to the application. We are glad to learn that this question, which is manifestly of the utmost importance to building societies, is now in a fair way to be finally settled.

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Yet another arbitration case! In *Trainor* v. *Macdonald and another* (Notes of Cases, p. 151) the plaintiff sued on a fire insurance policy, and the defendants pleaded fraud, but applied for an order to stay proceedings with the view of a reference to arbitration within the terms of the arbitration clause of the policy, which appears to have followed a common form. Section 11 of the Arbitration Act, 1889, provides, re-enacting section 11 of the Common Law Procedure Act, 1854, that 'if any party to a submission commences any legal proceedings against any other party to the submission, in respect of any matter agreed to be referred, any party to such legal proceedings' may apply to the Court for a stay, and the Court, or a judge thereof, 'if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission,' may make an order staying the proceedings. The Court made the order to stay, affirming the Master and Mr. Justice Charles, notwithstanding the contention of the plaintiff that fraud was properly a question for the jury. The Court appears to have an absolutely discretionary jurisdiction in these matters,

but the judgment seems just a little inconsistent with *Wallis* v. *Hirsch*, 26 Law J. Rep. C. P. 72. In the new edition of 'Russell on Arbitration' also (see p. 48) it is said that 'in the Chancery Division the rule seems to be that where fraud is charged the Court will, *in general*, refuse to send the dispute to arbitration if the party charged with the fraud desires a public inquiry.'

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As the question of law reform and more especially procedure reform has been brought prominently before the country, it is well to consider what improvements of a non-revolutionary character can be suggested with a reasonable certainty of their being passed into law next session. The gravest of the evils to which lately attention has mainly been directed are those occasioned by the delay between one hearing of a case and another, particularly in the case of appeals to the House of Lords. Two reforms, to which no appreciable opposition in the most powerful quarters could be expected, will suggest themselves to almost any member of the profession who thinks on the subject. One is what has already been proposed in the LAW JOURNAL—viz. the extension of the Lord Chancellor's Act by which an ex-Lord Chancellor may sit in the Appeal Court or High Court to the four Lords of Appeal in ordinary, and which would be equivalent, at least, to the appointment of another judge. The other would be the shortening of the period within which notice of appeal must be given either from the High Court or from the Court of Appeal. A year is undoubtedly too long, and the time might usefully be limited to three months in each case, or, at all events, to three months in the case of resort to the Court of Appeal and six months from the latter to the House of Lords. The same rules as to the extension of the time might be applied as now exist; and it may be that rather more indulgence might be extended, when further time was required, than is now the case. The result would be both a substantial saving of time and a not inconsiderable economy in costs, as fewer interviews with solicitors and counsel would be possible when the client is called upon to make up his mind quickly.

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MR. FINLAY'S Act suggests also that further improvement is possible with respect to Divisional Courts and the Appeal Courts. Why should an appeal lie from a Divisional Court constituted possibly of three judges, the Lord Chief Justice among them, to a Court of Appeal, also consisting of three judges? Take the case of a registration appeal, or a question under the Employers' Liability Act, in which it is found impossible to refuse leave to appeal. In such cases surely an appeal might be dispensed with. Under the old system in equity a decree might be enrolled and the parties go straight to the House of Lords from the Master of the Rolls or the Vice-Chancellor. In such instances as we have mentioned, and in the numerous important magistrates' cases which arise, one of two courses might profitably be adopted—viz. either to dispense with the hearing before the Divisional Court and go straight from the revising barrister or County Court judge to the Court of Appeal, or provide that the appeal from the Divisional Court should be to the House of Lords, and not to the Court of Appeal. It is really very much a question of names, and a strong Divisional Court is quite as good a tribunal as the Appeal Court. There is no reason why bills to give effect to such changes as these should not be introduced by a private member and become law in the course of next year.

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IN *In re Wilks; Child* v. *Bulmer*, 60 Law J. Rep. Chanc. 696, Mr. Justice Stirling had to consider how far the institution of legal proceedings by one joint-tenant will sever the joint-tenancy. In that case a fund in a suit having been carried to the separate account of three infant plaintiffs as joint-tenants, one of them on attaining twenty-one applied by summons for payment out to himself of one-third of the fund; but owing to pressure of business this summons was not heard on the day on which it was returnable, and before it was heard the plaintiff died. Mr. Justice Stirling held that the joint-tenancy was not severed. Laying down the text that 'the act of a joint-tenant which amounts to a severance must be such as to preclude him from claiming by survivorship any interest in the subject-matter of the joint-tenancy,' he thought that the applicant would have been at liberty at any time before his death to withdraw his summons and claim the benefit of the joint-tenancy. On the other hand, an order of the Court for payment out of his interest to one joint-tenant would clearly sever the joint-tenancy as to that share; and sometimes an order of the Court may effect a severance where it is not intended. Thus in *In re Pearson*, 46 Law J. Rep. Chanc. 670; L. R. 5 Chanc. Div. 982, the Court of Appeal pointed out that a petition for a vesting order on the appointment of a new trustee in place of a lunatic, who is one of several trustees, should be intituled in the Chancery Division as well as in Lunacy, as otherwise the order would not affect the title of the continuing trustees, and would, therefore, have the effect of severing the joint-tenancy. Whether there would be a severance if a joint-tenant died after the hearing, but before the judgment or order was delivered, was treated as an open question by Mr. Justice Stirling; but the case of *Turner* v. *The London and South-Western Railway Company*, 43 Law J. Rep. Chanc. 430; L. R. 17 Eq. 561, would seem to show that the Court in such a case has power to date the judgment as of the date of the hearing, and so bring about a severance.

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IN the case of *Howell* v. *Lewis*, reported in our Notes of Cases for this week, proceedings had been taken by a next friend (who was also co-plaintiff) on behalf of a person alleged to be of unsound mind, but not so found by inquisition. The person alleged to be of unsound mind afterwards took out a summons to strike out his name as co-plaintiff on the ground that he was of sound mind, and that the proceedings were not taken with his authority. In *Palmer* v. *Walesby*, 37 Law J. Rep. Chanc. 612; L. R. 3 Chanc. App. 73, under somewhat similar circumstances, proceedings were stayed while a petition in lunacy was presented, and in that case the plaintiff's soundness of mind being established on the inquiry, the bill was taken off the file and the costs ordered to be paid by the next friend. In *Howell* v. *Lewis* there was no intention of presenting a petition in lunacy, while on the evidence before the Court the capacity of the plaintiff was open to doubt. Mr. Justice Kekewich was guided by the old authority of *Lee* v. *Ryder*, 6 Mad. 294, where it being disputed whether

a defendant was from infirmity of mind competent to answer the plaintiff's bill on oath, it was referred to the master to inquire as to the fact. Following the analogy of this case, Mr. Justice Kekewich referred it to chambers to inquire whether the plaintiff was at the date of the commencement of the proceedings competent to retain the solicitors to institute them on his behalf; and if not, whether it was for his benefit that the action should be prosecuted in his name by the next friend. The precedent may prove a useful one.

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The maxim 'Beati possidentes' has just been well illustrated by the outgoing mayor of Chelmsford. That gentleman may certainly be congratulated on having the courage of his convictions. During his year of office it became necessary to elect an alderman to fill a casual vacancy. The mayor sat as chairman of the council at the election. He further became a candidate for the vacant office. He then voted for himself. Moreover, on finding that eleven of his colleagues in the council had voted against him, and only ten in his favour, his conviction of his own superior fitness for the post remained unshaken, and, the votes being equal, he bestowed the casting vote upon himself. Having thus voted early and voted often, he took up the *rôle* of returning officer and declared himself to be elected. Now in *Regina* v. *Owens*, 28 Law J. Rep. Q. B. 316, and *Regina* v. *White*, 36 Law J. Rep. Q. B. 267, it was decided that a man cannot, acting as a returning officer, return himself, and that, if a mayor offers himself for election as a town councillor during his term of office, he is incapable of performing his duty as returning officer, and the proper course is for the council to appoint an alderman to take his place. Section 36 of the Old Municipal Corporations Act (5 & 6 Wm. IV. c. 76), on which these decisions partly rested, is re-enacted in terms by section 67 of the Act of 1882, and their real basis—namely, the rule that no man may be a judge in his own cause, is one of the fundamental principles of our law. The opponents of the mayor, therefore, had a good case. It only remained for them to take advantage of it by the proper procedure. An election petition was clearly possible, but the twenty-one days within which, by section 88 of the Act, it must be presented were allowed to slip away. Could they proceed by *quo warranto*? Their grounds of complaint were two—namely, that the mayor ought not to have acted as returning officer; and, secondly, that he ought not to have voted for himself. But, if the first ground was good, he was disqualified at the time of the election; if the second, he was not duly elected by a majority of votes, and in both these cases the Act provides (section 87) that the election shall not be questioned except by a petition. *Quo warranto*, therefore, would not lie. The result is very similar to that arrived at in *Pritchard* v. *The Mayor of Bangor*, 57 Law J. Rep. Q. B. 313, where, upon the same ground, the Court refused to say whether an outgoing alderman was eligible for the office of councillor. Section 73 of the Act seems to contemplate that an election may in some way be called in question by *quo warranto*, but we confess we scarcely see how that process is to be used except in cases of disqualification arising after election, as indicated by section 225. Persons, therefore, affected by irregularities of the kind will do well to make sure of their remedy by presenting their petition within the prescribed twenty-one days.

No better indication could be afforded of the change in modern opinion regarding strikes than the argument which was gravely put forward in the recent case of *Warburton* v. *The Huddersfield Industrial Society* (Notes of Cases, p. 148), that a contribution out of the funds of the society to aid a local strike was an application of those funds to a 'lawful purpose.' By section 12 (7) of the Industrial and Provident Securities Act, 1876 (39 & 40 Vict. c. 45), it is enacted that 'the profits of the society may be applied to any lawful purpose.' According to the rules of the society its objects were to carry on the trades of general dealers, both wholesale and retail, also of manufacturers, farmers, and workers of mines and minerals, and to do all things necessary or expedient for the accomplishments of those acts. The net profits of all business carried on, after paying expenses, &c., were to be applied either to increase the capital, reserve fund, or business of the society, or to 'any lawful purpose,' less any grant that might be made for educational purposes. A majority of the members at a duly constituted meeting had voted in favour of contributing a sum from the society's funds in aid of a strike which was being carried on in the immediate neighbourhood. A dissentient member very properly brought an action against the society to restrain such an unauthorised application of its funds.

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It was contended, in support of the proposed contribution, that the words in the subsection, 'any lawful purpose,' were wide enough to include subscribing to strikes, which were lawful provided that there was no intimidation. As to the legality of strikes, with or without intimidation, it does not seem material to enter into any discussion. But what appears to have been overlooked by the society when the resolution was passed was that such an application of its funds was not to a 'lawful purpose' *quoad* the objects of the society. Its objects were, as stated above, trading and manufacturing; and its net profits were to be applied to increase the capital, reserve fund, or business of the society, or to any lawful purpose—clearly words *ejusdem generis*. It might just as well—and, from our point of view, far better—have been resolved that a sum out of the funds of the society should have been sent to a local charity. In our opinion, therefore, the decision of the learned judges of the Divisional Court was indisputably correct.

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The University correspondent of the *Globe* complains bitterly of the obligation of a 'very large number of men having to go down at this period to eat the three bad dinners provided for them by one or other of the Inns of Court,' and says that 'it is surely time that this senseless custom should be abolished.' It is added that 'the regulation was, of course, intelligible at a time when law students kept terms at the Temples or Lincoln's Inn instead of at the universities,' but that, 'now this is changed, there seems nothing whatever to be gained by the retention of these compulsory dinners, which only cause Oxford and Cambridge men some expense and very great inconvenience.' On reference to the Inns of Courts Consolidated Regulations, we find that non-university men keep terms by dining six days each term, while university men need only dine three days each term, but we know of no regulation of the Inns of Court by which terms can be kept at the universities themselves.

We regret to observe that in the report of *The Salvation Army Case* the *Times* speaks of 'Palmer's Act,' and not, as it ought to be, 'the Palmer Act.' There is, as we have already had occasion to observe, a wide distinction between the two forms of nomenclature. The Palmer Act, the Coventry Act, and some few other Acts are so called after the names of persons, not being Parliament men, who in some way or other occasioned their being passed; 'Palmer's Act,' more commonly called 'Hinde Palmer's Act,' Russell Gurney's Act, and very many other Acts, take their names from the members of Parliament who introduced them.

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In further reference to the forthcoming Government Criminal Evidence Bill, which we noticed last week (*ante*, p. 702), it may be well to draw attention to the provision of the Indian Codes in the matter. First, by the Indian Evidence Act, 1872, s. 120, it is enacted that 'in criminal proceedings against any person, the husband or wife of such person respectively shall be a competent witness.' Secondly, by the Indian Criminal Procedure Act, 1882, s. 342, it is enacted that 'for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of the inquiry or trial, without previously warning the accused, put such questions to him as the Court considers necessary, and shall for the purpose aforesaid question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.' It is added that 'the accused shall not render himself liable to punishment by refusing to answer such questions or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just;' that 'the answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into or trial for any other offence which such answers may tend to show that he has committed;' but that 'no oath shall be administered to the accused.' For arguments in favour of passing an Act to allow accused persons to testify, the reader may consult the *Law Magazine and Review* for 1858, vol. v. p. 101, and a paper by the late Mr. Pitt-Taylor, read at a meeting of the Society for Promoting the Amendment of the Law in 1861, from which it appears that Lord Brougham (the president of that society) brought in bills in 1858, 1859, and 1860 to allow accused persons to testify.

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It is stated in the course of a descriptive article in the *Times* on the 'Nomination of Sheriffs' that 'to secure their independence it is considered necessary that they should be possessed of a competent income from landed property in the county from which they are chosen, and, though there is no statutory qualification as to amount, it has generally been considered that they should at least have landed estate to the value of 600*l.* a year.' The exact words of section 4 of the Sheriffs Act, 1887, are that 'a person shall not be appointed sheriff except he have sufficient land within his county to answer [*sic*] the Queen and her people.' This very vague enactment is identical with that of the repealed 9 Ed. II. c. 10, st. 2, from which it is taken, and, whatever it may mean, is imperative (being couched in negative phrase) and not directory, as perhaps the somewhat similar provisions of section 12 of the Coroners Act, 1887 (see Law Journal for 1890, p. 166), may be.

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Those 'mystery men' of literature, the 'London Correspondents' of provincial newspapers, have been commenting on the fact of judges being now entitled to take their retiring pensions. Judges are notoriously long-lived, and when they retain their faculties unimpaired there is little cause for wonder or regret in their preferring to remain in harness. When, however, physical or mental infirmities have begun to interfere with the satisfactory performance of their judicial function, it is due both to themselves and to the public that their seats on the bench should be vacated and that front-rank men at the bar should be allowed to reach the legitimate goal of their ambition. It is probable, therefore, that the next few months may see several retirements and new appointments.

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Another fact (if it be a fact) which has exercised the minds and pens of the 'London Correspondents' is the very large number of Queen's Counsel who applied for the County Court judgeships recently filled up. There is, indeed, no room for doubt as to this rank in the profession being crowded, and it is a necessary result of the system that an unsuccessful Q.C. should be far worse off than a junior who is not a rising man. A County Court judgeship, with its certain 1,500*l.* a year, offers a comfortable, if not a brilliant, career for men already in the afternoon of life. But, so far at least as the last batch of appointments is concerned, the Q.C.'s were not in the race at all. The practical and utilitarian side of the subject is the one which the Lord Chancellor must regard, but the other side is, alas! too often a sad and pathetic one.

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That a man who was anxious and willing to do honest work, and had trudged the weary miles from Tonbridge to London in search of it, should nevertheless die of starvation in the richest city in the world, is a terribly severe criticism on the poor-laws of England. Mr. Wynne Baxter (the coroner) and the jury who sat on the inquest at Stepney on the 14th inst. felt and expressed themselves strongly on the sad occurrence, but were unable to indicate where the blame lay under the existing system. Most people will, however, agree with the coroner in saying, 'The whole poor-law principle was on its trial, and there must be some alteration made in order to enable it to deal with places having enormous and congested populations like London.' The sooner the remedy is found the better will it be for the credit of the poor-law officials and of common humanity.

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The dull decorum of the High Court was disturbed on Tuesday last by a military appellant in full uniform and wearing his sword. The officer in question holds strong views on the subject of costs, and his mode of addressing the judges who formed the Divisional Court was certainly unique. The antiquity of the story about the Scotch minister's sermon on the devil, with its three heads, may, perhaps, have destroyed some of its effect. At any rate its relation passed unrebuked;

but when a firm of solicitors were described as including a fox and 'a laughing jackass or the man-eating tiger of India,' the gallant appellant was very properly brought to book and reminded that he was 'a gentleman.' The answer given by one of the judges to the appellant's inquiry if he could go to Lord Justice Kay reads almost like a fourth head to the 'devil sermon'—'This is a free country; you may go where you like, and as soon as you like.' Perhaps the appellant has heard a report that Lord Justice Kay is not considered indulgent to solicitors and their bills. A repetition of the episode would hardly, however, be tolerated even by the most amiable of judges.

## A MARRIED WOMAN'S ADVANTAGES.

It was, perhaps, unavoidable while the Legislature was endeavouring piecemeal to relieve married women from disabilities with regard to property and the power of litigation, and to place them as far as possible, except politically, on the same level as their husbands, that some instances should occur in which the woman should be promoted to a condition of superior advantage to her spouse, and other instances in which the husband's burden survives the reason for its imposition.

The object of the Married Women's Property Acts was to free the married woman from disabilities entailed on her as between herself and her husband, not to alter the rights of third parties, except in points of adjective as distinguished from substantive law—*e.g.* in removing the obligation by which a married woman was bound to sue by her next friend. Thus she is not yet altogether a *feme sole* as regards the rest of the world, other than her husband; and the ecclesiastical doctrine imported into our law, where it became a fiction, that husband and wife are one person, still operates to the detriment of married persons in cases of gifts to a man, his wife, and a third party, where, in the absence of some indication of a contrary intention on the part of the grantor, the husband and wife take but one share between them instead of one-third each. To hold otherwise would be to prejudice the rights of the third person, which was not intended by the Acts.

There are certain particulars in which the position of a husband is distinctly inferior to that of his wife, and some of these I proceed to mention:—

1. A married woman is not personally liable for debt, though her separate estate is liable if at the time she contracted the debt she was possessed of separate estate, to bind which she could be deemed to have contracted, and if such estate were free from restraint on anticipation both at the time of contracting the debt and of execution; she cannot even be made bankrupt except in a few unimportant instances. If, therefore, she have no separate estate, the creditor is without a remedy unless the debt has been contracted by means of false pretences, when the criminal law steps in.

2. Upon marriage the husband becomes liable for his wife's ante-nuptial debts to the amount of her property acquired by him, though she is under no obligation with respect to his ante-nuptial debts, however large a property she may have acquired, marriage being a valuable consideration for a settlement, even as against creditors.

3. From the doctrine above referred to, that a husband and wife are one person, springs the liability of the husband for his wife's wrongs. Indeed, it is said that at common law a married woman cannot commit a wrong, but that actions and delinquencies for which she would have been liable, if single, are in law the torts of her husband (*Wainford* v. *Heyl* (1875), 44 Law J. Rep. Chanc. 567). This liability for a wife's wrongs remains to the full extent as regards those committed after the marriage, but with respect to ante-nuptial wrongs is limited by the amount of property derived from the wife. The wife may now be sued alone, and in such an action the husband cannot be made liable.

4. During the marriage a wife, who is justifiably living apart from her husband, may pledge his credit for 'necessaries' supplied, and for money advanced to buy 'necessaries,' a term which means 'reasonable expenses,' but he, although in poverty and whether living separate or not, may not pledge the credit of his wife without authority, however rich she be. He can, in fact, only obtain maintenance from his wife by means of the poor law, and then only by entering a workhouse and becoming chargeable to the parish rates.

5. A married woman deserted by her husband can obtain an order for maintenance by her husband to the extent of 2*l.* per week, on a summons in a police Court, unless guilty of uncondoned adultery (40 & 50 Vict. c. 52), and may also obtain a protection order, which has the same effect as a judicial separation (Divorce Act, 1857, s. 21). There are no similar provisions for the benefit of husbands.

6. By the Matrimonial Causes Act, 1878, if a husband has been convicted of an aggravated assault on his wife, the Court or magistrate may, if satisfied that the future safety of the wife is in peril, order that the wife be no longer bound to cohabit with her husband, an order which has the effect of judicial separation. The order may provide that the husband shall pay to the wife such weekly sum as is in accordance with his and her means, and that the legal custody of any children of the marriage under the age of ten years be given to the wife.

7. A husband is liable to the poor law for maintaining his wife's children, born before or after the marriage, and whether legitimate or not, while the wife is only liable to maintain her own children.

8. Even to the present day in some parishes the overseers insert the husband's name as ratepayer in respect of the property of his wife; and he thereby becomes liable to local burdens unless he takes steps to remove his name.

9. By the Slander of Women Act of this year, c. 51, words spoken and published imputing unchastity or adultery to any woman or girl no longer require special damage to render them actionable. It is difficult to see why the same relief was not given to men.

10. Generally speaking, a wife is, as regards the criminal law, in the position of a single woman, and responsible for her crimes to the same extent as an unmarried person. This rule is subject to the important exception that for criminal acts done in the presence of her husband she is presumed to have acted under his coercion in the absence of evidence to the contrary, and is held not guilty; an exception which does not apply to treason, murder, or misdemeanour. It is needless to remark that a husband is not so fortunate.

## SERVICE OUT OF THE JURISDICTION.—IV.

(*Continued from p.* 707.)

3. ORDER XI. is not, however, necessarily exhaustive as to service out of the jurisdiction *except in the case of actions* (*per* Mr. Justice Chitty in *In re Busfield*, 55, Law J. Rep. Chanc. 467; L. R. (1886) 32 Chanc. Div. 128) and it is established by innumerable decisions that the Court may and will order the service out of the jurisdiction of a mere *notice* to a third party that proceedings affecting his rights are pending within the jurisdiction. An examination of a few of these cases will clearly illustrate the principles on which this apparent exception to the general rule stated in last paper rests. (1) A. sued for goods in the possession of B. It appeared that C., a foreigner, residing out of the jurisdiction, claimed the right to the same goods, and would probably sue B. in respect of them. The Court (Baron Pollock and Mr. Justice Lopes) gave leave to B. to serve an interpleader summons on C. out of the jurisdiction. This decision was in accordance with the judgment of Lord Eldon in *Stevenson* v. *Anderson*, 2 V. & B. 407, and of Vice-Chancellor Wigram in *The East and West India Dock Company* v. *Littledale*, 7 Hare, 57, although opposed to a *dictum* of Baron Alderson in *Patorni* v. *Campbell*, 12 M. & W. 277, and it was justified by the Court on the following grounds: 'The Court, by making the order asked for, does not assert any present jurisdiction over (C.) or propose to compel him to submit to its process, but merely gives him notice of the proceedings which are being taken, so that, if after such notice he should decline to submit to the jurisdiction of the Court, and allow the rights as between the plaintiffs and defendant to be determined in his absence, and hereafter commence an action against the defendant in respect of the identical claim now made by the plaintiff, he may be barred from continuing proceedings which would be harassing upon the defendant, who would thereby be twice vexed for the same cause. If C. has a good claim, as he asserts, against the defendant he is *not* put in a worse position by prosecuting it now instead of waiting till the action of the defendant is determined (*Credits Gerundeuse* v. *Van Weede*, 53 Law J. Rep. Q. B. 142; L. R. (1884) 12 Q. B. Div. 171). (2) An order was made for winding up a limited company; an official liquidator was appointed; a list of contributories was carried into chambers, and of the persons included in it twenty-two were resident in Ireland or Scotland. It was held by the Court of Appeal, reversing the order of the chief clerk and of Mr. Justice North, that a notice under the General Order of November 11, 1862, r. 30, of *an appointment to settle the list of contributories* might be served on each of the persons out of the jurisdiction in the manner directed by rule 60. 'In the present case,' said Lord Justice Cotton, 'the notice is not intended to be the foundation of any proceedings against the persons on whom it is served. The official liquidator is only performing a duty cast upon him by the *Companies Acts* of giving certain information to persons whom it is proposed to place on the list of contributories;' and Lord Justice Lindley added: 'If notices of this kind could not be served abroad, it might in many cases be impossible to wind up a company at all' (*In re Nathan, Newman & Co.* 56 Law J. Rep. Chanc. 752; L. R. (1887) 35 Chanc. Div. 1). (3) But where it was sought to serve on persons residing out of the jurisdiction, *an order for a call*, with a view to found proceedings against them to compel payment, it was held that the Court had no jurisdiction to order such service (*In re The Anglo-African Steamship Company*, 55 Law J. Rep. Chanc. 579; L. R. (1886) 32 Chanc. Div. 348).

We do not propose to pursue this branch of the subject further for several reasons. In the first place, the decisions are conflicting; in the second place, service out of the jurisdiction in some at least of the cases that we have been considering can hardly be said to have been allowed *under Order XI.* In the last place, enough has been said to show the *ratio decidendi.*

4. Matters to which Order XI. does not *in terms* apply may be brought within its scope *by reference.*

The best illustration that we can give of this rule will be to trace shortly the history of the law as to the service of third-party notices out of the jurisdiction. In *The Swansea Shipping Company* v. *Duncan Fox & Co.* 45 Law J. Rep. Q. B. 638; L. R. (1876) 1 Q. B. Div. 644, an action had been brought against the defendants for breach of charterparty by which they agreed to discharge a cargo of nitrate of soda as fast as the custom of the port of discharge would allow. The defendants had sold at Liverpool to the British Agricultural Association, a company carrying on business in Scotland, the cargo to arrive, and it was shown that, by the custom of the trade, of which the company were aware, on such a sale of such a cargo the *buyers* would be bound to discharge in accordance with the custom of the port. The defendants applied, under Order XVI., rules 17 and 18, of the Judicature Rules, 1875, for an order citing the company to appear and take part in the trial. It was objected that the rule as to service of the notice to third persons did not apply to persons or corporations out of the jurisdiction, and that the soundness of this objection was clearly established by the fact that the person served with a third-party notice had to appear within eight days, which would be quite insufficient where the service had to be effected in a distant country. But the Master of the Rolls (Jessel) pointed out that the order giving leave to serve a notice out of the jurisdiction was 'to name such a time for appearance as the necessity of the case as to time and place' required, and held that, since, under Order XVI., service of a third-party notice was to be effected 'according to the rules as to service of writs of summons,' such notices were brought *by reference* within the purview of Order XI. *The Swansea Shipping Company* v. *Duncan Fox & Co.* was decided, as we have said, under the Rules of 1876, in which there was no exception to the service of writs out of the jurisdiction in favour of persons ordinarily resident in Scotland or Ireland, corresponding to that which is to be found in the Rules of 1883. In *Speller & Co.* v. *The Bristol Steam Navigation Company*, 53 Law J. Rep. Q. B. 322; L. R. (1884) 13 Q. B. Div. 96—a case decided after the Rules of 1883 had come into force—the defendants were sued for damages to the plaintiffs' goods while on board a vessel of the defendants on a certain voyage, by reason of the vessel being not seaworthy for the voyage, and they claimed to be entitled to issue a third-party notice under Order XVI., rule 48, on the person of whom they had hired the vessel with a warranty of seaworthiness, and to serve this notice upon such person in *Scotland*, where he was 'ordinarily resident,' on the ground that he was a necessary or proper party under Order XI., rule 1 (*g*). Mr. Justice Grove and Baron Huddleston held that the case was governed by *Lenders* v. *Anderson*, 53 Law J. Rep. Q. B. 104; L. R.

12 Q. B. Div. 50, and that Order XI., rule 1 (*g*) did not apply to service out of the jurisdiction of a third-party notice on a third party *domiciled or ordinarily resident in Scotland*, and the Court of appeal supported this decision, although on a different ground—viz. that as the defendants could neither claim contribution nor an indemnity from the person out of the jurisdiction, no third-party notice could be issued under Order XVI., rule 48 at all. It is obvious that there was nothing in this decision inconsistent with the principle affirmed in *The Swansea Shipping Company's Case*, but it gave rise to much uncertainty, and it was not until the decision of Mr. Justice Smith and Mr. Justice Day in *Dubout & Co.* v. *Macpherson*, 58 Law J. Rep. Q. B. 496; L. R. (1889) 23 Q. B. Div. 340, that the right to order service of a third-party notice out of the jurisdiction was clearly established.

(*To be continued.*)

# Reviews.

## SMITH ON THE LAW OF COMPANIES.

*A Summary of the Law of Companies.* By T. EUSTACE SMITH, of the Inner Temple, Barrister-at-Law. Fifth Edition. London: Stevens & Haynes. 1891.

THE author of this work tells us in the preface to his first edition, which is reprinted in the present edition, how his work came to be written. He felt, while reading as an articled clerk for the Final Examination of the Incorporated Law Society, the need of some small book to give the main principles of the law relating to joint-stock companies, more particularly as this important branch of mercantile law lies outside the scope of the text-books ordinarily used by students. The text-books on company's law, the author tells us, the student finds so large and the Companies Acts so long that he cannot gain even a general knowledge of the subject without devoting to it more time than he can safely spare from his other subjects. It was to meet this want that this volume was penned, and its considerable success in passing through several editions would seem to justify the venture. It is needless to say that the work has since then received considerable accretions, and last year there were three very important Acts dealing with joint-stock companies. The Companies (Winding-up) Act and the rules and forms thereunder are printed in the Appendix. The work may be recommended as giving a good sketch of this difficult branch of law.

## BRETT'S LEADING CASES.

*Leading Cases in Modern Equity.* By THOMAS BRETT, Barrister-at-Law. Second Edition. London: Wm. Clowes & Sons (Lim.). 1891.

STUDENTS of equity will welcome the new edition of this valuable collection of leading cases. The first edition appeared only four years ago, and the fact that another is now called for is sufficient proof that the book has met with the appreciation which we think it deserves. The object of the work, as explained in the preface to the first edition, is to illustrate, by means of leading cases, the doctrines of modern equity. The plan adopted is to give a selection of leading cases such as are best calculated to interest the reader, and impress the modern doctrines on the minds alike of students and practitioners, the cases dealing with the same class of subjects being to some extent grouped together. We think the selection of the cases is very good, and have nothing but praise for the manner in which the author states the principles and the facts of those cases; indeed, we are of opinion that the present race of reporters would do well to adopt a somewhat similar method in preference to that, which is too prevalent among them, of wrapping up the point of a decision in a mass of more or less unnecessary facts. On the other hand, it may be said that it is just such cases as Mr. Brett has selected that are capable of being concisely reported. The answer to that is, that unless the principle of a case can be clearly stated within a moderate compass it is rarely worth reporting at all. The notes are very full, and appear to be well brought down to date. The table of cases professes to give references to more than one series of Reports, but we are bound to say that this part of the work might have been more thoroughly done. One improvement we would suggest is that the dates of the leading cases should be given, there being nothing at present to guide the reader beyond a bare reference to one set of Reports.

## BEWES ON COPYRIGHT, PATENTS, &c.

*Copyright, Patents, Designs, Trade-marks, &c.: a Manual of Practical Law.* By WYNDHAM AUSTIS BEWES, LL.B., of Lincoln's Inn, Barrister-at-Law. London: Adam & Charles Black. 1891.

THE general idea of this handbook, which is to include in one volume all the principal legal monopolies depending on invention, is a good one, but whether the idea has been worked out in such a way as to be of much utility is another matter. The author pleads that he is writing 'under somewhat strict conditions a volume that is intended to be very concise, and, as far as the subjects permit, of a popular nature,' and that this renders it impossible to fulfil the requirements of every critic, or even of the author himself. The work is, we are afraid, too technical and minute for the general reader and, at the same time, not deep enough for the lawyer. Perhaps, however, readers who lie between these two classes may find it useful.

# Correspondence.

## MANORIAL FEES.

SIR,—Following up Mr. Lowndes's question in your issue of November 14, will any of your readers inform me whether the steward of a manor, who is not a solicitor, can charge any fees for admissions or surrender, and, if so, how those fees are regulated?

TENANT.

## NATIONAL UNIVERSITY EDUCATION.

SIR,—It is from our national universities that middle-class education throughout England should receive its impetus and encouragement. In origin, maintenance, and purpose, the mission of our universities has been—and should more fully become—to help forward the studious of all classes, and in all branches of study.

The universities of Bologna, Paris, Cambridge, and Oxford had one common origin—the combining together of poor students to live, lodge, and study in common as their limited means necessitated, at first in hostels, inns, or halls, which, being ultimately endowed with property and corporate privileges, became colleges. Kings, queens, and benevolent laymen united in fostering the efforts of these poor students. Subordinate corporations of students in any special branch of study were called 'faculties.' At all times the faculty of theology has been the most prominent, but it has existed side by side with other faculties—law, medicine, and music.

In this nineteenth century our public schools have found a 'modern side' to be imperatively necessary. The universities were in their early days but the development of the schools attached to monasteries and cathedrals. If they now held a similar relation to the public schools all would be well.

Degrees were originally but 'licences to teach,' at first within and ultimately (by authority of Pope Nicholas I.) beyond the precincts of the university. Why should not our national universities still be, in part, the training colleges of our secondary teachers?

Had the Cambridge senate voted the grace recently asked for, an advance in no way injurious to the theological faculty, but of incalculable advantage to middle-class education throughout England, would have been secured. Under present arrangements young men aspiring to commercial or professional pursuits are practically debarred from participating in the benefits originally intended for all willing and zealous students.

I do not advocate Parliamentary interference in this matter, but rather that the senate of each university should resolve (and that speedily) to act in accord with modern demands and requirements, the more so as the reforms needed are but few and very easy of adoption.

A public meeting, at which Lord Monkswell has consented to preside, will be held at Exeter Hall, Strand, on Monday evening, November 30, and at which I cordially invite the attendance of representatives of the professional and commercial classes—doctors, lawyers, bankers, manufacturers, and traders—from every town in England. Tickets will be forwarded on application to

JAMES HAYSMAN.

International University College,
Hampstead, London, N.W.

## REGISTRATION OF LAND.

SIR,—A case has recently come under my notice which has a strong likeness to *Pilcher* v. *Rawlins*, 41 Law J. Rep. Chanc. 485, and which illustrates the absolute necessity for the establishment of a register. A settlor, on his marriage, of an equity of redemption, through the supineness of the trustees in omitting to give notice to the mortgagee, has recently sold the property in consideration of a rentcharge, for which he obtained over 1,000*l.*, and used the money for his own purposes, he having first obtained a conveyance of the mortgaged property in fee simple. I admit that if the deed had not been registered, supposing it affected property in a register county, the results might have been the same, but the chances would be that, if it was the ordinary practice to register deeds, the practice would have been followed and the loss to the *cestui que trust* would have been avoided.

Of course, in making these remarks, I must not be taken to approve all the provisions of the late Registration Bill. One part was extremely objectionable.

November 13. B. G. W.

# Unreported Cases.

## COUNTY COURTS.

### A HUSBAND'S LIABILITY FOR HIS WIFE'S DEBTS.

JUDGE BACON, sitting in the Bloomsbury County Court on November 17, had before him the case of *Peter Robinson* v. *Skipper*. It was an action for the recovery of 17*l.* 8*s.* 9*d.*, for goods supplied to the wife of the defendant, who is a solicitor practising in London, and living at Bellevue, Southchurch, Southend. The principal item in the account was one of 14*l.* 3*s.* 6*d.* for a stuff dress. All the articles were supplied to the wife without any inquiries being made as to her means, and it was admitted that it was the common practice to give credit to married ladies on the supposition that they were authorised to pledge their husband's credit. For the defence it was said that Mr. Skipper allowed his wife a very liberal sum for housekeeping, and that he specially forbade her to pledge his credit. He paid one bill of over 60*l.*, and a second bill of 50*l.* to another large firm of drapers, under protest. He found out that his wife had been living very extravagantly. She was now separated from her husband, who had instituted proceedings against her for a divorce. Mr. Skipper knew nothing about this debt until the account was sent to him.—His Honour, in giving judgment, said it had been very solemnly laid down in the House of Lords that a wife, even though living at home with her husband, had no authority to pledge his credit if the husband told her she was not to do so; and if any tradesman trusted her he did it at his own risk. If a woman got credit and it was proved that the husband knew of it and did not warn the tradesman, that would be another thing. In this case he was of opinion that the plaintiff could not recover, and judgment would be for the defendant, but without costs.

### HOUSEHOLDERS AND PAVEMENT OBSTRUCTIONS.

An interesting case with respect to the liability of householders for obstruction on the pavement was heard on November 17 at the Marylebone County Court before his Honour Judge Stonor. Mrs. Emma Witt, a cook in service in Chilworth Street, Paddington, sued Mr. Edgar Romer, who lives in Gloucester Terrace, Paddington, for damages for injuries alleged to have been sustained in consequence of the defendant's negligence. The evidence showed that the defendant one evening in March gave a dinner party, and for the convenience of his guests he had a carpet laid from the front door to the kerb. The plaintiff was passing on her way to the post, and, not seeing the carpet, fell and injured one of her knees. She thought little of the injury, and a doctor was not called in for nearly a month, during which time she had been ineffectually nursing herself.—Mr. Chester Jones said that his client had had a light put outside the door, to be used when the carpet was laid down, and that light was in use on the evening when the plaintiff met with her accident. He contended, therefore, that the plaintiff might have seen the carpet, and was guilty of contributory negligence.—The judge told the jury that the light might serve for the convenience of the defendant's guests as well as for the benefit of passers-by, and he did not think the defendant had done enough to secure the safety of the public. It was not enough for him to put a light; he must have a person outside, whenever the car,

pet was put down, to warn passers-by. At the same time, the defendant was not liable for any additional injury the plaintiff might have sustained by neglecting to call in medical advice.—The jury found for the plaintiff, and assessed the damages at 20*l.* 5*s.*—Mr. Arthur Hutton appeared for the plaintiff, and Mr. Chester Jones represented the defendant.

## SOLICITORS' CASES.

On November 14, in the Queen's Bench Division, before Lord Coleridge and Mr. Justice Wright, *In the Matter of Joseph Dawler, a Solicitor, of Hull*, was the case of a solictor who, it was stated, was on July 18 last convicted at the Yorkshire Assizes of the conversion of a security for 1,000*l.*, and sentenced to seven years' penal servitude. Mr. Hollams, on behalf of the Incorporated Law Society, moved that the solicitor be struck off the roll.—Ordered accordingly.

*In the Matter of Arthur Watling, a Solicitor*, was the case of a solicitor of Coleman Street, in the City, who on July 25 had been convicted at the Central Criminal Court of forgery and sentenced to twelve months' imprisonment with hard labour.—Mr. Hollams, on the part of the Incorporated Law Society, made a similar application.—Ordered accordingly.

*In the Matter of Percy Lucas, a Solicitor*, was the case of a solicitor of Fenchurch Street, in the City, against whom the Venerable Albert Seymour, vicar of Chettlehampton, South Moulton, Devonshire, Archdeacon of Barnstaple, had made a charge that, having received for him the sum of 1,639*l.*, he had appropriated it to his own use. The Archdeacon was trustee under a settlement made on the marriage of a Mr. and a Mrs. Forster, and, as such, became entitled on Mr. Forster's death to receive a sum of 1,639*l.*, payable by the Clergy Mutual Assurance Society in respect of a policy effected upon Mr. Forster's life in that office. Mr. Forster died in September, 1890, and the Archdeacon then employed the solicitor to obtain payment of that sum. Having heard from the office of the society that the money had been paid, the Archdeacon called upon the solicitor on February 9 last, when he admitted that he had received the money from the society, but stated that it was on deposit, and gaining interest, and that he would invest it. Next day he wrote to the Archdeacon with a list of investments, one of which he had selected, and on February 13 the solicitor wrote to him that he would invest the money. Not hearing from the solicitor, the Archdeacon in March got his brother to see him, when he said he had instructed his broker to invest the money in the securities agreed upon. The brother saw the solicitor on more than one occasion in March. He made various excuses for his delay, and said he would send a cheque. Not having received the money or any securities, the Archdeacon caused an application to be made to the solicitor, who, however, had never paid the money. The report of the committee of the Law Society, who had inquired into the matter, stated that nothing further was heard of the solicitor, who on June 9 was adjudicated a bankrupt, the act of bankruptcy being that he had absconded with the intention to defeat or delay his creditors. The committee found that the charge was proved, and that the solicitor had been guilty of the professional misconduct alleged.—Mr. Hollams appeared for the Incorporated Law Society, and the report having been read, and the solicitor not appearing, Lord Coleridge said notice had been given and nothing had been heard of the solicitor. The act of professional misconduct imputed was gross, the sum was large. No excuse whatever was suggested, and under such circumstances the Court, in vindication of the character of its officers, must hold that such a person was unfit to remain upon its rolls, and therefore directed the name of the solicitor to be struck off.—Ordered accordingly.

## NISI PRIUS.

VENUE, LONDON CAUSES.

On November 14, at Guildhall, before Mr. Justice Wills and a common jury, the case of *Hill* v. *Morris* was heard. This case was of interest both from its peculiar circumstances and as illustrating a matter which has recently been much remarked upon—viz. the manner in which actions, of which the natural venue would be at the assizes in remote parts of the country, are brought up to be tried in the City of London. The action was for damages in respect of personal injuries sustained through the negligence of the defendant or his servants. The plaintiff is a lodging-house keeper at Weymouth, and the defendant is a draper in the same town. It appeared that in September, 1890, the plaintiff was passing the defendant's shop when some rolls of flannel, which were piled upon the pavement just outside the shop for exhibition, fell, striking the plaintiff and knocking her down. One of the rolls was produced in Court. It was about three feet long, and stated to weigh eight pounds. At first the plaintiff did not appear to have suffered any serious injury, but she gradually became worse, developing symptoms of hysteria and paralysis. She was brought into Court upon a couch, and in the course of her evidence, which she gave in an almost inaudible voice, she became unconscious and had to be carried out. According to the medical evidence, she was in a nervous and hysterical condition, and suffered from loss of memory, vomiting, frequent fainting fits, and paralysis of the left side. In the case of a naturally weak and hysterical temperament such results might be produced by a comparatively slight nervous shock, such as this accident. With proper treatment she might recover in twelve or eighteen months, but it was doubtful. Evidence was given that she was unable to attend to household duties, and had lost her former profits of 60*l.* or 70*l.* a year.—No evidence was called on behalf of the defendant, counsel merely addressing the jury in reduction of damages.—The learned judge, in summing up, said that it was an extraordinary case. From a very trivial accident—the mere tumbling of a roll of flannel—effects appeared to have resulted of the most serious nature, and the plaintiff had been reduced to her present deplorable condition. In estimating the damages, however, the jury ought to consider that this action might have been brought to trial six months ago at Dorchester Assizes, a course which would have spared the plaintiff fatigue and anxiety, and, as the doctors said, would have greatly promoted her recovery. This was a case in which the cause of action arose and both the parties resided at Weymouth, which was only eight miles from an assize town. No valid excuse had been made for bringing such an action to London nor for the long delay that had occurred.—The jury gave a verdict for 250*l.*—Mr. Justice Wills gave judgment for that amount, with such costs only as would have been payable had the case been tried at Dorchester Assizes.—Mr. M'Call, Q.C., and Mr. J. E. Bankes appeared for the plaintiff; Mr. Bullen and Mr. Salter for the defendant.

THE SITTINGS AT THE GUILDHALL. — The present sittings of the Law Courts at the Guildhall will conclude on Wednesday, November 25, and there will be no further actions tried there until the Hilary sittings in January.

## ORDER OF COURT.

Wednesday, November 18, 1891.

WHEREAS, Mr. Justice North and Mr. Justice Stirling have respectively requested Mr. Justice Chitty to hear and dispose of short causes and petitions in causes and matters assigned to them respectively which will be in the paper for hearing on Saturday, November 21, 1891; and whereas Mr. Justice North has requested Mr. Justice Kekewick to hear and dispose of summonses in chambers in causes and matters assigned to him, which will be in the paper on Monday, November 23, 1891; and whereas Mr. Justice Stirling has requested Mr. Justice Romer to hear and dispose of summonses in chambers in causes and matters assigned to him, which will be in the paper on Monday, November 23, 1891; now I, the Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, do hereby concur in such requests and also in any further requests which may be made under section 6 of the Supreme Court of Judicature Act, 1884, by the said Mr. Justice North and Mr. Justice Stirling respectively, during the present Michaelmas Sittings and do hereby order accordingly. And this order is to be drawn up by the registrar and set up in the several offices of the Chancery Division of the High Court of Justice. HALSBURY, *C.*

## CALLS TO THE BAR.

THE undermentioned gentlemen were called to the bar on November:—

*By the Honourable Society of Lincoln's Inn.*

Henry Smethurst Mundahl (studentship in Jurisprudence and Roman Civil Law, C.L.E., Hilary Term, 1890; Lincoln's Inn scholarship in International and Constitutional Law and Common Law, 1889), B.A. and LL.B., Cambridge.

Morgan Owen Evans (studentship in Jurisprudence and Roman Civil Law, C.L.E., Trinity Term, 1890), University of London.

John Westley Manning (studentship in Jurisprudence and Roman Civil Law, C.L E., Hilary Term, 1890; Lincoln's Inn scholarships in Real and Personal Property Law and Equity, 1890; and International and Constitutional Law and Common Law, 1891), University of London.

Norman Wise Sibley, B A. and LL.M., Cambridge.

John Ormerod Scarlett Thursby, B.A., Cambridge.

Walter Buckley Jones, B.A., Cambridge.

George Joseph Stokes, M.A., Dublin.

George Daniel Lynch.

Henry Wellington Vallance, B.A, Oxford.

Nicholas Francis Harvey Proud, of Trinity College, Dublin.

Allen Gordon M'Arthur, M.A., Cambridge.

Satis Chandra Mookerjee, of Queen's College, Oxford, and University of Calcutta.

George Turner Sills, B.A., Cambridge.

Sydney Roden Fothergill, M.A., Oxford.

Francis Drummond Percy, chaplain of University College, Oxford.

Clarence Armstrong Irvine Roberts, B.A., Cambridge.

Thomas Sydney Lea, B.A. and LL.B., Cambridge.

Ernest Emilius Bennett.

Harry Dobb, B.A., Cambridge.

Francis Arnold Hull Terrell.

Bomanjee Cowasjee, of the University of Calcutta.

*By the Honourable Society of the Inner Temple.*

William Howel Scratton, M.A., Cambridge.

Louis Amherst Selby-Bigge, M.A., Oxford.

Arthur Wellesley Sells, London.

Arthur Hope Montgomery, B.A., Oxford.

Manuel Ramon Menendez, LL.B., Cambridge.

Gilbert Marshall Prior, B.A., LL.B., Cambridge.

Cecil Vivian Barrington, B.A., LL.B., Cambridge.

Herman Joseph Cohen, B.A. Oxford, M.A. London.

William Cadwaladr Davies.

John William Fearnsides, B.A., Oxford.

Edward, Viscount Doneraile, B.A., Oxford

Henry Dyke Acland, B.A., Oxford.

Alfred Lionel Maddison, B.A., Cambridge.

John Harry Warton Pilcher, M.A., B.C.L., Oxford.

Daniel Stephens, B.A., Cambridge.

Thomas Frederic Dawson Miller, B.A., Oxford.

John Godfrey Baumbach, LL.B., Cambridge.

Arthur Louis Roger Gaddum, B.A., LL.B., Cambridge.

Mizra Fukendeen Hussan.

James Alexander Fraser, B.A., Cambridge.

Edgar Frederick Gladstone Truefitt, B.A., LL.B., Cambridge.

Reginald Harrison, B.A., Cambridge.

John Appleyard Dugdale.

Kenneth Lachlan Macdonald, B.A., Oxford.

Ernest Ruthven Sykes, B.A., Cambridge.

Herbert Hutchings Shepherd, B.A., Oxford.

Edward Hall Alderson, B.A., Oxford.

Hubert Lawrence Roper, B.A., Cambridge.

John Joseph Baldwin Young, B.A., Oxford.

Evan Alcock Nepean, B.A., Oxford.

James Marshall Easton, B.A., Oxford.

John Henry Jackson, B.A., Oxford.

Frederic Cuthbert Smith, London.

Charles Alexander Dick Melbourne, Cambridge.

Douglas Cole Bartley.

James Reginald Thomas, B.A., LL.B., Cambridge.

Frank Collins Richardson, Oxford.

Herbert Percy St. Gerrans.

Thomas Percy Cooke, B.A., Oxford.

*By the Honourable Society of the Middle Temple.*

William Harrison Moore, B.A., Cambridge University, LL.B. London University, 1st Class Honours, Scholar King's College, Cambridge, Roman Law Studentship, Council of Legal Education, Middle Temple International Law Scholar, Barstow Law Scholar, and George Long Prizeman.

John Hunt.

William Edward Lines, of King's College, London, Associate.

Richard Pike, Glasgow.

James Woulfe Flanagan, M.A., Oxon, of King's Inns, Dublin, Barrister-at-Law.

William James Peake Mason.

Francis Henry Fearon, B.A., LL.B., St. John's College, Cambridge, Honours in Law Tripos.

David Fulton.

Bulaki Kama.

Eugène Hugo Mallet, LL.B., King's College, Cambridge.

Hugh Morrison Rose, M.A., Edinburgh University, Scholar and Prizeman, and Durham University, First Class Middle Temple Common Law Scholar.

Shumpei Uyemura, LL.B., Imperial University, Tokio, Japan.

Mohamed Solaiman.

*By the Honourable Society of Gray's Inn.*

Arthur Edward Hughes, B.A., late scholar of Sidney Sussex College, Cambridge, of the County School, Bedford, senior mathematical master.

George Eugène Yarrow, M.D., Licentiate of the Royal College of Physicians, London, Medical Officer of Health for St. Luke, Middlesex, surgeon to the City of London Lying-in Hospital, of Oakley House, City Road.

## THE DAY CENSUS IN THE CITY.

UNDER the title of 'Ten Years' Growth of the City of London, 1881–1891,' the Corporation of London have just published an interesting volume recording the results of the day census of the City recently made by the Local Government and Taxation Committee. The day on which the census was taken was April 27, or about three weeks after the Imperial census. Three considerations showed the desirability of a day census. First, the returns as to the population of the City made under the Imperial enumeration were absolutely worthless as forming any indication of its commercial importance, for they convey the impression that the City was hopelessly on the wane. Thus, in 1861, the population of the City according to the Imperial census was 112,063; in 1871, 74,897; in 1881, 50,652; and in 1891, 37,694. The mercantile and commercial population as ascertained by the day census was found to be, in 1866, 170,133; in 1881, 261,061; and in 1891, 301,384. The difference in the two returns was due to the non-residential character of the City of London consequent upon the demand for business premises, the great value of City property, the unsatisfactory method of imposing the inhabited house duty, and the facilities for railway travelling. Secondly, the desirability of a day census was apparent for the reason that under the Imperial registration the City of London was placed in a disadvantageous position in regard to other cities and towns where the central business population and the surrounding residential population were embraced in one enumeration. Thirdly, the advantage of taking a day census had been recognised by the Imperial Registration Department itself. Only twenty-six people declined to furnish the information required, and of these information as to nineteen was supplied from other sources. The population was found to be 301,384—viz. employers, 29,520; male *employés*, 202,213; female *employés*, 50,416; and children under fifteen, 19,235. In twenty-four hours 1,186,094 persons and 92,372 vehicles entered the City. This day census placed the City at the head of the metropolitan constituencies as regards size, while it was put last in the Imperial census. It was greater than any of twenty-six counties in the kingdom. As regarded its ratable value, 3,872,088*l.*, which had increased by 336,594*l.* in the last ten years, the City was at the head of every place in the kingdom. The profits assessed to income-tax in the City were 70,018,707*l.* in 1890, as against 39,263,424*l.* ten years ago. These and other interesting figures are given in the report, which was compiled by Mr. James Salmon, the chairman of the committee.

## LAW STUDENTS' SOCIETIES.

DEBATING. — The ordinary weekly meeting of this society was held at the Law Institution, Chancery Lane, on Tuesday, November 17; Mr. Harcourt in the chair.—The subject for discussion, 'That the British occupation of Egypt is no longer justifiable or expedient,' was opened by Mr. Crawford.—Mr. Kinipple opposed.—The debate having been declared open, the following gentlemen spoke: In the affirmative, Messrs. Archer-White and Evershed; in the negative, Messrs. Baldwin, Watson, and Willson.—On the motion being put to the meeting, it was lost by a majority of fifteen.—The subject for discussion at the next meeting of the society on Tuesday, November 24, is: 'That the case of *Medawar* v. *The Grand Hotel Company*, L. R. (1891) 2 Q. B. 11, was wrongly decided.'

LIVERPOOL.—At a meeting of this association on Monday, November 16 (Mr. Alex. Wilson in the chair), a debate was held on the following subject for discussion: 'That sections 4 and 17 of the Statute of Frauds (29 Car. II. c. 3) be repealed.'—Mr. C. H. Rutherford opened in the affirmative, which was also supported by Messrs. Broadbridge and M'Master.—Mr. A. C. Thomas opened in the negative, which was also supported by Mr. Barnes.—The question was decided in the negative by the casting vote of the chairman.

## OBITUARY.

WE have to announce that Mr. THOMAS CURZON HANSARD died on Thursday, November 12, at Ashdown, Kingston-on-Thames. Mr. Hansard was born in 1813, he received a private education, and was called to the bar of the Temple in 1843. On the death of his father he undertook the editing of 'Hansard,' and, in conjunction with the late Mr. Cornelius Buck and his son, devoted upwards of half a century to the production of a national record, unrivalled in accuracy or in the number of its volumes, the popularity of which has resulted in our Colonies adopting the name for their Parliamentary records. 'Hansard' was for many years considered semi-official, and its extension was provided for by a grant-in-aid voted annually by Parliament, but this assistance attracted competition, and resulted in the very reluctant transfer of eighty-five years of labour to other hands. Mr. Hansard wrote the articles on Printing and Type-founding for the seventh edition of the 'Encyclopædia Britannica,' published in 1841, which were revised for the eighth edition in 1859.

THE NORTHERN CIRCUIT.—The following arrangements have been made by the judges (Mr. Justice Lawrance and Mr. Justice Collins) for holding the Winter Assizes on the Northern Circuit—viz. The commission will be opened at Carlisle on Friday, November 13; at Lancaster on Tuesday, November 17; at Manchester on Saturday, November 21, and at Liverpool on Thursday, December 3. Business will commence at each place on the day next after the commission day, at 11 o'clock. There will be no civil business at Carlisle or Lancaster, but at Manchester and Liverpool there will be both civil and criminal business. In pursuance of Order XXXVI., rule 22 (*b*), and by the leave of the judges going this circuit, causes for trial can now be entered with the associate at his office, Chapel Street, Preston, or at the district registries, during office hours at any time not later than 4 P.M. of the day next but one before the commission day. The trial of special jury causes will commence at Manchester on Wednesday, November 25, and at Liverpool on Monday, December 7.

UNITED LAW SOCIETY.—A meeting was held at the Inner Temple Lecture Hall on Monday, November 9, the subject for discussion being: 'That the case of *Medawar* v. *The Grand Hotel Company* was wrongly decided,' Mr. Green opened the debate, and was opposed by Mr. Browne, the other speakers being Messrs. Nesbitt, S. Williams, Atkin, Mallam, and Hawkins. The house being equally divided, the chairman gave his casting vote against the motion.——A meeting was held at the Inner Temple Lecture Hall on November 16.—Mr. Sinclair Cox moved: 'That this House disapproves of the proposal for payment of members of Parliament.'—Mr. Atkin opposed, and was followed by Messrs. Sapwell, M'Millan, Smith, Bagram, Lewis, Marcus, S. Williams, Le Maistre, and Hawkins.—The motion was carried by a majority of six.—The subject for the next debate (November 23) is: 'That the continued exclusion of the self-governing States of the Empire, other than Great Britain, from a direct share in the control of foreign affairs is an infraction of constitutional principle and a growing danger.'

## CALENDAR OF THE COUNTY COURTS.

FROM NOVEMBER 23 TO NOVEMBER 28.

| No. of Circuit | His Honour | Nov. 23 | Nov. 24 | Nov. 25 | Nov. 26 | Nov. 27 | Nov. 28 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Runcorn | — | Warrington | Birkenhead | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | Middlesbrough | Stockton-on-Tees | — | — | — | — |
| 16 | Judge Bedwell | Whitby | Goole | Selby | Malton | Driffield | — |
| 47 | Judge Bristowe | — | Lambeth | Greenwich | Lambeth | Lambeth | — |

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, LOPES, L.J., and KAY, L.J.

THURSDAY, NOVEMBER 12.

*North Wales Gold Exploration Company* v. *Seaver and others* (appeal of La Caisse des Mines from judgment of Cave, J., dated May 2, at trial in Middlesex).—Allowed.

*Metropolitan Railway Company* v. *Fowler and others* (appeal from order of Cave, J., and Williams, J., dated May 14, directing judgment for defendants in special case).—Part heard.

FRIDAY, NOVEMBER 13.

*In re N. B. Downing, ex parte J. Mardon* (appeal of J. Mardon, a creditor, from order of Mr. Registrar Hope, dated July 24, discharging warrant for arrest of debtor).—Dismissed.

*In re W. H. & F. Croaker, ex parte R. Ward & Sons* (appeal of R. Ward & Sons from order of Mr. Registrar Giffard, dated November 11, adjourning application for adjudication).—Order varied.

*Metropolitan Railway Company* v. *Fowler and others.*—*Cur. adv. vult.*

SATURDAY, NOVEMBER 14.

*Baumwell Manufactur Von Carl Scheibler* v. *R. L. Gilchrist & Co.* (appeal of defendant C. Furness from judgment of Charles, J., dated May 15, at trial without a jury in Middlesex).—Appeal allowed.

Before the MASTER OF THE ROLLS and FRY, L.J.

MONDAY, NOVEMBER 16.

*Golden* v. *Darlow* (appeal of plaintiff from order of Denman, J., and Williams, J., dated August 12, setting aside writ and subsequent proceedings).—Allowed.

*Hong Kong and Shanghai Banking Corporation* v. *Java Agency Company (Lim.)* (appeal of defendants from order of the Lord Chief Justice and Collins, J., affirming order giving liberty to defend on payment into Court or sign judgment).—Dismissed.

*Davis* v. *Billing* (appeal of plaintiff from order of Day, J., and Grantham, J., dated October 29, affirming refusal to strike out or amend defence as embarrassing under Order XXII., rule 1).—Allowed.

Before the MASTER OF THE ROLLS, LOPES, L.J., and KAY, L.J.

TUESDAY, NOVEMBER 17.

*Hedley (admix.)* v. *Pinkney & Sons SS. Company (Lim.)* (application of defendants for judgment on appeal from verdict and judgment, dated July 15, at trial before Grantham, J., and a special jury at Durham).—Granted.

WEDNESDAY, NOVEMBER 18.

*Rogers* v. *James* (application of plaintiffs for judgment or new trial on appeal from verdict and judgment, dated July 11, at trial before Mathew, J., with a special jury at Maidstone).—Dismissed.

*William Radam's Microbe Killer Company (Lim.)* v. *Leather* (application of plaintiffs for new writ of inquiry for assessment of damages on appeal from inquiry and assessment, dated July 7, before the Under-Sheriff with a jury in Middlesex).—Dismissed.

*Woodall* v. *Nuttall* (application of plaintiff for new trial on appeal from verdict and judgment, dated July 18, at trial before Wright, J., and a common jury at Manchester).—Dismissed.

*Ferrand* v. *Bingley Township District Local Board* (application of plaintiff for judgment or new trial on appeal from verdict and judgment, dated August 1, at trial before Day, J., with a special jury at Leeds).—Part heard.

## APPEAL COURT II.

Before LINDLEY, L.J., BOWEN, L.J., and FRY, L.J.

THURSDAY, NOVEMBER 12.

*Nuttall* v. *Hargreaves* (appeal of plaintiffs from judgment of Kekewich, J., dated May 6).—Dismissed.

FRIDAY, NOVEMBER 13.

*Holland* v. *Skidmore* (appeal of defendants from judgment of Kekewich, J., dated April 30).—*Cur. adv. vult.*

SATURDAY, NOVEMBER 14.

*Rugby Portland Cement Company* v. *Rugby and Newbould Cement Company (Lim.)* (appeal of plaintiffs from judgment of Williams, J. (sitting as an additional judge of the Chancery Division), dated May 4).—Dismissed.

*In re Queensland Mercantile and Agency Company (Lim.) and Co.'s Acts* (appeal of Union Bank of Australasia (Lim.) from order of North, J., dated January 14).—Part heard.

MONDAY, NOVEMBER 16.

*In re Cathcart.*—Part heard.

TUESDAY, NOVEMBER 17.

*Pirie & Sons (Lim.)* v. *Goodall & Sons. In re Pirie's Trade-mark, No.* 43,549, *and Patent, &c. Act,* 1883 (appeal of A. Pirie & Sons (Lim.) from order of Williams, J. (sitting as an additional judge of the Chancery Division), dated May 11, expunging trade-mark and dismissing petition).—Dismissed.

WEDNESDAY, NOVEMBER 18.

*In re Wilkinson, dec. Wilkinson* v. *Baird* (appeal of plaintiff from order of Romer, J. (for North, J.), dated July 27, refusing restraint of interference by executrix with real and personal estate left by testator in favour of plaintiff).—Dismissed.

*Automatic Weighing Machine Company* v. *National Exhibitions Association (Lim.)* (appeal of defendant W. H. Edwards from judgment of Williams, J. (sitting as additional judge of the Chancery Division), dated June 11).—Dismissed.

*In re James Casey (part proprietor of Patents, Nos.* 10,511 *and* 10,513, *granted to Stewart and Charlton). Ex parte Stewart and another (executors of Stewart, dec., and Charlton). Stewart* v. *Casey* (appeal of Stewart's executors and Charlton from orders of Romer, J., dated June 8).—Part heard.

## NOTICES FOR THE WEEK.

### Rota of Registrars.

Monday, November 23.—Court of Appeal No. 2: Mr. Godfrey. Mr. Justice Chitty: Mr. Farmer. Mr. Justice North: Mr. Lavie. Mr. Justice Stirling: Mr. Pugh. Mr. Justice Kekewich: Mr. Pemberton. Mr. Justice Romer: Mr. Clowes.

Tuesday, November 24.—Court of Appeal No. 2: Mr. Leach. Mr. Justice Chitty: Mr. Rolt. Mr. Justice North: Mr. Carrington. Mr. Justice Stirling: Mr. Beal. Mr. Justice Kekewich: Mr. Ward. Mr. Justice Romer: Mr. Jackson.

Wednesday, November 25.—Court of Appeal No. 2: Mr. Godfrey. Mr. Justice Chitty: Mr. Farmer. Mr. Justice North: Mr. Lavie. Mr. Justice Stirling: Mr. Pugh. Mr. Justice Kekewich: Mr. Pemberton. Mr. Justice Romer: Mr. Clowes.

Thursday, November 26.—Court of Appeal No. 2: Mr. Leach. Mr. Justice Chitty: Mr. Rolt. Mr. Justice North: Mr. Carrington. Mr. Justice Stirling: Mr. Beal. Mr. Justice Kekewich: Mr. Ward. Mr. Justice Romer: Mr. Jackson.

Friday, November 27.—Court of Appeal No. 2: Mr. Godfrey. Mr. Justice Chitty: Mr. Farmer. Mr. Justice North: Mr. Lavie. Mr. Justice Stirling: Mr. Pugh. Mr. Justice Kekewich: Mr. Pemberton. Mr. Justice Romer: Mr. Clowes.

Saturday, November 28.—Court of Appeal No. 2: Mr. Leach. Mr. Justice Chitty: Mr. Rolt. Mr. Justice North: Mr. Carrington. Mr. Justice Stirling: Mr. Beal. Mr. Justice Kekewich: Mr. Ward. Mr. Justice Romer: Mr. Jackson.

Sittings of the Divisional Court and its Business.—On November 16, in the Queen's Bench Division, before Lord Coleridge and Mr. Justice Wright, upon an application by counsel to reinstate a case, an appeal from Judges' Chambers, Lord Coleridge made the important announcement that the Court did not intend to allow arrears of such cases to accumulate, and that a Court to hear such cases would sit (in one or other of the Courts) up to the Christmas Vacation (December 21).

The Commissioner of Police and Slippery Streets.—At the meeting of the Marylebone Vestry, on November 12, a letter was read from Sir Edward Bradford, the Commissioner of Police, stating that orders would be issued to the police of the metropolis directing them to immediately telegraph to the local authority in the event of the roadway of any thoroughfare being found dangerous to traffic through the want of sand or gravel. The vestry clerk (Mr. W. H. Garbutt) was instructed to acknowledge the receipt of the commissioner's communication, and to express the vestry's satisfaction with the new regulation. The works committee, too, were authorised to arrange for the sanding and gravelling of roadways as necessity arose, and the order was made known to the vestry officials.

## BOOKS RECEIVED FOR REVIEW.

Indermaur's Principles of the Common Law. Sixth Edition. London: Stevens & Haynes. 1891.

Moore's Practical Forms of Agreements. Third Edition. By T. Lambert Mears, Barrister-at-Law. London: Wm. Clowes & Sons (Lim.). 1891.

Business of the Courts.—Mr. Justice Chitty, on taking his seat on Wednesday, November 18, made the following statement: 'Arrangements have been made for the disposal of parts of the business of Mr. Justice North and Mr. Justice Stirling until over Monday next, November 23.' The arrangements are as follows: 1. On Friday Mr. Justice Romer will take motions for Mr. Justice North and Mr. Justice Stirling. 2. On Saturday Mr. Justice Chitty will, in addition to his own list, take petitions and short causes for Mr. Justice North and Mr. Justice Stirling, but of opposed petitions only such as are urgent will be heard. 3. On Monday Mr. Justice Romer will sit in chambers for Mr. Justice Stirling, taking his list of summonses. And Mr. Justice Kekewich will, in addition to his own list of summonses, take such of Mr. Justice North's summonses as the chief clerks of that judge select as urgent, and place in the paper accordingly.

Inner Temple.—His Honour Judge Bristowe, the treasurer, and the Masters of the bench of the Inner Temple entertained at dinner, on November 18, being the Grand Day of Michaelmas Term, the following guests: Lord Macnaghten, Sir Michael Hicks-Beach, Lord Justice Kay, the Dean of Westminster, Sir R. W. Herbert, Sir P. H. Currie, Sir John Phear, Sir John Stainer, Sir A. Geikie, the Queen's Remembrancer, the Head Master of Harrow, Mr. Vicat Cole, Mr. A. Legros, Mr. E. Ray Lankester, the president of the Architectural Association, Mr. Lawrence, the sub-treasurer, and Mr. Pickering, the librarian. The benchers present were: Lord Bramwell, Mr. Forsyth, Q.C., Mr. Clerk, Q.C., Mr. Staveley Hill, Q.C., Mr. Pearson, Q.C., Mr. Marten, Q.C., Mr. Cohen, Q.C., Mr. Baylis, Q.C., Mr. Robinson, Q.C., Mr. Mellor, Q.C., Mr. Holl, Q.C., Lord Knutsford, Mr. Millar, Q.C., Mr. Graham, Mr. Cooper Willis, Q.C., Mr. Colt, Mr. Channell, Q.C., and Mr. Bayford, Q.C.

The Hansard Union and their Compositors.—Deputy-Judge Scott, sitting in the Westminster County Court on November 18, had before him an important trade question. There were two claims by compositors against Messrs. R. K. Burt (one of the Hansard Union's branches) to recover wages for the Sunday prior to last August Bank Holiday, when they did not work. They were engaged on the *Daily Oracle*, which was not published on the Bank Holiday.—Plaintiffs' counsel, Mr. Powell, said that the plaintiffs worked for the Hansard Union, and they refused to pay the two plaintiffs and forty-three other men for the Sunday night which was not worked. These two actions were brought to test the question as to whether defendants were not bound to pay for the Sunday night. His clients contended that it was the custom of the trade to pay for the Sunday night before the holiday if the paper did not come out. The *Daily Oracle* was one of the financial papers, and they were never published on the Bank Holiday. Defendants had given notice of defence, but at the last moment they paid the money into Court, and his application now was that, as this affected the whole of the compositors belonging to the trade, he should be allowed costs in both cases upon the scale between 10*l.* and 20*l.* The amounts claimed were both under 10*s.*—Messrs. Linklater opposed the application, but His Honour held that the question affected a body of persons, and gave the required certificate for costs between 10*l.* and 20*l.*

COMPANIES IN LIQUIDATION.—The following gentlemen have been selected by the Bar Committee to act with a committee to be appointed by the Incorporated Law Society to consider any questions that may arise with reference to the tribunal to which it is intended to assign the winding up of companies in liquidation—viz. Sir Henry James, Q.C., M.P., Mr. Robinson, Q.C., Mr. J. Forbes, Q.C., Mr. Cozens-Hardy, Q.C., M.P., Mr. Buckley, Q.C., Mr. Chadwyck-Healey, Q.C., and Mr. Joseph Walton.

MINERS AND SAFETY LAMPS.—Nearly 300 men employed at Malago Colliery, Bristol, came out on strike on November 12. An explosion recently occurred in the pit by which ten men lost their lives, and, in order to lessen the risk to the workers, the managers have since had safety lamps used. The men did not appreciate the change, however, urging that they could not do so much work with the safety lamp as under the old system, and they demanded an increase of 10 per cent. in wages by way of compensation. This was refused, and the men stopped work.

COUNCIL OF LEGAL EDUCATION.—The following appointments have been made by the council under the new scheme of instruction to students of the Inns of Court: Constitutional law and legal history—Reader, J. P. Wallis. Roman law and jurisprudence and international law (public and private)—Reader, W. A. Hunter; assistant-reader, J. E. C. Munro. The law of real and personal property and conveyancing—Reader, W. H. Elphinstone; assistant-reader, J. Gent. Common law—Reader, Edmund Robertson; assistant-reader, J. A. Hamilton. Equity—Reader, A. Hopkinson; assistant-reader, O. A. Saunders. Procedure (civil and criminal)—Reader, A. Henry.

GRAY'S INN.—Saturday being the Grand Day of Michaelmas Term, the treasurer (Mr. Arthur Beetham) and benchers of this honourable society entertained at dinner the following guests, namely: The Lord Chief Justice of England, Mr. Justice Collins, Sir Augustus Keppel Stephenson, K.C.B., Q.C., the treasurer of the Honourable Society of the Inner Temple (his Honour Judge Bristowe), Sir Eyre Massey Shaw, K.C.B., Colonel Cecil Russell, I.C.R.V., Mr. J. Forrest Fulton, M.P., Mr. Durston, R.N., Mr. A. H. Barber, Mr. Richard Dixon, and the Rev. Dr. Tremlett; and the Masters of the Bench present, in addition to the treasurer, were: Lord Watson, Mr. Henry Griffith, Mr. Hugh Shield, Q.C., Mr. W. Bowen Rowlands, Q.C., M.P., Mr. James Sheil, Mr. W. D. Jeremy, Mr. John Rose, Mr. E. H. Power, Mr. James Mulligan, Mr. Miles W. Mattinson, M.P., and Mr. J. C. Lewis Coward; and the Rev. the Preacher (J. H. Lupton).

GRAY'S INN MOOT SOCIETY.—A moot will be held in Gray's Inn Hall on Tuesday, November 24, at 7.30 P.M., before J. Lawson Walton, Esq., Q.C. Question: 'A. is the wife of B. A. resides in a house which is her separate property, and has refused to live with her husband, B., or to obey a decree for the restitution of conjugal rights obtained by B. B., against the will of A., effects an entry into A.'s house, and refuses to leave. A. and B. are respectively possessed (A. in her separate right) of property sufficient to maintain themselves. Is A. entitled to treat B. as a trespasser, and eject him from her house; or is she entitled to any relief in any proceedings she may institute against him, assuming that (1) B. has entered and remains in the house for the purpose of living with A. and exercising his conjugal rights, or (2) that he has entered and remains in the house merely for the purpose of residing therein without desiring the *consortium* of his wife?' All members of the Inns of Court are invited to attend. Any members of the Inns of Court willing to argue at the moots should write to the Hon. Secretary of the Gray's Inn Moot Society.

MIDDLE TEMPLE.—The benchers of the Middle Temple recently passed a resolution to increase their number from fifty-two to sixty-two, and accordingly ten additional benchers will shortly be added to the present number. Lord Justice Lindley has been elected treasurer of this Inn for the ensuing year, in succession to Lord Chief Justice Coleridge.

THE CITY TRAFFIC.—Official notification is given that an application has been received by the Local Government Board from the Corporation of the City of London for approval to certain bye-laws which the corporation has made, pursuant to sections 31 and 32 of the Highways and Locomotives (Amendment) Act, 1878, and section 41 of the Local Government Act, 1888, with respect to the use of locomotives within the City. Copies of the bye-laws can be inspected at the Town Clerk's office, Guildhall. The board notify that within a month they will proceed to consider the application, and that in the meantime they will receive any objections which may be made to it.

METROPOLITAN POLICE COURT DISTRICTS.—A circular letter has been addressed at the instance of the Home Office to the chief clerks of all the metropolitan Police Courts requesting statistics of the charges and summonses for some years past. It is understood that these returns are immediately called for in connection with some redistribution of districts scheme, there having been complaints from St. Pancras as to its want of Police Court accommodation. As there was the most determined opposition to, and strong local feeling against, the removal of any existing Courts when the matter was mooted some years ago, and since that time very large sums have been expended at many of the Courts in structural changes and increased cell and other accommodation for prisoners, &c., it is not considered at all likely that the authorities will do any more than utilise the existing buildings, the respective districts of which would be mapped out afresh. Mr. Montagu Williams and other experienced magistrates have recommended this to be done. Owing to the different classes of work at the various Courts—that at the East-end of London being very different from the West—too much reliance cannot be placed on statistical returns. Charges of drunkenness and police summonses against cabmen and omnibus drivers for trivial offences are disposed of by the dozen in a very short time, and at a Court in the midst of a very busy traffic centre they would enormously swell a return.

## BIRTHS.

On Nov. 13, at Shaftesbury Road, Ravenscourt Park, W., the wife of George E. Morrison, Barrister-at-Law, of a daughter.

On Nov. 13, at St. Andrew's Lodge, Southampton, the wife of Walter R. Lomer, Solicitor, of a son.

On Nov. 13, at 38 Craven Park, Harlesden, N.W., the wife of William Vincent, Solicitor, of a son.

On Nov. 13, at Roslyn, Campden Road, Croydon, the wife of R. F. Colam, of the Middle Temple, Barrister-at-Law, of a daughter.

## MARRIAGES.

On Oct. 18, at St. Andrew's Presbyterian Church, Gravesend, Samuel Robert Macartney, Solicitor, Gravesend, to Minnie, second daughter of Edward Casper Paine, of New Road, Gravesend.

On Oct. 21, at Christ Church, Herne Bay, Kent, Frederic Edward Wright, Solicitor, Westminster, eldest son of Frederic Robert Wright, Solicitor, East Dulwich, Surrey, to Mary Elizabeth, younger daughter of John James Wacher, of Herne Bay, Kent.

## DEATHS.

On Nov. 7, at his residence, Oxford Road, Birkdale, John Lynch, J.P., Solicitor, Liverpool, aged 65 years. R.I.P.

On Nov. 10, at Balahaul, Carmarthen, Thomas Lloyd-Edwardes, Solicitor, of Millfield, Lampeter, Cardiganshire, eldest son of the late Rev. T. Edwardes, Vicar of Llangeitho.

On Nov. 12, at 54 Avenue Road, Regent's Park, Mary, the wife of Joseph Brown, Esq., Q.C., in her 84th year.

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# The Law Journal.

*SATURDAY, NOVEMBER* 28, 1891.

## 'OBITER DICTA.'

Court of Appeal No. I. appears to be somewhat modifying its reputation for relentless hostility to applications for new trials. Last week, marvellous to state, one was even granted on the ground that the verdict was against the weight of evidence. But probably the case most worthy of note was *Fletcher* v. *The London and North-Western Railway Company*, in which Mr. Justice Wright had nonsuited the plaintiff on the opening statement of his counsel. It was not justifiable, in the view of that learned judge, that the public time should be wasted in testing the accuracy of counsel, and he was not going to try the case to see whether the opening might have been different. The Court of Appeal, without hesitation, laid down in the broadest terms the proposition that a judge has no power to nonsuit a plaintiff on his counsel's opening without his consent, and Lord Esher poked much fun at the junior occupant of the High Court bench, who appeared from the shorthand note to have talked much about saving time to the public and trouble to the Court of Appeal.

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Attention should be called to the reluctance expressed by the Court of Appeal to interfere with the discretion of the Court below in small matters of taxation. The point arose in the recent case of *In re Cheeseman*, 60 Law J. Rep. Chanc. 714, where Mr. Justice Kekewich, having directed taxation after payment of a small bill of costs amounting to a little over 40*l.*, under 6 & 7 Vict. c. 127, s. 41, the Court of Appeal, being unable to say that there were no special circumstances in the case, refused to interfere with the discretion conferred on the learned judge by the Act of Parliament. The case is of the more importance because Lord Justice Lindley was not sure that, had the case come before him in the first instance, he should have taken the same view as Mr. Justice Kekewich; while Lord Justice Bowen emphasises the fact that by the terms of section 41 taxation may be ordered after payment, not if the special circumstances shall require the same, but if, in the opinion of the judge, 'they shall appear to require the same.' In appeals of this nature, therefore, against a direction for taxation it seems that for the future the appellant, in order to succeed, will have to show that there were no special circumstances which in the reasonable exercise of judicial discretion could be held to require taxation. This rule, having regard to the language of section 41, seems to us a new but natural development of the principles laid down in *In re Norman*, 55 Law J. Rep. Q. B. 202, and *In re Boycott*, 55 Law J. Rep. Chanc. 835.

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In the recent case of *Camanada* v. *Hulton*, 60 Law J. Rep. M. C. 116, the legality of the prize coupon system as applied to horse races was brought before the Court, consisting of Mr. Justice Day and Mr. Justice Lawrance, who held on the case stated that there had been no offence against the provisions of the Betting Act of 1833, the Betting Act of 1874, or the Lottery Act of 1823. The weekly publication, which gave rise to these questions, is sold for 1*d.*, with a coupon attached in which six races to come are named. The purchaser, if he chooses, fills up the coupon with the names of the horses which he selects as winners and returns it to the office. A first prize is offered to the competitor naming six winners, and (in case of a general failure to select six winners) a second prize is offered to the competitor naming five winners, with a consolation prize (in case of a general failure to win the higher prizes) to the competitor naming four winners. One selection only is allowed in each race. It is obvious that, to a certain extent, the skill of the editor in selecting the races is matched against the skill of the competitors in selecting the horses; and, if we are to judge of the difficulty of the task set from the particular case stated for the Court's decision (from which we have taken the above facts), it is very considerable, since while no less than 27,000 coupons attached to the publication published on August 16, 1890, were filled

up and returned, not one competitor named six or even five winners, and one only was sufficiently lucky or skilful to select four winners. The Court, as we have stated, found that the system was neither a lottery nor a bet, but, as the law stands, a legitimate device to increase the sale of the periodical.

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THE recent decision in *Hornsby* v. *Raggett* (Notes of Cases, p. 147), convicting a publican of permitting his house to be used for the purpose of betting, contrary to the statute 16 & 17 Vict. c. 119 for the suppression of betting-houses, will remedy the hasty decision of a Divisional Court in *Whitehurst* v. *Fincher* in January of last year. Previously to that case convictions for breaches of the Act were readily obtained on the authority of *Eastwood* v. *Miller*, 43 Law J. Rep. M. C. 139, and *Haigh* v. *The Corporation of Sheffield*, 44 Law J. Rep. M. C. 17. In both these cases it was held that enclosed grounds used for pigeon-shooting and running matches were 'places' within the meaning of the Act, and their proprietors, who were cognisant that professional bettors were making bets within them upon the matches, were convicted of permitting them to be used contrary to the Act. In addition to these cases, in *Doggett* v. *Catterus*, 34 Law J. Rep. C. P. 159, a conviction under the Act was obtained against a person who had a betting-table under one of the trees in Hyde Park, and in *Bows* v. *Fenwick*, 43 Law J. Rep. M. C. 107, an umbrella stuck into the ground, and in *Galloway* v. *Maries*, 51 Law J. Rep. M. C. 53, a wooden box on which a betting-man stood, were both held to be 'places' occupied for the purpose of betting. *Snow* v. *Hill*, 54 Law J. Rep. M. C. 95, was the first case to break this current of authority, but there the person charged had no fixed location, and none of the *insignia* of the professional man, but merely moved freely about a reserved portion of a field, in which dog races were being held, making bets in the same way as any ordinary member of the public might do. Then in 1890 *Whitehurst* v. *Fincher* was decided, in which the defendant, who was not otherwise proved to be a professional bookmaker, went to the bar of a public-house on three consecutive days and there made bets with all comers on horse races. On these facts the Court held that, as the person charged had no interest in the house, and moved about it, and had no room or part of the house which he kept open for the purpose of betting, he could not be convicted. The erroneous character of this decision—for in view of the decision in *Hornsby* v. *Raggett* it must now be taken to be bad law—was apparently generally recognised by legal reporters, and the only report of the case we have been able to find is in 54 Justice of the Peace, 565. In *Hornsby* v. *Raggett* the facts were almost identical, except that the professional character of the bookmaker was made plain, and the Court, distinguishing the two cases on somewhat transparent grounds, held that it was unimportant whether any particular spot in the house had been used by the bookmaker, and convicted the publican. Neither *Snow* v. *Hill*, therefore, nor *Whitehurst* v. *Fincher* would now be likely to be followed in their entirety. As explained, they merely mean that whether an occupier of premises is charged with permitting their use for betting, or a betting-man with using them, it must be proved that professional betting is being carried on, and if the evidence is consistent with the idea that ordinary members of the public using a place for other purposes, such as refreshing themselves or witnessing a race, happen to bet there, no conviction can properly take place.

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THE plaintiff in *Beriro* v. *Thalheim* was somewhat late in the day in raising the point that an appeal would lie from the refusal of the learned Recorder of London to grant a new trial in the Mayor's Court. The appeal, if it existed, would be based on section 8 of the Mayor's Court Act (20 & 21 Vict. c. clvii.); but the words of the section are almost identical with those of section 14 of the County Courts Act, 1850 (13 & 14 ict. c. 61), and it was long ago finally settled (in *Carr* v. *Stringer*, E. B. & E. 123) that this section was not applicable to interlocutory proceedings. The truth is that now that the right of appeal from County Courts has been extended by the Acts of 1865 (28 & 29 Vict. c. 99) and 1888 (51 & 52 Vict. c. 43)—*Jonas* v. *Long*, 57 Law J. Rep. Q. B. 298; *How* v. *The London and North-Western Railway Company*, L. R. (1891) 2 Q. B. 496—there is some dissatisfaction that the right of appeal from the Mayor's Court should be more limited than from the County Court. The remedy, however, is not to be found in placing a strained interpretation on an old statute, but by procuring a new one. With reference to the particular case, it may further be pointed out that even under the extended powers of the new Act there is no appeal from the refusal of a County Court judge to grant a new trial, nor from his decision granting one if the ground be that the verdict was against the weight of evidence.

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THE Forged Transfers Act, 1891, provides that companies coming within that Act 'may impose such reasonable restrictions on the transfer of their shares, stock, or securities as they may consider requisite for guarding against losses arising from forgery.' Can companies impose any restrictions apart from this Act? We think not. In particular, it may be well to point out that the almost universal requirement of companies that signatures to transfer deeds should be witnessed is *primâ facie* quite outside the law. The Companies Clauses Act, 1845, gives a permissive form of transfer (schedule B.) which requires no witness whatever, while table A., which is scheduled to the Companies Act, 1862, gives a form, apparently not susceptible of variations, which also requires no witness. The requirement of a witness seems to be a reasonable one; but it is not a little curious that the public should have voluntarily submitted to it for so many years. We have some doubt, however, whether the companies, even with the protection of the Forged Transfers Act, would be within their right in declining to register a transfer on the ground that it was witnessed by the wife of one of the parties.

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IN *Regina* v. *Clutterbuck* the prisoner has been sentenced to four years' penal servitude for obtaining many thousands of pounds by false pretences within the meaning of section 88 of the Larceny Act, 1861. By this, as by many sections of that Act, the maximum sentence of penal servitude was fixed at three years, which term was raised to five years by the Penal Servitude Act,

1864, and again fixed by the recent Penal Servitude Act, 1891, at 'any period not less than three years, and not exceeding five years.' It would have been competent for the Court to give cumulative sentences of five years each for each of the offences proved, as was done in *Regina* v. *Castro, otherwise Orton, otherwise Sir Roger Tichborne, Baronet*, where there were two cumulative sentences of seven years' penal servitude, each for two perjuries committed with the same object. A peculiarity in *Regina* v. *Clutterbuck* consists in the counsel for the prosecution stating, no doubt from reliable instructions, but without calling evidence to prove them or being able to refer to the depositions, certain circumstances in aggravation of the prisoner's guilt. We do not think that this is a precedent which ought to be followed.

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In section 5 of the Elementary Education Act, 1891, which directed free education to be provided under certain circumstances after inquiry by the Education Department, as that Act was originally issued by the Queen's printers there appeared the following words:—

(which inquiry shall, on the request of the same persons as are entitled, under section 9 of the Elementary Education Act, 1870, to apply for a public inquiry, be a public inquiry if the district is under a School Board).

In the text of the Act as issued shortly afterwards these words were omitted, and there is no doubt that they had been inserted by mistake, arising, it is presumed, from a conflict between the two Houses of Parliament, the details of which will be found pretty fully stated in the Parliamentary Record, tit. 'Elementary Education Bill.' But how is it that the mistake could be corrected in the Queen's printers' text, and did not require a fresh Act of Parliament to correct it? Instances of statutory corrections of such clerical errors are by no means rare, the most recent being that of the correction effected by the Companies Clauses Consolidation Act, 1889 (52 & 53 Vict. c. 37), which swept away the words 'a member of' in 'line three of section two' of the Companies Clauses Consolidation Act, 1888, and went on to direct that 'in every copy' of the Act of 1888 'published by the Queen's printers after the passing of the Act of 1889,' those words should be omitted. Going further back, we find that in 1829 a factory bill passed the Commons and was agreed to by the Lords, with an amendment; but instead of being returned to the Commons, it was by mistake included in a commission, and received the royal assent. The amendment was afterwards agreed to by the Commons, but in order to remove all doubts an Act (10 Geo. IV. c. 63) was passed to declare that the original statute 'should be valid and effectual to all intents and purposes, as if the amendment made by the Lords had been agreed to by the Commons before the said Act received the royal assent.' (See May's 'Parliamentary Practice,' 9th edit. p. 602.) This is not a case quite on all-fours with the recent Education Act mistake, but it is sufficiently like it to make one wonder why the rule, that a mistake in a once officially printed Act can be corrected by Parliament alone, has been so signally departed from.

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An important point of patent law, that was expresly left open for further discussion by the Court of Appeal in *Vickers* v. *Siddell*, and which was dealt with only in the form of a *dictum* of Lord Halsbury in the same case in the House of Lords (60 Law J. Rep. Chanc. 105, 106; L. R. 15 App. Cas. 496, 499), was decided recently by the Court of Appeal in *Nuttall* v. *Hargreaves*. It may therefore be taken as now finally determined that, under the Patents, &c. Act, 1883, as under the former statutes regulating patents, it is an essential condition of a valid patent that the true nature of the invention should be described in the provisional specification; and that the invention so described in the provisional specification should be the same as that described in the complete specification.

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Section 5, subsection 3, of the Patents, &c. Act, 1883, enacts that 'a provisional specification must describe the nature of the invention and be accompanied by drawings, if required.' Section 26, subsection 3, of the same statute enacts that 'every ground on which a patent might, at the commencement of this Act, be repealed by *scire facias* shall be available by way of defence to an action of infringement, and shall also be a ground of revocation.' Before that Act the effect of a patentee not stating in his provisional specification the true nature of his invention, so as to identify it with the invention which he described in his complete specification, was to invalidate the patent (*Bailey* v. *Roberton*, L. R. 3 App. Cas. 1055). And, according to the decision of the Court of Appeal in the present case of *Nuttall* v. *Hargreaves*, there has been no change in the law. Lord Halsbury, in *Vickers* v. *Siddell* (*ubi sup.*), thought that subsection 3, section 26 preserved the conformity between the provisional specification and the complete specification as a ground upon which an action for the infringement of a patent right might be defended, and a ground upon which a patent might be revoked. That view was in no way dissented from by the other learned law lords, although they abstained from expressing a positive opinion on it.

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In *Nuttall* v. *Hargreaves* the patentee had obtained a patent for an improved method of tapping barrels containing beer, &c. He had, however, omitted from his provisional specification any reference to a certain wire-gauze strainer which, as a preventive of hops and impurities passing through the beer-tap, was the only novel part of his alleged invention and the only good subject-matter for a patent. The wire-gauze strainer was duly specified in the complete specification. That being so, the Court of Appeal, affirming the decision of Mr. Justice Kekewich, reluctantly came to the conclusion that the patent was invalid, upon the grounds that we have before stated.

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The public are asking, and have a right to ask, what steps have been taken to punish the gross perjury which, as the judge pointed out, was committed by either the plaintiff or defendant in the *cause célèbre*, *Evelyn* v. *Hurlbert*. The Solicitor-General, it was understood, would advise whether the Public Prosecutor should take the necessary steps, and we believe we are correct in saying that the papers have been before the Solicitor-General. Perjury is, unfortunately, only too common, but in this particular case public interest was so much aroused that it will be nothing less than a scandal if the perjurer goes unpunished.

In reference to the appointment of Welsh-speaking persons to offices in Wales, and the comments of Mr. Gladstone and Dean Vaughan thereon (see *ante*, p. 712), attention may be directed to three cases in which the Legislature has made efforts to secure such appointments. By the Coal Mines Regulation Act, 1887, s. 39, and by the Factory and Workshop Act, 1891, s. 23, it is expressly provided that 'in the appointment of inspectors' of mines and factories 'in Wales and Monmouthshire, among candidates, otherwise equally qualified, persons having a knowledge of the Welsh language shall be preferred;' section 11 of the Factory Act also providing that rules for regulation of each factory are to be posted up therein in Welsh as well as English in Wales or Monmouthshire. As regards religious instruction, much more has been done. It was at first provided by 6 & 7 Wm. IV. c. 77, that the Ecclesiastical Commissioners should prepare a scheme 'for preventing the appointment of any clergyman not fully conversant with the Welsh language to *certain* benefices with cure of souls in Wales,' but the enactment was repealed by 1 & 2 Vict. c. 38, with the view of enacting 'other provisions of more general and extensive application,' and it is now provided by section 104 of that Act that within the dioceses of St. Asaph, Bangor, Llandaff, and St. David's the bishop may 'refuse institution or license to any spiritual person who after due examination and inquiry shall be found unable to preach, administer the Sacraments, perform other pastoral duties, and converse in the Welsh language.' From the bishop's refusal the same section gives an appeal to the archbishop, but adds 'that nothing hereinbefore contained shall be construed to affect or abridge any rights which the inhabitants of any benefice within the said four Welsh dioceses may at present by law possess of entering a *caveat* against or objecting in due course of law to the institution, collation, or license of any spiritual person, or of proceeding to procure the deprivation of any such person.' It may be added that the Education Code has now for two years provided (see Art. 15) for the instruction in Welsh of scholars in schools in Wales.

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In the 'Echoes of the Week' column of the *Sunday Times*, George Augustus Sala recently made some very sensible remarks on the recent strong advocacy by the chairman of the Durham Quarter Sessions of the lash as a punishment for culprits convicted of assaults on women and girls. Mr. Sala as strongly deprecates any such reform of the law, and we quite agree with him. The danger of extortion by the 'Sapphira prosecutrix who tells all manner of lies in the witness-box,' and the danger of a repetition of the offence being caused by the peculiar punishment of flogging, combine, we think, to form sufficient arguments against any such alteration of the law as is desired at Durham. The flogging of grown-up men should be confined to cases of robbery with violence, which from its nature is the result of premeditation such as is rarely to be found in the case of assaults on women. It may be mentioned that by section 43 of 24 & 25 Vict. c. 100, which replaces 16 & 17 Vict. c. 30, the 'Act for the better prevention of aggravated assaults upon women and children,' express provision is made for dealing with assaults on women of so aggravated a nature that they cannot be sufficiently punished under the provisions of that Act, which relates to common assaults and batteries. For such assaults an offender may be imprisoned for six months, while, if he be a husband, his wife may, under the Matrimonial Causes Act, 1878 (41 Vict. c. 19), s. 4, obtain what is practically a judicial separation from the convicting justices.

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## THE MIDDLESEX REGISTRY ACT.

In an age of iconoclasm and consolidating Acts the famous statute 7 Anne, c. 20, which provided for the registration 'of deeds, conveyances, and wills, and other incumbrances which shall be made of, or that may effect any honors, manors, lands, tenements, or hereditaments within the county of Middlesex, after the twenty-ninth day of September, one thousand seven hundred and nine,' has had a long life. Even now it is not to be wholly demolished, though part of section 2, and sections 3 to 7, 11 to 14, 16, 19, 20, and 22 have been repealed by the Land Registry (Middlesex Deeds) Act, 1891, to which the Queen signified her assent on August 5 in this year. The object of this new statute is to transfer the Middlesex Registry of Deeds to the Land Registry, and to provide for the conduct of the business thereof. It is to be part of the Land Registry Office and be conducted by the registrar of that office. Rules can be made for the purpose of the Middlesex Registry under the Land Transfer Act, 1875, but so much of the provisions of that Act as requires regard to be had to the value of any land or charge in fixing fees shall not apply, and the charges of solicitors, which are regulated by the Solicitors' Remuneration Act, 1881, are not to be altered by any of those Rules (s. 2). Section 3 vests in the Crown all land, registers, books, and effects held or used at the commencement of the Act for the purposes of the Middlesex Registry, and directs that all moneys received on account of it shall be paid into the Exchequer. Under section 4 the Lord Chancellor, with the consent of the Treasury, may transfer to the Land Registry so many of the former *employés* of the Middlesex Registry who are necessary for the permanent organisation of the registry, and these shall be permanent civil servants, with the hopes of pensions in the future. The Treasury are also empowered, with the concurrence of the Lord Chancellor, to give pensions or gratuities to officials not transferred as aforesaid. The registrar, unless the mortgagee named in the mortgage, his executors or administrators, applies to him, need not note on the register the discharge of a mortgage, except by registering a memorial of the instrument of discharge. Judgments, statutes, and recognisances will be valid without memorials of them being registered under the Act of Queen Anne. The Act does not come immediately into operation, but has to wait until the first day of April, 1892. In schedule 1 are contained regulations which, subject to any rules made under section 2, are to be observed in the Middlesex Registry. Under section 5 of the Act of 1708 the memorial was to be put into writing 'in vellum or parchment;' by the first of the new regulations it is to be 'on paper of a size and quality to be prescribed by the registrar.' One witness will now suffice instead of two as formerly. It may be remembered that *Regina* v. *Lord Truro*, 57 Law J. Rep. Q. B. 577; L. R. 21 Q. B. Div. 555, decided that the witness to the execution of the deed, who was also to witness the signing and sealing of the memorial, might be a witness to the execution by the grantee. In some cases under the new

regulations the witness to the memorial need not have been a witness to the deed at all, as the words are: 'Such witness where practicable to be a witness to the execution of such deed.' In the older Act the words 'where practicable' were not inserted. Regulation 3 provides that the memorial of a will 'shall be under the hand and seal of some or one of the devisees, his or their heirs, executors, or administrators, guardians, or trustees, attested by one witness, who shall upon his oath prove the signing and sealing of such memorial.' In the Act of Anne the heirs of the devisees were not mentioned, although they would, on an intestacy of a devisee, naturally be the persons most interested. Probably the omission was *per incuriam*. The new provisions show a similar caution to that referred to before when they do not prescribe categorically that the abodes of the witnesses to the deed or will are to be contained in the memorial, but again insert the saving words 'where practicable.' Where there are more writings than one for perfecting a conveyance or sale affecting the same property, the parcels need be set out only once (rule 9). This is substantially a re-enactment of the provisions of the earlier Act (s. 7). The memorial is itself to be registered, and the filed memorials, arranged in volumes conveniently for reference, are to form the registers. In the Act of 1708 provision was made for searches made by the registrar; this is now simplified, and it is provided in regulation 11 that 'the registrar, as often as is required, shall make searches concerning all memorials in the registry, and give certificates concerning the same, if required.'

The registrar is to have power to make a consolidated index from the lexicographical one, and when made such index is to take the place of the old indexes for the period which it covers (rule 13). Regulation 14 may perhaps encourage the registration of possessory titles under the Land Transfer Act, 1875. In effect it permits a person claiming under an instrument that could be registered in the Middlesex Registry, and which entitles him to apply for registration with a possessory title under the Act of 1875, at his option to register the memorial or register the land with a possessory title. If the land is registered in the latter form, no registration of the memorial will be necessary, and the fee payable will be only that payable under the Land Transfer Act, and a purchaser who applies will have no declaration as to possession to make. Allowance for this fee will be made if an absolute title is afterwards obtained.

Such is a short sketch of the Act and the regulations which will be in force, until the authorities think that some further directions are necessary, or that some improvements, not yet to be predicted, can be made. The rule-making authorities, as prescribed by the Act of 1875, are, in respect of the general rules, the Lord Chancellor and the Registrar; in respect of the amount of fees payable, the Lord Chancellor and the Commissioners of the Treasury (ss. 111, 112).

## SERVICE OUT OF THE JURISDICTION.—V.

(*Continued from p.* 723.)

Before proceeding to consider the clauses (*a*) to (*g*) of Order XI., rule 1, we shall deal very briefly with the *discretion* of the Court as to ordering, or refusing to order, service out of the jurisdiction.

'Order XI.,' said Lord Justice Lindley, in *La Société Générale de Paris* v. *Dreyfus Brothers*, 57 Law J. Rep. Chanc. 276; L. R. (1887) 37 Chanc. Div. 225, which is the *locus classicus* on this subject, 'enumerates certain circumstances under which, and which alone, the Court can give leave to serve writs out of the jurisdiction. It does not say that when those circumstances occur the Court is bound to give leave. On the contrary, the language is that service out of the jurisdiction "may be allowed by the Court or a judge" in certain specified events. This shows that the Court has a discretion, and is bound to exercise its discretion. This becomes still plainer* by turning to rule 2, which states certain matters which the Court is bound to have regard to when it is asked for leave to serve a writ in Ireland or Scotland. It is not that you are entitled to have leave simply because you bring your case within one or other of the eleven rules of Order XI. You cannot get the leave unless you do so; but it does not follow if you do you are to have the leave. The Court has a discretion, and that discretion must of course be exercised judicially and upon proper grounds. . . . The Court must look at the plaintiff's case, and see whether he has a probable cause of action.'

*Illustrations.*—1. S. and D. entered into a French contract, being French subjects resident in Paris, for the participation of profits in a certain adventure, and their rights under that contract depended upon French law alone. D. sued the P. Company in England, and the sum of 200,000*l.*, being the proceeds of the adventure in question, was paid into Court to the credit of that action. This fund was the subject of litigation between S. and D. in France, and the French Courts decided that D. was entitled to the control of it, under liability, however, to account to S. S. thereupon brought an action in this country asking for an injunction to restrain D. from receiving or dealing with the fund in Court, and applied for leave to serve the writ on D. in France. It was held by the Court of Appeal that, the French Courts having decided that D. was entitled to the control of the fund, leave to serve the writ ought not to be given (*La Société Générale de Paris* v. *Dreyfus Brothers*, *ubi sup.*). The points deserving notice in this case are these: (*a*) the contract was French; (*b*) the French Courts had delivered a clear and final judgment on the law applicable to its interpretation; (*c*) the plaintiffs succeeded in bringing their application within Order XI.—they were claiming an injunction as to something to be done within the jurisdiction (rule 1 (*f*)); and yet the Court of Appeal, in the exercise of its discretion, refused to allow service. In the course of his judgment, Lord Justice Lindley said: 'I do not think the Court ought to look into *the defence* as distinguished from the plaintiff's case' in dealing with applications under this order. These words might possibly be construed into meaning that if the plaintiff's case was *primâ facie* satisfactory, the Court would not consider any adverse light that the defendant might be able to throw upon it. But it is clear from the course adopted by the Court of Appeal in the *Société Générale's* English case that this cannot have been their lordships' meaning. The judgment of Lord Justice Lopes is perfectly explicit upon the point. 'If a *primâ facie* case is made on the affidavits that there is a cause of action within Order XI. and the rules of that

* So, too, the fact that an applicant for leave to serve a writ out of the jurisdiction has to make an affidavit stating his belief that he has a good cause of action, shows that the Court ought to consider whether there is a probable cause of action before giving the leave asked for.

Order, the Court, in its discretion, permits the service. If, on the other hand, no such case is made out, *or if it is shown by the party on whom service is sought to be effected that there is a clear and complete defence*, the Court, in its discretion, does not grant but refuses such service.'

2. A., an Englishman residing in Paris, sued B., a German, also resident in Paris, upon a bill of exchange accepted in France, but *payable in England*. A. had already sued and obtained judgment against B. on this bill in France, but there were grave doubts as to the effect and validity of this judgment. It was held by the Court of Appeal that leave to A. to serve B. out of the jurisdiction ought to be given (*Call* v. *Oppenheim* (1884) 1 Times Rep. 623). The points of difference between this and the preceding case are obvious. Here the question at issue was one of English law; the decision of the French Court was not free from doubt both as to its meaning and as to its soundness; and the supreme tribunal in France had not pronounced judgment upon the matter at all.

We pass on now to the consideration of the various clauses of Order XI. rule 1.

(*a*) 'The whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits).'

(*b*) 'Any Act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within the jurisdiction is sought to be construed, rectified, set aside, or enforced in the action.'

These clauses may conveniently be considered together. The first seems to refer, and is probably limited to, actions in the nature of ejectment when the land of which the property or possession or *status* is disputed is English land (*Agnew* v. *Usher*, 54 Law J. Rep. Q. B. 371; L. R. (1884) 14 Q. B. Div. 79, per Chief Justice Coleridge), and forms the whole subject-matter of the action. Such a case as *Agnew* v. *Usher*, which was simply an action for the recovery of rent, could not possibly have been brought within this clause. Clause 2 refers to any legal proceedings whereby English land is to be 'affected,' provided that the instrument or obligation affecting such land is sought to be construed, rectified, set aside, or enforced *in the action*.

*Illustrations.*—1. A. brings an action for arrears of rent against B., a domiciled Scotchman, assignee by way of mortgage of certain leasehold property in England. B. alleged that he had never signed nor accepted the assignment nor entered into possession. It was held by the Divisional Court that a contract to pay rent fell within clause (*e*), but not within clause (*b*) of Order XI., and that as B. was domiciled in Scotland, service out of the jurisdiction could not be ordered. The judgment of Lord Coleridge in this case turned on the view that it was clearly within the mischief which the proviso in clause (*e*) was intended to check—viz. a Scotchman, domiciled or ordinarily resident in Scotland, being made liable personally on an English contract. Mr. Justice Smith, however, founded his judgment on this, that the words 'sought to be enforced' mean 'specifically performed' (*Agnew* v. *Usher*, *ubi sup.*).

2. In an action by the outgoing tenant of a farm in Yorkshire to recover from his landlord, who was ordinarily resident in Scotland, compensation for tenant right *according to the custom of the country*, it was held by Mr. Justice Stephen and Mr. Justice Charles that there was 'a contract, obligation, or liability affecting land' (*Kaye* v. *Sutherland*, 57 Law J. Rep. Q. B. 68; L. R. (1887) 20 Q. B. Div. 147).

3. A. sued B. for slander of title to English property uttered in Ireland. What is here affected directly is not the property, but the minds of intending purchasers, and clause (*b*) does not apply (*Casey* v. *Arnott*, L. R. (1876) 2 C. P. Div. 24).

(*To be continued.*)

# Correspondence.

## MANORIAL FEES.

SIR,—In reply to the letter of your correspondent 'Tenant,' I may mention that two or three years ago I raised the same point with regard to a charge made for preparing surrender and admittance in a manor, where neither the steward nor deputy-steward were solicitors. The deputy-steward rendered his account in the name of the steward, and claimed payment of his charges for drawing the surrender, &c., under 'custom.' My point was that the deputy-steward had brought himself within the provision of section 60 of the Stamp Act, 1870, as 'preparing an instrument relating to real estate in expectation of a fee or reward.' I ultimately laid the correspondence before the Council of the Incorporated Law Society, who were of opinion that the deputy-steward was right. The wording of section 60 of the Stamp Act, 1870, is very clear, and I still fail to see how it can be overridden by custom.

A. H. DICKINSON.

Bank Chambers, Mosley Street,
Newcastle-on-Tyne: November 23.

## CLAIMS FOR ARREARS OF INCOME-TAX.

SIR,—A short time ago you published a letter from us on the illegal demands made by the Inland Revenue for back duty, more especially in regard to the estate of deceased persons, executors being frequently the victims of such demands. We have resisted these claims of the Inland Revenue, and have been successful in every case. In one instance we were actually able to get back a sum of money thus illegally obtained by the surveyor of taxes under false pretences. In regard to executors, we would inform them that no claim upon a deceased person's estate can be made under any circumstances after four months have elapsed after the expiration of the year of assessment. Thus, should a person die before April 5 in any given year, no claim can be made upon the executors for that year after August 5. This knowledge is the more important as we have had numerous cases in which surveyors of taxes have made application for income-tax for any number of years up to ten.

A. CHAPMAN & Co.

Income-tax Repayment Agency,
25 Colville Terrace, W.

COMMERCIAL FAILURES.—According to *Kemp's Mercantile Gazette*, the number of failures in England and Wales gazetted during the week ending November 21 was eighty-two. The number in the corresponding week of last year was eighty-seven, showing a decrease of five, being a net increase in 1891 to date of ninety-one.

## LAW AND PROFESSIONAL NOTES.

By T. F. UTTLEY, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### CORPORATION BYE-LAWS.

TOWN CLERKS should take heed to their bye-laws and see that they are correctly framed consonant to the intentions of the promoters, and also that, when persons are summoned, the obligations imposed by the bye-laws are fulfilled. Quite recently, in Manchester, an omnibus conductor was charged with touting for passengers in the public streets contrary to the corporation bye-law. A constable proved that the conductor was calling out loudly, 'This way for the football match' and other cries, and, when asked to cease by the officer, refused. The defendant's advocate submitted that there was no case. The bye-law under which the summons had been issued, said that: 'No owner, driver, or conductor of an omnibus shall tout for or importune persons to enter his omnibus to the annoyance of any such person or persons.' The correct reading of this bye-law, it was urged, was that no offence could be committed unless some person complained that he had been annoyed by the shouting. Here that had not been done, and the case ought to be dismissed. The magistrates took that view and discharged the defendant, holding that the police ought to have brought forward some one who had been annoyed by the shouting. A curious fact in connection with corporation bye-laws came out in connection with the sittings of the Labour Commission on the factory question, when witnesses on the textile and non-textile industries were being heard. It was then stated in the Bradford evidence that the factory laws do not apply to wool-sorting, the only regulations affecting the trade being those contained in the borough bye-laws. It is somewhat remarkable that such an important trade as this should be independent of statutory provisions.

### COSTS UNDER THE TITHES ACT.

In what is known as the *Llanarmon Tithe Case* judgment was delivered by the judge of the Ruthin County Court in favour of the vicar, an order being made appointing a receiver, which was, however, suspended for fourteen days. To the legal profession, an important point in connection with this decision is the question of costs, to which the defendant's solicitor has called attention in the Welsh press thus: 'In giving judgment, his Honour stated that the rules under the new Tithe Act did not empower him to grant costs except upon the ordinary or lower County Court scale. The result of this decision is of the utmost importance to tithe-payers and tithe-owners. It practically means that, in all cases under 2*l.*, the applicant can only obtain his mileage and an allowance for any necessary witnesses. No solicitor's or counsel's fees whatsoever can be recovered from the tithe-payer. Further, in all cases under 10*l.*, the fees allowed to solicitors appearing on behalf of a party to an action are very trivial, and will be considerably less than the legal costs which the tithe-owner will have to pay if he employs a solicitor to conduct his case.' Tithe-owners, if these statements are correct, will, of course, see to it that the matter is speedily remedied, and that the Tithe Act is made a 'Protection Act' in every respect.

### THE CORRUPT PRACTICES ACT AGAIN.

In these notes recently reference was made to the Salford gas affairs, and the attempt at the Central Criminal Court to found a charge of bribery. The jury did not agree. Since then a new trial has been held, and the Recorder, in summing up the case to the jury, pointed out that the meaning of the statute was that the offer of a bribe must be made corruptly—that was, improperly with an improper motive. If, therefore, the jury thought the offer of the bribe was made for the purpose of influencing the gas manager in favour of the tender that the defendant was about to make, they should conclude that that was an improper motive. It was agreed that whatever was offered by the defendant was offered as a recognition of services rendered by the gas manager in the past, but it might be very possible for any one to conclude that, even if past services were considered, the defendant had an eye as well to the future; and, if that was the case, the corrupt motive was present all the same. It was, in fact, a question of the motive entirely. Ultimately the jury announced that they were of opinion that the contents of the envelope offered to the gas manager by the defendant were in recognition of past kindnesses and not intended to influence him in any future thing he was about to do, and there was no corrupt motive. This was, therefore, a verdict of acquittal.

### FACTORY ACT LEGISLATION.

The custom of the Cobden Club in offering an annual prize for the best essay on some commercial or industrial topic is well known. This year the prize was offered for an essay on 'Factory Act Legislation: its Industrial and Commercial Effects, Actual and Prospective,' and the winner is a lady, Miss Victorine Jeans. Mr. T. Fisher Unwin has published the essay in a handy, tasteful book of ninety-six pages, and those who are interested in the subject should make a point of perusing the work. An historical sketch of early legislation is given, and then its effects on the textile industries and non-textile industries. Then the prospective effects of newly proposed changes is discussed, and it is suggested that the scope of legislation ought to include: (1) Labour in 'domestic' industries; (2) 'Services' of railway and tramways officials, &c.; (3) Labour in workshops where men only are employed. A change ought also be made in stringency—*e.g.* (1) Raising of maximum age of half-timers; (2) further reduction of hours. Miss Jeans has written a most readable little essay. She does not approve of the handing over of workshops to the care of local sanitary authorities, instead of leaving them under the management of Government inspectors. Without special knowledge of the practical administration of the Factory Acts and of the particular exigencies of the present time, it is, of course, impossible to speak with anything like confidence on a point like this, but what we do know is that the result of leaving the Workshop Act of 1867 to the local authorities was simply that it became a dead letter.

### THE MARRIAGE LAWS OF AMERICA.

It is averred that great confusion exists among the various marriage laws of the United States. That is so if one may judge by a recent decision of the Supreme Court of the State of South Carolina. It appears, according to the New York papers, that a Mr. Peoples married in South Carolina, his wife being then, and having been ever since, a resident of that State, which has the distinction of being the only one where divorce is absolutely unobtainable. The husband had moved to Florida, secured a divorce there, married, and finally died. His second marriage being valid where it was contracted would be generally recognised by the Courts of other countries, but the judges of the State where the first marriage was performed declined to take that view. Mr. Peoples, by marrying in South Carolina, is declared to have entered into a contract with that State as well as his wife, and by the laws of South Carolina the marriage is indissoluble. The children by the second marriage are therefore put out of court as illegitimate, and they cannot inherit property left by their father in South Carolina. It is pointed out that the number of husbands, wives, and children whose status is doubtful and changes when they

cross State boundary lines is constantly increasing. All this could be much improved on by the promulgation of a Federal divorce law if the legislators from the different States could be got to agree on a universal basis.

THE MANCHESTER ASSIZES.

Mr. Justice Collins, in his charge to the grand jury, expressed his pleasure at the lightness of the calendar. He pointed out that there was a serious class of crime with which the jury were no doubt familiar—cases arising under the Criminal Law Amendment Act. He need hardly tell gentlemen of their experience that in dealing with charges of that kind, depending as they must do upon the evidence of children to a great extent, and involving very grave charges, the evidence must be scrutinised with some care.

## GENERAL RULES MADE PURSUANT TO THE BANKRUPTCY ACTS, 1883 AND 1890.

DISCHARGE.

1. An order of discharge of a bankrupt, subject to conditions as to his earnings, after acquired property, and income shall be in the form No. 1, and an order of discharge subject to a condition requiring the bankrupt to consent to judgment being entered against him for the balance or part of the balance of the debts provable in the bankruptcy shall be in form No. 2 in the appendix, with such variations as circumstances may require.

The said forms Nos. 1 and 2 may be cited with reference to the forms appended to the Bankruptcy Rules, 1886 and 1890, as Nos. 63 and 63A, and form No. 63 shall no longer be used.

2. An order for substituted service of a petition shall be in the form No. 3 in the appendix, which may be cited with reference to the forms appended to the Bankruptcy Rules, 1886 and 1890, as No. 16A, and shall be substituted for No. 16A of the said forms.

3. These rules shall come into operation on January 1, 1892. HALSBURY, *C.*

I concur,
M. E. HICKS-BEACH,
President of the Board of Trade.

November 23, 1891.

No. 1 [63].

Order of Discharge subject to Conditions as to Earnings, After acquired Property, and Income.

(*Title.*)

On the application of , adjudged bankrupt on the day of 189 , and upon taking into consideration the report of the official receiver as to the bankrupt's conduct and affairs and [further recitals to be inserted].

And whereas it has not been proved [this recital to follow the other forms with necessary variations].

It is ordered that the bankrupt be discharged subject to the following conditions as to his future earnings, after acquired property, and income.

After setting aside out of the bankrupt's earnings, after acquired property, and income the yearly sum of *l.* for the support of himself and his family, the bankrupt shall pay the surplus, if any [or such portion of such surplus as the Court may determine], of such earnings, after acquired property, and income to the official receiver [or trustee] for distribution among the creditors in the bankruptcy. An account shall, on January 1 in every year, or within fourteen days thereafter, be filed in these proceedings by the bankrupt, setting forth a statement of his receipts from earnings, after acquired property, and income during the year immediately preceding the said date, and the surplus payable under this order shall be paid by the bankrupt to the official receiver [or trustee] within fourteen days of the filing of the said account.

Dated this day of 189 .

By the Court

Registrar.

No. 2 [63A].

Order of Discharge subject to a Condition requiring the Bankrupt to consent to Judgment being entered up against him.

(*Title.*)

On the application [formal parts and recitals as in last preceding form].

It is ordered that the bankrupt be discharged subject to the following condition to be fulfilled before his discharge take effect—namely, he shall, before the signing of this order, consent to judgment being entered against him in the [insert name of Court having jurisdiction in the bankruptcy] by the official receiver [or trustee] for the sum of *l.*, being the balance [or part of the balance] of the debts provable in the bankruptcy which is not satisfied at the date of this order, and 1*l.* 10*s.* costs of judgment.

And it is further ordered, without prejudice and subject to any execution which may be issued on the said judgment with the leave of the Court, that the said sum of *l.* be paid out of the future earnings or after acquired property of the bankrupt in manner following, that is to say, after setting aside out of the bankrupt's earnings and after acquired property a yearly sum of *l.* for the support of himself and his family, the bankrupt shall pay the surplus, if any [or such portion of such surplus as the Court may determine], to the official receiver [or trustee] for distribution among the creditors in the bankruptcy. An account shall on January 1 in each year, or within fourteen days thereafter, be filed in these proceedings by the bankrupt, setting forth a statement of his receipts from earnings, after acquired property, and income during the year immediately preceding the said date, and the surplus payable under this order shall be paid by the bankrupt to the official receiver [or trustee] within fourteen days of the filing of the said account.

And it is further ordered that upon the required consent being given judgment may be entered against the bankrupt in the [insert name of Court] for the said sum of *l.*, together with 1*l.* 10*s.* for costs of judgment.

Dated this day of , 189 .

By the Court

Registrar.

No. 3 [16A].

Order for substituted Service of a Petition.

In the [High Court of Justice].
In Bankruptcy.

No. of 18 .

*Re*

*Ex parte* a creditor.

In the matter of a bankruptcy petition filed the day of , 18 ,

upon the application of and upon reading the affidavit of of in the of

It is ordered that the sending of a sealed copy of the above-mentioned petition, together with a sealed copy of this order, by registered post addressed to in the of and by publication in the *London Gazette* and in the or newspaper of the presentation of such petition, and the time and place fixed for hearing

the petition shall be deemed to be good and sufficient service of the said petition on the said on the day of completing such posting $\frac{\text{and}}{\text{or}}$ publication as aforesaid.

Given under the seal of the Court this day of 189 .

By the Court

Registrar.

## MR. JUSTICE CAVE'S STRICTURES ON A MAGISTRATE'S CLERK'S HANDWRITING.

THE following is an extract from the *Dorset County Chronicle*, of Thursday, November 26:—

My attention has been drawn to your report of the proceedings at our recent assize and to the remarks which the presiding learned judge thought it becoming to make on me as clerk to the justices of this division of the county; and I ask you to afford me an opportunity of excusing, if not justifying, myself against them, and especially to acknowledge, with the fullest sense of its propriety and good taste, his lordship's contemptuous reference to Board schools, and to suggest that he and I apparently lived before their establishment. I had, however, the advantage of being at a school where something besides writing was taught. I am combatant enough naturally to resent an insult.

I have been clerk to justices nearer sixty than fifty years, and, without being egotistic, I venture to think I have a tolerable acquaintance with my duties, and no one can accuse me of disrespect to the law, or towards its administrators. I regret the learned judge had not the courtesy to have me informed of what he had in contemplation, for, if he had done so, or desired me to wait on him, I should most certainly have done so, or, as the alternative, have attended his address to the grand jury; and I think it likely I should have asked permission to say something on his utterances at the risk of his refusal, and possibly a suggestion of contempt, or of being treated to a repetition of that dignified exhibition of urbanity to which an unfortunate police constable appears by the public papers to have been exposed at the Devizes Assizes on Monday last. Judges on the bench, like parsons in their pulpits, are masters of the situation, and we rather too frequently see what, in common life, would be called a cowardly advantage taken of it; but worms will turn even if trampled on by royalty. We hear a good deal in these days of our overworked judges, and of their complaints that some coroners, as well as justices' clerks, do not write copper-plate. It may be that I do not write as well as I once did, and if judges live as long and work as hard as I have done a similar infirmity will possibly follow them; but I ask no consideration from selfishness; and I suppose the next thing required or suggested for the relief of this long-suffering class will be a type-writer, on the ground that printed matter will be easier for them to read than the very best of writing. I have had a good deal of experience in my time of judges' writing during their bar days, but I have always been able to decipher it without difficulty or remonstrance, and it is not a fact that the writing of busy men now at the bar has improved. So far as my recollection serves me the only instance in which my writing was ever complained of was by a deceased learned judge, hereafter referred to, who, whilst more than commonly bitter in his complaints of others, was unable to read his own writing before his own full Court. I had the present carping habit of the times in my mind when I wrote the depositions of which so much complaint has been made, and I respectfully deny that any good or sufficient grounds existed, or exist, for the outburst of judicial impatience which has lately been exhibited in Dorchester; and I would welcome a reference of the offending depositions to any one qualified to give an opinion on them. It is grievous to think that, after all my care and trouble, the learned judge should have had his time occupied so long as he mentioned in deciphering what was not, I think, after all, a matter of serious difficulty, though written, perhaps, with some of the haste more or less attending all magisterial inquiries, for it is not impossible that impatience or anxiety of some kind may exist in the mind of more than one of our public functionaries. I have always thought that the time of judges, like that of other officials, belonged to the public, who pay for it, and, as it is notorious that circuit work, especially at this season, is little less than an absolute holiday, it can scarcely be said that a serious waste of time took place, or that any oppressive inroad was made on such holiday, in deciphering seven widely written depositions, of which two only, I think, extended to a second side of the paper used. I am unable to form, and much less to express, an opinion of the present handwriting of Her Majesty's judges, or how far they would be likely to come out successfully in a Board school writing competition. I am not sure that writing alone, or from dictation, is made matter of preliminary inquiry before promotion to the judicial ermine, but I do know what the writing of some of the judges was before their promotion; and it is only generous to hope that an improvement has since taken place in it and will be continued. I wish, of all things, that the editor of the *Leisure Hour* would help to solve and satisfy a very natural curiosity which the present incident has created, and collect and publish *facsimiles* of the present judges' caligraphy in the same way as he has lately done with the signatures and writings of royal personages of present and past days; and I will cheerfully subscribe to compensate him for the trouble this would cause him. It is within my own personal experience that, on the occasion of an application to the full Court of Exchequer on some points reserved, and for a new trial, the learned baron who presided at the original hearing was unable to read his own notes, and, what was worse, perhaps, that he had omitted a power for the full Court to draw inferences. As a fact, the whole matter had to be considered and determined by the aid of the notes of the counsel engaged, one of whom is now a respected Lord Justice of Appeal. The other barons present did not, however, scold their erring brother for his carelessness or inability to write legibly, or suggest that he should attend an evening writing school; nor was there any explosion of fireworks or other interlude got up for the amusement or laughter amongst bystanders, as is usually the object of theatrical farces; nor did it even occur to the full Court to suggest that he should undergo the condign punishment of having to read his own writing, as is the very common and, perhaps, pious wish expressed by some modern judges for similar backslidings. Coroners and justices' clerks have, therefore, the advantage of this instance of actual infirmity in one of their superiors, for I have never heard of a coroner or justices' clerk being unable to read his own writing when challenged to do so; and I hope every judge of the present day can do as much. I have the advantage, or the reverse, of remembering the judges of sixty years ago, and in the course of my many years' experience in the old office of county clerk I had the honour of knowing a good many of them and of their successors, and I have a grateful recollection of the courtesy and personal kindness and consideration they always showed towards everyone attending on them as a duty in the administration of justice. I hardly think anyone will dispute that they discharged their important duties quite as efficiently as are any such in these days, and that, without the talking and fault-finding with everybody and everything which waste

so much time and generate disrespect. It is immaterial to me whether the judges are too numerous, or otherwise, or whether they are overpaid or underpaid, but it is strange that, with all the long-suffering and overwork of which we hear so much, we never hear of a resignation on account of them, or a refusal from competent men to fill a vacancy if one happens. Judges, like other people, are mortal, and should remember their own shortcomings, for they are not exempt from criticism, even of the *tu quoque* type, and as they, too, live in glass houses, they should not throw stones. G. SYMONDS.

Dorchester: November 21, 1891.

## PHYSICAL EXAMINATION OF PLAINTIFF IN ACTIONS FOR PERSONAL INJURIES.

COMMENTING on a recent decision of the American Supreme Court, the *Washington Law Reporter* says:—

Speaking of dissenting opinions, we wish to note a very sensible one of Justices Brewer and Brown in the case of *The Union Pacific Railway* v. *Botsford*. The majority of the Court had held that the Courts of the United States have no power in an action for personal injuries to order, before the trial, an examination of the body of the injured person. The plaintiff was a passenger of the defendant, and while in one of the lower berths of a sleeping-car was injured by the upper one falling upon her head, causing her great pain and suffering, rupturing, as she claimed, the membranes of the brain and spinal cord and resulting in permanent and increasing injuries. Three days before the trial, the defendant moved the Court for an order against the plaintiff, requiring her to submit to a surgical examination, in the presence of her own surgeon and attorney, if she desired their presence, it being proposed by the defendant that such examination should be made in such a way as not to expose the person of the plaintiff in any indelicate manner. The application was made on the ground that the examination was necessary to obtain a correct diagnosis of the case, and that without such examination the defendant would be without any witness as to the plaintiff's condition. The Court below refused to make the order, and the Supreme Court, in affirming that ruling, held as above stated. Mr. Justice Gray, delivering the opinion, entered into an extended and learned review of the authorities. We have only space for the following language of the distinguished judge upon the merits of the application.

'The inviolability of the person is as much invaded by a compulsory stripping and exposure as by a blow. To compel anyone, and especially a woman, to lay bare the body, or to submit it to the touch of a stranger, without lawful authority, is an indignity, an assault, and a trespass; and no order of process commanding such an exposure or submission was ever known to the common law in the administration of justice between individuals, except in a very small number of cases, based upon special reasons, and upon ancient practice, coming down from ruder ages, now mostly obsolete in England, and never, so far as we are aware, introduced into this country.'

To this view of the case Justice Brewer delivered a strong dissenting opinion, in which Justice Brown concurred. After commenting upon the changed conditions under which actions to recover damages are now tried when compared with the early days of the common law, and how very few of those difficult questions over the nature and extent of personal injuries, which now form an important part of such litigations, were then presented to the Court, the opinion proceeds:—

'The end of litigation is justice. Knowledge of the truth is essential thereto. It is conceded, and it is a matter of frequent occurrence, that in the trial of suits of this nature the plaintiff may make in the Court room, in the presence of the jury, any not indecent exposure of his person to show the extent of his injuries; and it is conceded, and also a matter of frequent occurrence, that in private he may call his personal friends and his own physicians into a room, and there permit them a full examination of his person, in order that they may testify as to what they see and find. In other words, he may thus disclose the actual facts to the jury if his interest require, but by this decision, if his interests are against such a disclosure, it cannot be compelled. It seems strange that a plaintiff may, in the presence of a jury, be permitted to roll up his sleeve and disclose on his arm a wound of which he testifies; but when he testifies as to the existence of such a wound, the Court, though persuaded that he is perjuring himself, cannot require him to roll up his sleeve, and thus make manifest the truth, nor require him, in the like interest of truth, to step into an adjoining room, and lay bare his arm to the inspection of surgeons. It is said that there is a sanctity of the person which may not be outraged. We believe that truth and justice are more sacred than any personal consideration; and if in other cases, in the interests of justice, or from considerations of mercy, the Courts may, as they often do, require such personal examination, why should they not exercise the same power in cases like this to prevent wrong and injustice?

'It is not necessary, nor is it claimed, that the Court has power to fine and imprison for disobedience of such an order. Disobedience to it is not a matter of contempt. It is an order like those requiring security for costs. The Court never fines or imprisons for disobedience thereof. It simply dismisses the case or stays the trial until the security is given. So it seems to us that justice requires, and that the Court has the power to order, that a party who voluntarily comes into Court alleging personal injuries, and demanding damages therefor, should permit disinterested witnesses to see the nature and extent of those injuries, in order that the jury may be informed thereof by other than the plaintiff and his friends; and that compliance with such an order may be enforced by staying the trial or dismissing the case. For these reasons we dissent.'

This is a broad and intelligent view of the right and justice of the matter, and should have been held the law of the case. The reputation of the Supreme Court would have been increased had this been the opinion of the Court.

It would seem, however, from Justice Brewer's language—'Justice is the end of litigation'—that he partakes of an impression prevailing among many that Courts are created for the one purpose of administering justice between litigants. May it not rather be said that they exist for a more practical purpose?—that the administration of justice is the incident and not the reason of their existence? Can anyone conversant with the methods of legal procedure, and giving thought to the subject, say that of the controversies adjudicated by the Courts there are many instances of justice being meted out in its absolute sense? On the contrary, the more his opportunity for observing the *rationale* of judicial decisions, the more one must become persuaded that legal justice and actual justice are very different things. Judges are but men, and vary from each other as men vary who have different and opposite qualities of mind and temperament. As hardly a doctrine, religious or political, but has its antithesis in some other creed or country, so there are but few legal questions which have not been decided in diametrically different ways by different Courts, each declaring this or that to be the justice of the case, according to the light before it. And still greater the diversity where, instead of pronouncing the law, Courts, whether with or without juries, are called

upon to adjudicate complicated facts. If anyone doubts this, let him, for example, observe the difference in the award of damages by different juries. He will find that they vary from one to twenty in their verdicts under almost similar facts. Thus, one man for the loss of an arm is given a thousand dollars, another two, another five, another twenty thousand. It is, of course, impossible that even-handed justice has been rendered in the majority of these verdicts, and yet the Courts in most instances sustain them as proper. In 95 per cent. of the cases decided the lawyer upon the losing side will honestly insist that the Court is thoroughly wrong in its decision. Nor is he so often mistaken as some might imagine. The truth is, so much depends upon the condition under which a case is investigated—the ability of the judge, of the jury, of counsel; the time given to argument, the amount of work which the Court has on hand; the character of the case itself, the quality of the judicial mind, whether considerate or inattentive, combative or receptive of argument, deliberate or impulsive in judgment—all these and other qualities, mental and even physical, so often enter into the result, that it is nearly an even chance whether the Court, instead of doing justice 'according to the true right of the matter,' will not unconsciously side wholly with the wrongdoer. Doubtless, if it could be infallibly ascertained how often the decisions of Courts have resulted in justice (justice as distinguished from law) being done between the parties, it would be found that the wrong party has triumphed quite as often as he has been defeated. And it will always be so. It will be so because the minds of men are so constituted that it can never be otherwise. Justice then—the administration of it—is neither the first nor the only object of government in the establishment of Courts. If it were so Courts would be failures. The primal and paramount object is the ending of controversies. 'Interest reipublicæ ut sit finis litium.' It is well to decide controversies rightly, but it is better that controversies should be decided with reasonable speed, even though sometimes wrongly, than that the injured party should have added to the loss he has sustained the harassment of years of litigation with a strong chance of a miscarriage of justice in the end. In methods of judicial procedure in this respect it would seem that with the growth of the country in wealth and population, and consequent increase of business for the Courts, we are going backward instead of forward. Almost anywhere in the United States it takes a longer time to obtain a final judgment in a contested case than it did fifteen or twenty years ago. This is the reason business men through their boards of trade are abandoning the established judicial tribunals of the country and resorting to Courts of their own creation, where, by means of arbitration, speedy and inexpensive, however imperfect and liable to err, they avoid the inordinate delays which litigants are subjected to, especially in our large cities. Unfortunately, however, all citizens are not members of boards of trade. The non-tradesman, the poor man, the widow and the orphan must still look to the ordinary tribunals where, if justice cannot always be meted out to them with certainty, they should at least be spared the cruel harassments of years of suspense. The Legislature has no higher nor more imperative duty than that of providing the public with a sufficient judicial force for settling the honest differences of opinion which nearly all citizens at some time or other are wont to entertain as to their property and personal rights. When this has been done the Courts will be enabled to do all that can be expected of them as human tribunals. To a great extent the measure of a free and civilised State is a judiciary adequate to the needs of the people. Just in proportion as we are deficient in this do we approach the condition of savage life.

## LIVERPOOL INCORPORATED LAW SOCIETY.

THE following address was delivered by Francis Archer, Esq. (the retiring president), at the annual general meeting held on November 13:—

The report which has been made to you by the committee will show you that, with the exception of one measure which I shall presently mention, the bills brought before Parliament during the past session have not involved any unusual amount of labour on the part of the committee. As a Parliament draws towards its end, the legislative energy of the individual member is abated, and the responsible members of the Government of the day are less inclined to formulate new schemes of change which trench on the privileges of influential classes. The duties of the committee have therefore been somewhat lighter than in the previous years.

By far the most important bill affecting the interests which it is the special duty of the family solicitor to safeguard is that introduced by the Chancellor of the Exchequer, under the title of the 'Public Trustee Bill.'

This bill, which has for its object the establishment of a new State Department for the management of private trusts, passed through the House of Lords last year without opposition, though the elaborate report prepared by our committee upon it made it evident that it called for the closest attention on the part of the profession. This is specially the case because it bears at first sight an attractive aspect. The offer to the testator or the beneficiaries to give the absolute security of the State, if only they will confide their cash and the administration of it to a State official, is one which is alluring, not only to those who are interested in trust moneys, but to members of Parliament and other representative men, who are in most cases satisfied to regard the avowed purpose and general scope of a measure, and not trouble themselves about details until after the principle of the bill is accepted. It is, however, possible to buy good things at too dear a price, and the price to be paid for the security of the State is too high. The rapid increase of the savings of this country, combined with the want of sufficient new outlets for their reasonable safe employment, has already gradually decreased very materially the natural usufruct of money, has enabled the Chancellor of the Exchequer to reduce the dividend on Consols, and has sent up to a very high point the value of railway debentures and other authorised investments for trust moneys. Thus the income arising from wealth apart from brains—that is, the income of all trust estates, and the annual sums available for the use of the widows and children—has already been much diminished. The adoption of the Public Trustee Bill would carry this process a step further; not only would the expenses of the State officials be large—for an army of highly-paid civil servants would be required, and would have to be self-supporting—but the inevitable and immediate result of the employment of a State officer or Department as trustee would be the diminution by a large percentage of the trust investments. I am not now referring to the cases, numerous and important though they may be, in which, at the commencement of a trust, a private trustee, by careful nursing (probably not without running some personal risk) would disentangle an estate and preserve its whole value, while a public trustee would be compelled to realise his assets, and that promptly. I am taking the case of an ordinary trust, and I assert that the public trustee will of a certainty confine his investments to the high-class stocks and securities with which he is familiar, and that in particular he will absolutely and entirely decline to consider any mortgage securities. This would be through no fault of his own, but would be the necessary consequence of his position. Mortgages require in each

case special consideration. However partial the Courts of Chancery and the framers of Acts of Parliament may be to surveyors' valuations, the public trustee would know that nothing can make up for the want of personal inspection and inquiry. He would also be very conscious that his department would be blamed by the Treasury whenever any loss of moneys lent on mortgage occurred. He would say with perfect truth that it was impossible for him to make these personal inspections or inquiries, nor could he with safety employ others to make them for him, and that therefore he must decline to accept any such investments of the money for which he is responsible. Now, consider what this means to the *cestuis que trusts*. At the present high price of the best stocks the necessity for lending trust moneys on good mortgages is greater than ever, in order to insure a decent income for the trust, and the establishment of the various mortgage insurance institutions greatly diminishes the practical risk of the loss of any part of the principal in well-advised mortgage transactions. Yet these advantages, which may easily make a difference of 25 per cent. in the net income of the trust, are to be lost for the sake of having the State your debtor.

It has been well pointed out that the bill ignores the fact that the functions of a trustee are not confined to the preservation and investment of the trust estate and the distribution of its income. By far the larger number of trusts are created by wills and settlements, the object of which is to provide for infants and other persons who are not *sui juris*, and the duties of a trustee are often rendered delicate and difficult by their having to take into account personal and moral considerations. A public department could not be expected to take these considerations into account; it would necessarily act according to fixed rules and without elasticity. In the case of infants the question of guardianship is inextricably mixed up with that of trusteeship, and would be eminently unsuited for treatment by a public department.

Practically the public trustee would in nine cases out of ten be sole trustee. The callous indifferent mind of a paid official (and probably if the scheme were a success that of some subordinate official) would have to deal with the niceties of discretionary trusts.

In Liverpool, perhaps, we should scarcely feel the effects of the Act in their extremest form. We should doubtless have local representatives of the public trustee to transact his business here, and, if we may judge by our past experience, they are not likely to be either callous or indifferent. We have good reason to be satisfied with our registrars, one and all; we believe them to be men of the highest honour, to whom the interests of women and children may very safely be confided; but even if under them the evils of officialism were reduced to a minimum, we should still feel that nothing could make up for the intimate personal knowledge of character and circumstances, which is indispensable to the full discharge of the delicate duties of a trustee.

It was, I presume, such considerations as these which drew from Mr. Lake, the respected ex-president of the Incorporated Law Society of the United Kingdom, his letter to the *Times* of April last, which probably represents a good deal of London opinion on this measure. He thought that all objections to this bill would disappear if the public trustee's functions were similar to those of the official trustee of charitable funds; were limited, that is to say, to 'protecting the capital of the trust, leaving the administration of it to the trustees appointed by the settlor, and presumably friends of and well known to the beneficiaries.'

Such a public trustee as this might or might not be of value, but certainly he would be a very different functionary from that contemplated by the bill, which would have to be entirely redrawn in order to create him. The official trustee of charitable funds is merely a sort of receiver of trust moneys which he invests on Government or other securities, which have never to be disturbed, as the trusts are perpetual. But the very suggestion of a public trustee of this character shows that the fact of the funds being in the hands of a State official is incompatible with a fair rate of income. I have made inquiries, and find that under the trustee of charitable funds, if those interested in the income wish to change an investment, application must be made to the commissioners, who, as a rule, will not authorise any investment which goes beyond those upon which money in Court may be invested, and who refuse to sanction any investment on the security of real estate. I should in fact be surprised to hear that this official trustee has a single sum invested on the security of a mortgage of real estate.

Again, ''Tis easy dropping stones in wells, but who shall get them out?' The official trustee, having got the trust funds into his possession, will require the most complete and particular evidence of the right to the various shares therein, before he parts with them; and in case of any difficulty he would naturally hand the funds over to another department of State—the Chancery Division of the High Court of Justice, to ascertain after their prolix and expensive fashion who may be entitled to receive them. In very many of these cases private trustees would, and rightly, be satisfied by a less elaborate proof of title than the Courts would demand, and would be prepared to divide the funds accordingly without expense. Mr. Lake is conscious of this difficulty, but does not give it full force as a serious blot upon his scheme. The point never arises with charitable trusts, as the corpus of the fund never has to be divided and paid away to individual beneficiaries, but for ever remains applicable to charitable purposes under the statutory powers of the commissioners.

Thus the introduction of state officialism into the private pecuniary affairs of the citizens appears to bring with it at every turn difficulty and expense.

The danger which the Public Trustee Bill is intended to guard against is much less serious than it is represented by the promoters of the measure to be. Those members of this society who are best able to judge, from their large experience in trust matters, will bear me out in the statement that loss in trust estates by the malfeasance of the trustees is very rare. Such cases appear to be more common than they really are, from the circumstances that, in most cases of fraud by trustees, it becomes necessary to invoke the aid of the Courts to settle the rights of the parties. The simplest and surest safeguard is to keep up the number of trustees to two at least, and then there will be but few opportunities for fraud by an individual, and the only risk is one of a very exceptional kind—a conspiracy by both trustees to plunder the trust. It is, however, asserted that many persons find it impossible to obtain the services of private trustees. In some cases this may be so, though I think the difficulty is overstated, for many objections have been removed by the course of recent legislation. But where the difficulty exists, it arises in great measure from the fact that trustees are not entitled to make any charge for their trouble. The opinion of your committee on this subject is to be gathered from the report of last year, in which they refer to the fact that they passed a resolution in favour of the report of the Manchester Law Association commending the principle of remuneration of trustees. The old idea which prevailed in many branches of the law, that those who charged nothing for their services, or acted from public spirit, seeking no profit, were exempt from liability save where guilty of crass negligence, has been finally exploded by a series of decisions as well in cases of trustees as in others, and there seems to be no good reason why trustees should incur risks for nothing, or why the principle of

payment of trustees, which is the basis of the bill in question, should not be extended to all trusteeships. We all of us know many gentlemen distinguished for their probity and intelligence amongst us, who yet perhaps from the very reason of their great honesty and scrupulosity, have not attained to much wealth. Such men as these make admirable trustees, and remuneration by a small percentage of the annual income would be to them a sufficient incentive to their undertaking the burthen of trusteeships.

It is not necessary for me to trouble you with a recital of the many other practical objections which have suggested themselves to the committee in the course of their opposition to this bill. Some of them are touched upon in the report above referred to, and in the documents to be found in the appendix. The whole subject, however, is of so great practical importance in one of the principal branches of a solicitor's profession, that it deserves the greatest watchfulness of each of us.

The other subject on which it is necessary for me to address you is that of the Continuous Sittings Bill, or more generally the improvement of the machinery for the early local trial of suits. My predecessor in this chair dealt forcibly with the question in his presidential address, and every word that he said is as cogent now as it was then, but as a long correspondence has been going on in the *Times* and the law papers on the circuit system, and the subject was also casually dealt with by Mr. Melmoth Walters as president of the Incorporated Law Society of the United Kingdom at Plymouth, it is proper for me to allude to it.

Mr. Walters touched on the subject with a light hand, just pointing out the difficulties and complexities which surround it, and promising that the serious attention of his council should be devoted to it. Others have been more dogmatic, and all the old schemes which were urged twenty years ago at the time of the Judicature Commission and later have once more been paraded. On the one hand we have the proposal 'to abolish circuits altogether, and make the County Courts universal Courts of first instance, with unlimited jurisdiction.' This is virtually the scheme suggested by Mr. Pitt Lewis. Mr. G. R. Askwith would apparently preserve the circuit system, and merely provide for—

1. 'Holding assizes only in those towns which contain more than 50,000 inhabitants, and are already assize towns, with leave for other towns containing more than 50,000 inhabitants to become assize towns if they are suitably situated, and undertake to build proper Courts;' or
2. 'Holding assizes only in those towns which are the chief towns of wide districts or of several County Court circuits.'

But among all the correspondents, 'it seems,' as Mr. Askwith says, 'that no one has much to urge in favour of the circuit system.'

I do not propose to go into the intricate and important subject of the relation of County Courts to the High Court of Justice. I would merely remind you that in past years a somewhat similar proposal to that of Mr. Pitt Lewis was under the careful consideration of the committee of this society in the form of a bill promoted by Mr. Cowan in the year 1883, and they decided that it should be opposed. There was no objection, I conceive, to the County Courts being made branches of the High Court; such a step might bring with it many incidental advantages, and it was one which, at the request of this society, their witnesses, Mr. Jevons and Mr. Gill, sent to give evidence before the Judicature Commission, in 1872, were desired to press upon the commission. But the proposal to hand over the bulk of our Nisi Prius business, now dealt with at assizes, to the County Courts is one which I think the members of this society would scarcely regard with favour. It might indeed hasten the trial of causes, but would probably end in all important cases, and especially all difficult commercial questions, being tried in London.

The general outcry against the circuit system is on account of the great waste of the time of judges, bar, solicitors, and suitors, and the consequent waste of money to the latter, and it may be that Mr. Askwith's suggestion would considerably reduce this. But the complaint of the largest centres of provincial population—Liverpool, Manchester, and Birmingham—is that the assizes are too infrequent, and too uncertain in their duration to satisfy the needs of suitors in the great cities. What we want, and what we have a right to demand, is the speediest, cheapest, and most perfect and complete justice. As of old it was decreed, 'Communia placita ne sequantur curiam Regis sed teneantur in aliquo certo loco,' so we pray that our clients' interests should not be involved in the evils of the circuit system, but that (whatever the needs and interests of other parts of the provinces), Liverpool, Machester, and Birmingham should be able to try their causes as soon as the pleadings are closed, and that all necessary arrangements should be made to secure this end. No idea of uniformity can be of sufficient value to make it right that these great quasi-metropolitan districts should be bound for their civil business to a circuit system which has confessedly broken down.

The Provincial Sittings Bill promoted by this society in 1886 was a very complete if not sweeping measure, and provided for the local hearing of all issues of fact or law depending in the Chancery or Queen's Bench Divisions, or in the Admiralty branch of the Probate Division, and of such issues of fact in the Probate and Divorce branches of that division as might be sent down to them, and all appealed or adjourned summonses from the district registrars. The minor changes made since that year in the arrangements for bringing Chancery and Admiralty causes to an early hearing have been beneficial. In the same way a few slight alterations would suffice to improve the hearing of common law actions, and secure great additional promptitude in bringing cases to a decision. If these were granted us, we could, perhaps, afford to wait more patiently for the elaboration of a larger and more complete scheme. The suggestions I would make are:—

1. That the opening of the civil assizes at Liverpool, Manchester, and Birmingham take place on fixed dates—*e.g.* January 30, April 30, July 30, and November 30 in every year.
2. That the litigants may enter their cases for trial up to and after the commencement of the assize.
3. That the assize shall continue until the whole of the cases entered for trial are heard.
4. That during the assize the judge shall take all such chamber work in civil actions as would be taken by a judge in London.

These changes could, I think, be effected without unduly disturbing the arrangements of Her Majesty's judges. But if they were found to necessitate the creation of an additional judge, it would show how pressing a grievance had been removed, and we should have a good case for asking that an additional judgeship should be created.

The three districts to which I have alluded contribute a very large percentage to the business of the Superior Courts, and as, on the whole, a considerable profit is made out of the administration of justice (which, indeed, is contrary to sound government), the salary of the new judge may fairly be taken from this surplus.

I am glad to notice that the question of the local trial of causes is effectively engaging the attention of the Government. An Act of one clause was passed last session to provide for holding sittings at Guildhall by

judges of the High Court under commissions for the trial of issues at Nisi Prius, and the Lord Chief Justice, on taking his seat at the resumption of those sittings after a long discontinuance, said that it was supposed the trial of mercantile issues had diminished owing to their removal to the Courts of Justice in the Strand. In Liverpool, Manchester and Birmingham we attribute the decrease in Nisi Prius issues to the unnecessary delay, worry, and expense of the present system. The same lesson may be learnt in each centre—that the old system must be adapted to meet the new conditions of business—and it would seem probable that the only solution of the present block in the Chancery Division recently described by the Attorney-General is an increase of the number of judges.

In making the above suggestions, in which I believe I express the opinion of my colleagues, I have made no mention of what is known as the bar difficulty. I have not done so because for my own part I do not believe that any serious difficulty of that kind exists, or if existent would long remain. The virtually continuous sittings of the Palatine Chancery Court in Liverpool and Manchester, presided over by an able superior judge, are found to retain as resident in the district or to bring down from London counsel quite strong enough to cope efficiently with any part of the important business brought into that Court. Even without the existence of some similar opportunities in the Common Law Division of the High Court of Justice, our local bar has grown in number to no less than seventy. It is true that we see from time to time some of the ablest of the common law men amongst them move off to London for the wider sphere of labour and profit there to be met with; but the large measure of success which they almost all achieve in London is an indication of the exceptional amount of legal ability always to be found among the resident members of our bar. Who can doubt that the steady flow of high-class business brought to them by the prompt and thorough trial of all local causes would at all times insure for us the presence of a bar which would be in all respects adequate to the work? If, as we know, it is the easiest thing in the world for counsel to run up to London on occasion, it is not much more difficult for counsel to run down from London; and there could be no difficulty in making any slight changes of custom or professional etiquette which might be requisite to adjust the bar of the Northern Circuit to the new order of things.

A word as to our efforts in the cause of legal education. You know what great importance the committee attaches to this subject, and I would beg your individual assistance by the adoption of the form of articles of clerkship set forth in the appendix to the report. I am glad to say that this session an increase has taken place in the attendance at the lectures arranged by the Board of Legal Studies, a fact which, combined with the circumstance that the total number of articled clerks has somewhat diminished, justifies the restoration by the council of the Incorporated Law Society of the United Kingdom of the larger annual grant of 150*l.* to the funds for those lectures. For this grant we are, I believe, mainly indebted to the exertions of our friend Mr. Gray Hill, who, as you are aware, was recently elected without a contest a member of the council. We shall look to him for assistance on many future occasions, and hope that he may become a *nexus* of opinion between the provinces and the metropolis on many important projects for the improvement of the law and its administration.

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'VANITY FAIR' for December 5 will contain a cartoon called 'Bench and Bar,' containing portraits of members of those two bodies, some of which appear to be good likenesses, but we fear we cannot say the same for all.

## OBITUARY.

MR. FREDERICK PRIDEAUX, late Professor of Real and Personal Property to the Inns of Court, and author of 'Prideaux's Precedents in Conveyancing,' died on Saturday last, at the age of seventy-four.

## LAW STUDENTS' SOCIETIES.

DEBATING.—The ordinary weekly meeting of this society was held at the Law Institution, Chancery Lane, on Tuesday, November 24; Mr. Pattinson in the chair.—The subject for discussion—'That the case of *Medowar* v. *The Grand Hotel Company*, L. R. (1891) 2 Q. B. Div. 11, was wrongly decided'—was opened by Mr. Harcourt, followed by Mr. Alder; Mr. Simon, followed by Mr. Herbert Walton, opposed.—The debate having been declared open, the following gentlemen spoke: In the affirmative, Messrs. Herbert Smith, Anderson, Baldwin, and Crawford. In the negative, Messrs. Wilkinson, Willson, Watson, Evershed, Harry Watkins, Arnold, Bower, and Thirlby. Mr. Harcourt replied.—On the motion being put to the meeting, it was lost by a majority of five.

## NOTICES FOR THE WEEK.

### ROTA OF REGISTRARS.

MONDAY, November 30.—Court of Appeal No. 2: Mr. Farmer. Mr. Justice Chitty: Mr. Ward. Mr. Justice North: Mr. Beal. Mr. Justice Stirling: Mr. Leach. Mr. Justice Kekewich: Mr. Jackson. Mr. Justice Romer: Mr. Carrington.

Tuesday, December 1.—Court of Appeal No. 2: Mr. Rolt. Mr. Justice Chitty: Mr. Pemberton. Mr. Justice North: Mr. Pugh. Mr. Justice Stirling: Mr. Godfrey. Mr. Justice Kekewich: Mr. Clowes. Mr. Justice Romer: Mr. Lavie.

Wednesday, December 2.—Court of Appeal No. 2: Mr. Farmer. Mr. Justice Chitty: Mr. Ward. Mr. Justice North: Mr. Beal. Mr. Justice Stirling: Mr. Leach. Mr. Justice Kekewich: Mr. Jackson. Mr. Justice Romer: Mr. Carrington.

Thursday, December 3.—Court of Appeal No. 2: Mr. Rolt. Mr. Justice Chitty: Mr. Pemberton. Mr. Justice North: Mr. Pugh. Mr. Justice Stirling: Mr. Godfrey. Mr. Justice Kekewich: Mr. Clowes. Mr. Justice Romer: Mr. Lavie.

Friday, December 4.—Court of Appeal No. 2: Mr. Farmer. Mr. Justice Chitty: Mr. Ward. Mr. Justice North: Mr. Beal. Mr. Justice Stirling: Mr. Leach. Mr. Justice Kekewich: Mr. Jackson. Mr. Justice Romer: Mr. Carrington.

Saturday, December 5.—Court of Appeal No. 2: Mr. Rolt. Mr. Justice Chitty: Mr. Pemberton. Mr. Justice North: Mr. Pugh. Mr. Justice Stirling: Mr. Godfrey. Mr. Justice Kekewich: Mr. Clowes. Mr. Justice Romer: Mr. Lavie.

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THE BIRMINGHAM CHARTERED ACCOUNTANTS' STUDENTS' SOCIETY.—A largely attended meeting was held at the Library on Tuesday evening, presided over by Mr. Walter N. Fisher, when an interesting lecture was delivered to the students by Mr. H. A. Pearson, barrister-at-law, of Handsworth, on 'Trusts and Trustees.' The lecturer gave a brief sketch of the origin and rise of uses and trusts, and proceeded to define and illustrate the different kinds of trusts, and concluded by referring to a few of the duties and liabilities of trustees. The lecture was interspersed with several humorous anecdotes and poetical versions of some of the leading cases.—At the close of the lecture a hearty vote of thanks was accorded to Mr. Pearson for his able lecture. The proceedings closed with a vote of thanks to the chairman.

## CALENDAR OF THE COUNTY COURTS.

FROM NOVEMBER 30 TO DECEMBER 5.

| No. of Circuit | His Honour | Nov. 30 | Dec. 1 | Dec. 2 | Dec. 3 | Dec. 4 | Dec. 5 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Birkenhead | — | — | Leigh | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | — | — | — | Middlesbrough | Stockton-on-Tees | — |
| 16 | Judge Bedwell | Bridlington | — | — | — | Beverley | — |
| 28 | Judge Jordan | — | Newcastle | Stoke | Stafford | Leek | Tamworth |
| 47 | Judge Bristowe | — | Lambeth | Woolwich | Lambeth | Greenwich | — |
| 54 | Judge Metcalfe | Bristol | Bristol | Bristol | Bristol | Bristol | — |
| 55 | Judge Machonochie | — | Wincanton | Crewkerne | Yeovil | Salisbury | — |
| 58 | Judge Edge | — | Exeter | Exeter | Exeter | Newton Abbot | Newton Abbot |

# House of Lords Register.

NOVEMBER 12, 16, 17, 19, 20, 23, 24.

*Concha* (*pauper*) v. *Concha* (reported below 54 Law J. Rep. Chanc. 532; L. R. 29 Chanc. Div. 269, and L. R. 40 Chanc. Div. 543. Preliminary objection—competency of appeal—time—several orders, some of which made more than a year before notice of appeal—foreign law—evidence).—*Cur. adv. vult.*

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, LOPES, L.J., and KAY, L.J.

THURSDAY, NOVEMBER 19.

*Ferrand* v. *Bingley Township District Local Board* (application of plaintiff for judgment or new trial on appeal from verdict and judgment, dated August 1, at trial before Day, J., with a special jury at Leeds).—New trial granted.

FRIDAY, NOVEMBER 20.

*In re J. J. Josolyne, ex parte A. J. Josolyne* (appeal of debtor from order of Mr. Registrar Giffard, dated November 10, for receiving order on application of F. J. Upton).—Dismissed.

*Fletcher* v. *London and North-Western Railway Company* (application of plaintiff for new trial on appeal from verdict and judgment of nonsuit, dated July 30, at trial before Wright, J., and a special jury at Liverpool).—Granted.

*Lord Masham* v. *Wood* (application of defendant of defendant for judgment or new trial on appeal from verdict and judgment, dated July 21, at trial before Grantham, J., with a special jury at York).—Part heard.

SATURDAY, NOVEMBER 21.

No sitting.

MONDAY, NOVEMBER 23.

*Adcock* v. *Foot* (application of plaintiffs from order of Day, J., and Grantham, J., dated October 28, affirming order for transfer of proceedings from Norwich County Court to High Court).—Dismissed.

*Hughes* v. *London, Edinburgh, and Glasgow Assurance Company* (*Lim.*) (appeal of defendant from order of Day, J., and Grantham, J., dated October 29, setting aside leave to sign final judgment on admissions)—Dismissed.

*Williams* v. *Lavigerie and others* (appeal of defendant A. J. Reid from order of the Lord Chief Justice and Wright, J., dated November 4, giving conditional liberty to defend).—Dismissed.

*Cunliffe* v. *Hampton Wick Local Board* (appeal of defendants from order of Day, J., and Grantham, J., dated October 31, reversing order for stay of proceedings).—Dismissed.

TUESDAY, NOVEMBER 24.

*Lord Masham* v. *Wood* (application of defendant for judgment or new trial on appeal from verdict and judgment dated July 21, at trial before Grantham, J., with a special jury at York).—New trial granted.

*Regina* v. *A. H. Rourke* (Q. B. *Crown Side*) (appeal of Eleanor G. Thompson (prosecutrix) from order of Cave, J., and Smith, J., dated July 25, discharging *nisi* for *habeas* for infants).—Part heard.

Before LOPES, L.J., and KAY, L.J.

*Pelton Brothers* v. *Harrison* (appeal of plaintiffs from order of Denman, J., and Wright, J.).—Allowed.

Before the MASTER OF THE ROLLS, LOPES, L.J., and KAY, L.J.

WEDNESDAY, NOVEMBER 25.

*Regina* v. *A. H. Bourke* (Q. B. *Crown Side*).—Dismissed.

*Hampton & Sons* v. *London Electric Supply Corporation* (*Lim.*) (appeal of plaintiffs from judgment of the Lord Chief Justice, dated May 28, at trial with a special jury in Middlesex, judgment only upon findings appealed from).—Dismissed.

## APPEAL COURT II.

Before LINDLEY, L.J., BOWEN, L.J., and FRY, L.J.

THURSDAY, NOVEMBER 19.

*Holland* v. *Skidmore* (appeal of defendants from judgment of Kekewich, J., dated April 30; *cur. adv. vult.* November 13).—Dismissed.

*In re James Casey* (*part proprietor of Patents, Nos.* 10,511 *and* 10,513, *granted to Stewart and Charlton*). *Ex parte Stewart and another* (*executors of Stewart, dec., and Charlton*). *Stewart* v. *Casey* (appeal of Stewart's executors and Charlton from orders of Romer, J., dated June 8).—Dismissed.

*In re Devonshire Silkstone Coal Company* (*Lim.*) *and Companies Acts, ex parte Jonathan Blomely* (from refusal of North, J., dated June 8).—Dismissed.

*In re J. Capstick, dec. Capstick* v. *Simmonds* (appeal of plaintiff from judgment of North, J., dated March 11, on further consideration).—*Cur. adv. vult.*

FRIDAY, NOVEMBER 20.

*In re J. Capstick, dec. Capstick* v. *Simmonds.*—*Cur. adv. vult.* November 19.—Allowed.

*Mills* v. *Lumb* (appeal of defendant from judgment of Kekewich, J., June 12).—Allowed.

SATURDAY, NOVEMBER 21.

*Squire* v. *Pardoe* (appeal of plaintiff from judgment of North, J., dated February 20).—Allowed.

Before LINDLEY, L.J., BOWEN, L.J., and KAY, L.J.

MONDAY, NOVEMBER 23.

*London, Chatham, and Dover Railway Company* v. *South-Eastern Railway Company* (appeal of defendants from order of Kekewich, J., dated April 10, 1891, on application to vary official referee's report; heard November 5).—Order varied.

*In re Cathcart* (adjourned summons).—*Cur. adv. vult.*

*In re Matthews* (adjourned certificate).—Order made.

Before LINDLEY, L.J., BOWEN, L.J., and FRY, L.J.

TUESDAY, NOVEMBER 24.

*Jones* v. *Merioneth Permanent Benefit Building Society. Same Society* v. *Jones* (appeal of defendants from judgment of Williams, J., sitting as an additional judge of the Chancery Division, in first-mentioned action, dated June 1).—Part heard.

WEDNESDAY, NOVEMBER 25.

*In re R. R. Bignell, dec. Bignell* v. *Chapman* (appeal of plaintiff from order of North, J., dated November 2, allowing claim of executrix of receiver for salary and remuneration).—Dismissed.

*South Australian Mining Association* v. *King* (appeal of defendant from order of North, J., dated October 30, disallowing objections to answer to interrogatories).—Dismissed.

*Jones* v. *Merioneth Permanent Benefit Building Society. Same Society* v. *Jones.—Cur. adv. vult.*

*In re North Australian Territory Company (Lim.) and Companies Acts* (appeal of S. G. Sheppard and another (liquidators) from order of Kekewich, J., dated July 9, refusing to make directors liable for alleged misfeasance).—Part heard.

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MIDDLE TEMPLE.—Mr. Alfred Cock, Q.C., and Mr. Russell Roberts have been elected benchers of the Middle Temple.

THE Prince of Wales, under warrant dated November 9, has specially appointed Messrs. John Brinsmead & Sons pianoforte manufacturers to His Royal Highness.

DANISH MARGARINE LEGISLATION.—A report from the British Consul at Copenhagen, which has just been issued, deals mainly with recent Danish legislation regulating the sale of margarine. The importance of maintaining the high reputation of Danish butter, especially in the English market, has led to successive enactments providing for the production and trade in margarine. The first Act was passed in 1885. Three years later the Government introduced a bill containing more stringent provisions. But clauses entirely forbidding the use of colouring matter, the mixture of artificial and dairy butters, and the export of artificial butter were rejected by the Lower House of the Legislature. The discussion on the proposed total prohibition ended in a compromise, empowering the Minister of the Interior, 'whenever he shall find it necessary, to forbid the export of artificial butter from the country.' In May last a new law came into operation, and the consul supplies a full translation of this, with the supplementary regulations, and six plates giving the table of colours. He adds that these stringent regulations are rigidly enforced, and that 'any doubts as to the purity of Danish export butter may be safely laid aside.' The law is said to meet with the approval of those concerned; one effect of it was immediately noticeable in the cheesemongers' shops, where many of the small pieces of cheese exposed for sale were labelled 'oleomargarine cheese,' instead of the fancy names they had previously borne.

UNITED LAW SOCIETY.—A meeting was held at the Inner Temple Lecture Hall, on November 23, at which Mr. Marcus moved: 'That the continued exclusion of the self-governing States of the Empire, other than Great Britain, from a direct share in the control of foreign affairs is an infraction of constitutional principle and a growing danger.' Mr. C. W. Williams opposed, and was followed by Messrs. Hawkins, Lewis, Bagram, Green, Hudson, H. Smith, Le Maistre, and Atkin. The motion was defeated by a majority of four. The next meeting will be held on November 30, the subject for discussion being: 'A. travelled on a railway, without having paid his fare or provided himself with a ticket, but without intent to defraud the company or evade payment of the fare; and his luggage, which was placed in the luggage van of the train, was lost. Can he recover compensation from the railway company?'

MIDDLE TEMPLE.—Thursday, November 19, being Grand Night of Michaelmas Term, Lord Coleridge, the Lord Chief Justice of England, as the treasurer of the Inn for the past year, and the masters of the bench of the Middle Temple, entertained at dinner a number of guests in their ancient hall. Among the guests present were: His Royal Highness Prince Christian, the Duke of Teck, the Marquis of Salisbury, Viscount Barrington, the Bishop of Rochester, Lord Aberdare, Lord Knutsford, Sir Edward Thornton, Lord Justice Kay, Mr. Justice Charles, Mr. Justice Vaughan Williams, Mr. Justice Romer, Mr. Justice Jeune, Sir Arthur Clay, Sir Alfred Lyall, the Treasurer of the Inner Temple, Lieutenant-General Wray, Colonel G. Grant Gordon (Equerry to His Royal Highness Prince Christian), the Treasurer of Gray's Inn, Mr. John Rigby, Q.C., the Treasurer of New Inn, the Reader at the Temple Church, Mr. J. C. Horsley, R.A., Mr. W. W. Ouless, R.A., Mr. John Shortt, Mr. C. Henderson Scott, Mr. J. A. D. Heaton, Mr. J. J. Morgan, and the Under Treasurer. The benchers present were: Sir Thomas Chambers, Q.C., Mr. Cripps, Q.C., His Honour Judge Prentice, Q.C., Mr. Higgin, Q.C., Sir Peter Edlin, Q.C., Mr. Pope, Q.C., Lord Justice Lindley, Mr. Cowie, Q.C., Mr. Morgan Lloyd, Q.C., Mr. Hopwood, Q.C., Mr. Philbrick, Q.C., Mr. Macrory, Q.C., Mr. Locock Webb, Q.C., Sir Richard Couch, Mr. Littler, Q.C., Mr. Ambrose, Q.C., M.P., Mr. Kemp, Q.C., Mr. Underhill, Q.C., Mr. Graham, Q.C., Mr. Saunders, Q.C., Mr. Finlay, Q.C., M.P., Mr. Dauney, Mr. Justice Collins, Mr. Bigham, Q.C., Mr. Stallard, Mr. Finlason, Mr. Bruce, Q.C., M.P., Mr. Will, Q.C., M.P., Mr. Digby, Sir F. Villeneuve Smith, Mr. Crump, Q.C., Mr. Balfour-Browne, Q.C., Mr. Francis-Williams, Q.C., and Mr. Aspinall. There was also a large attendance of barristers and students who are members of the inn. During the evening the treasurer proposed the toast of 'The Queen,' which was received with loud cheers and the customary clapping of hands. After the cloth was drawn the masters of the bench and their guests left the hall, Lord Salisbury and others of the guests being greeted with loud applause.

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## BIRTHS.

On Nov. 18, at Ashtead, Surrey, the wife of Wilfred Duke Mellersh, Solicitor, of a daughter.

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## DEATHS.

On Nov. 15, at Barton Hall, Kingskerswell, Devon (the residence of her brother-in-law, Hercules E. Brown, Esq.), Elizabeth Jane Clark, of Lascelles, Boscombe, Bournemouth, aged 54, widow of Henry Clark, of Trowbridge, Wilts, Solicitor.

On Nov. 18, at Folkestone, Edward Gordon, eldest surviving son of Charles W. Law, Barrister-at-Law, Moulmein, Burma, aged 12.

On Nov. 21, at Ermington, Taunton, in his 75th year, Frederick Prideaux, of Lincoln's Inn, Esq., late Professor of the Law of Real and Personal Property to the Inns of Court.

On Nov. 23, at 64 Cromwell Road, Hove, Regnier Campbell Moore, late Lieutenant 86th Regiment, eldest son of the late Regnier Winckley Moore, Esq., Barrister-at-Law.

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# The Law Journal.

*SATURDAY, DECEMBER 5, 1891.*

## 'OBITER DICTA.'

MR. JUSTICE MATHEW is making good progress with Mr. Justice Stirling's list of witness actions, with the result that he is almost every day assailed with applications that certain cases may stand off the paper, either because the parties (who are supposed to be yearning for trial) are not ready, or that a settlement is contemplated, or some other such reason. His lordship pointedly remarked, on one of these applications, that there would come a time when they could not be acceded to. He understood that his services had been taken away from the Queen's Bench Division in order that he might try a number of actions which were urgently in need of adjudication! The delay which has hitherto prevailed in getting to trial, however, may possibly account for the apparent unreadiness of the parties when their turn arrives. But the state of things also tends to show that the block in Chancery is not so serious as is generally supposed, for the lists, when resolutely attacked by a strong judge, seem to melt away like snow in the sun.

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THE House of Lords has affirmed by a majority the decisions of the Court of Appeal and Mr. Justice North in the case of *Salt* v. *The Marquis of Northampton*. We commented on the case when it was before the Court of Appeal (59 Law J. Rep. Chanc. 745), and it will be remembered that Lord Justice Bowen dissented from the other members of the Court. Lord Compton, eldest son of the Marquis of Northampton, borrowed 10,000*l.* from the National Life Assurance Company on his reversionary interest, contingent on his surviving his father, in certain real estate. To provide against the event, which happened, of Lord Compton's predeceasing his father, the company insured the son's life against the father's for 34,500*l.* They paid the premiums, and it was stipulated that if Lord Compton should fail to repay them the premiums, the policy should belong absolutely to the company, and Lord Compton or his representatives should have no interest in the policy. In fact, Lord Compton never paid a penny. On his death the Marquis, as his personal representative, claimed, on payment of premiums and interest and of the 10,000*l.* and interest, to have the policy moneys paid to him. The House of Lords, on the ground of the ancient equitable doctrine—'once a mortgage always a mortgage'—has affirmed his right to this money. Lord Selborne confessed to having fluctuated in his opinion during the argument, but finally arrived at the conclusion that, as the debtor was clearly to have some interest in the policy, his interest was that of a mortgagor with a right to redeem on the usual conditions. Most debtors would like to be able to borrow money in so favourable a way, for the result is that Lord Compton's estate is the richer by some 15,000*l.* or more by this very profitable loan transaction.

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LORD BRAMWELL played the very unusual *rôle*, for him, of following authority and not his own judgment, and he indulged in some sarcastic observations on equitable doctrines. He thinks it might have been better if people were kept to their bargains, and then 'we should have been spared the double condition of things, legal rights and equitable rights, and a system of documents which do not mean what they say. But,' he adds, 'the piety or love of fees of those who administered equity has thought otherwise.' Accordingly, while his reasoning was in favour of the appellants, his vote was given for the respondents. Lord Hannen dissented on the ground that there never was a mortgage of the policy at all. There is much force in his argument. He holds that, as a mortgage 'imports the conveyance to the mortgagee of property belonging to the debtor or someone other than the mortgagee,' and there was no such conveyance, the policy having been brought into existence by the company, the relation of mortgagor and mortgagee was never established. It certainly seems probable that the result actually brought about was not in the contemplation of the parties, and insurance com-

panies will doubtless take care in the future to avoid the pitfall into which, in this instance, the appellants have fallen.

---

It is only a few weeks since we dealt in these columns with the important question of abating the smoke nuisance in the metropolis. A correspondence on the subject has been for some time proceeding in the *City Press*, and in last week's issue of that paper there appeared a spirited letter dealing with 'London smoke from a woman's point of view.' Though written in a humorous vein, it contains many forcible arguments in favour of some further legislation on the subject. The writer, after remarking that, although smoke does not produce fog, yet it lends to it its most injurious elements, says, 'The London fog nearly kills me, and drives me from London when I wish and ought to be there.' The remark undoubtedly applies to a large number of her sex, and, as she observes, entails a very serious loss upon the shopkeepers of London. The letter then proceeds to point out that the subject is far more serious to that large class of women whose daily bread is dependent on residence in London, to whose work good health is essential, very many of whom have children to support. Reference is also made to the large numbers of women employed as clerks, dressmakers, &c., who need daylight for their work and pure air for their health, and a strong argument is drawn from the serious injury caused to the eyesight of many workers from having to use artificial light almost continually for weeks together. The writer concludes by saying that women are as deeply interested as men in the abatement, as far as possible, of the smoke nuisance.

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The important case of *Wiedeman* v. *Walpole* is amongst those which we report this month, 60 Law J. Rep. Q. B. 762. Technically, it decides what perhaps required judicial decision in view of *Bessela* v. *Stern*, 46 Law J. Rep. C. P. 467, that the mere fact of a defendant in an action for breach of promise of marriage not having answered two letters, one by the plaintiff, and the other by a stranger to the parties, charging the promise to marry, does not amount to material evidence in support of the promise within the meaning of the Evidence Further Amendment Act, 1869 (32 & 33 Vict. c. 68), s. 2, which first made the evidence of the parties to this kind of action admissible. On this point the Court of Appeal has no doubt whatever. As to the more general question, whether silence upon the receipt of any letter can be taken as evidence of admission of the truth of its contents, all the judges agreed that there might be particular circumstances under which silence would be tantamount to admission, but that, unless those particular circumstances existed, no inference could be drawn from leaving a letter unanswered. We have thus an emphatic confirmation by the whole Court of Appeal of the *dictum* of Willes, J., in *Richards* v. *Gellatly*, L. R. 7 C. P. 127.

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It is a far cry from the Companies Act, 1867, back to Sheppard's 'Touchstone,' but, in *In re The Anglo-Colonial Institute* (*Lim.*), reported in our Notes of Cases for this week, Mr. Justice Kekewich went back to that ancient authority for assistance in deciding whether a valid contract to issue fully-paid-up shares had been duly made and filed under section 25 of the Act. The contract by the company to issue the shares as fully paid up purported to be made four days before the incorporation of the company, but the company's seal was affixed after incorporation. Mr. Justice Kekewich thought that this was not an attempted ratification of a contract entered into before the existence of the company, which, according to *In re The Northumberland Avenue Company*, L. R. 33 Chanc. Div. 16, would be of no avail; but that, according to the law as laid down in Sheppard's 'Touchstone,' p. 72, the contract under seal must be considered as having been delivered and first made when the seal was affixed, and as binding on the company in consequence. Another point in the case was whether the contract, which was, in fact, filed on the morning after the day of issue of the shares, was filed 'at or before the issue' of the shares within the meaning of section 25. The learned judge, following the view taken by Mr. Justice North in *Pook's Case*, 56 Law J. Rep. Chanc. 1049; L. R. 35 Chanc. Div. 579, held that the two things—the delivery of the deed and the filing—were substantially contemporaneous, and that there had in this respect, too, been a sufficient compliance with the terms of section 25.

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We confess that we are by no means surprised that the decision of Mr. Justice Kekewich in *In re The North Australian Territory Company*, 60 Law J. Rep. Chanc. 798, has been reversed by the Court of Appeal. The question, we may remind our readers, was whether a director upon taking and paying for his qualification shares could take an indemnity in the form of an agreement by the promoter of the company to buy back the shares at *par* in the event of the director retiring, under which indemnity he afterwards received back the *par* value of the shares at a time when the shares were really valueless. Mr. Justice Kekewich thought that the indemnity had resulted in no loss to the company, and that the case was not within the line of authorities in which an agent was shown to have made a gain for himself in such a way that the money so gained was held by him as trustee for the company, and decided against the liquidator. In commenting on this decision at the time (*ante*, p. 474) we ventured to remark that, if the learned judge's judgment could be sustained, the example set by the director was likely to find many imitators. The Court of Appeal, however, has now held that the case falls within the principles enunciated in *Hay's Case*, 44 Law J. Rep. Chanc. 721; L. R. 10 Chanc. App. 593, and that the director was bound to repay the secret profit which was derived from his position of director. The case is undoubtedly a novel one on the facts, but in principle it is difficult to see how it differs from the cases in which the promoter has directly provided the director with the money for his qualification shares.

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It has been stated, and no doubt correctly, that many persons who presented themselves at the polling stations for the purpose of voting at the recent election of the School Board for London, were 'turned back' as not being on the register. The franchise is rather a curious one, depending as it does on certain sections of the Metropolitan Management Acts and the Elementary Education Acts taken together. By section 37 of the

Elementary Education Act, 1870, 'the members of the School Board' shall in the city of London be elected by the same persons and in like manner as common councilmen are elected, and in the other divisions of the metropolis by the same persons and in the same manner as vestrymen under the Metropolis Management Act, 1855, and the Acts amending the same.' Turning to the Metropolis Management Act, 1855, we find that vestrymen are elected by the parishioners, but that it is provided by section 16 that no person shall be entitled to vote 'unless he shall have been rated in the parish to the relief of the poor for one year next before the election and have paid all parochial rates' due from him at the time of voting, except such as have become due within six months immediately preceding the voting. By an amending Act of 1856, 19 & 20 Vict. c. 112, occupiers not actually rated may claim to be rated, and upon paying the rates due in respect of the premises for which they claim may become entitled to vote. By the Elementary Education Act, 1873, the poll was directed to be taken as under the Ballot Act, 1872, but no change was made in the franchise itself. Section 3 of that Act speaks of the rate-book and other documents constituting the register, but there is no register properly so-called, much less is there any register conclusive in the same way as the Parliamentary register is conclusive under the Ballot Act, 1872. It may be hoped that by the time of another School Board election the properly revised County Council register may be constituted the register for School Board purposes.

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Mr. Archer's address at the recent annual general meeting of the Liverpool Law Society, which we reported at full length last week, *ante*, p. 741, contains some eminently sensible remarks upon the Chancellor of the Exchequer's Public Trustee Bill, which we discussed at length in April last, *ante*, p. 269. We are glad to observe that Mr. Archer dwells on the desirability of remunerating private trustees, as this is a practice which we have frequently advocated. It is, we believe, almost universal in the colonies, and if generally adopted in this country would go far to neutralise the arguments, so much in favour in the highest quarters, for the appointment of a public trustee. The reformation may be achieved to a great extent by solicitors themselves advising their clients, when creating a trust, to bethink themselves of the question of remuneration. Especially can this be done in connection with the appointment of executors or of trustees to act under a will. Many testators either forget, or do not care to consider, the trouble and responsibility which their executors will be saddled with, and bequeath either no legacy or a miserably inadequate one to their executors. Of course, in cases of near relationship or great poverty of beneficiaries, executors may easily waive their claims to a legacy, but in all ordinary cases they ought to be adequately paid.

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Only about 10 per cent. of the present members of the bar subscribe to the Barristers' Benevolent Association, and even this small percentage exhibits a tendency to diminish. Such is the short effect of Lord Justice Bowen's speech at the annual meeting of the association, and it has become of importance to inquire into the causes of so lamentable and unexpected a state of things. It has been suggested in some quarters that the reason for the falling off may be that, as the supply of barristers already largely exceeds the demand, the existing barristers do not wish to increase the supply by rendering the profession more attractive, or rather less unattractive, by reason of the interposition of a benevolent association to save utter failures from the workhouse. We think that this is a reason which would have weight with few. More likely is it that the diminished earnings of the bar have diminished the natural source of subscriptions, and perhaps it may have occurred to some that the rules in accordance with which relief is administered are not sufficiently made known. Is a subscriber, for instance, entitled to relief in preference to a non-subscriber? To what extent, if any, may barristers actually practising obtain relief? For ourselves, we are rather inclined to think that a decided preference ought to be given to subscribers of large amounts.

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Section 120 of the County Courts Act, 1888, provides that, 'if any party in any action or matter shall be dissatisfied with the determination or direction of the judge' of a County Court 'in point of law or equity, or upon the admission or rejection of any evidence, the party aggrieved by the judgment, direction, decision, or order of the judge, may appeal from the same to the High Court.' These words are very comprehensive; but in the recent case of *How* v. *The London and North-Western Railway Company*, the Court expressed the opinion that they would not have the effect of giving an appeal from the refusal of the County Court judge to grant a new trial. This opinion proceeded on the ground that in such a case there is an appeal against the determination or direction of the judge at the trial, and that to hold that there is also an appeal against his subsequent refusal to alter that determination or direction is in effect indirectly to extend the time for appealing from the original determination or direction of the judge. We cannot concur in this reasoning, which seems based on a wrong view of the rules of construction of statutes, and we are glad to see that the *dictum* has been dissented from in *Pole* v. *Bright* (Notes of Cases, p. 159), in which Mr. Justice Mathew and Mr. Justice Smith have expressly held that an appeal lies to the High Court from the refusal of a County Court judge to grant a new trial.

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*Ex parte Portingell* (Notes of Cases, p. 155) is an important case upon service of notice of intention to oppose the renewal of a license. By section 42 of the Licensing Act, 1872, no objection to the renewal of a license may be entertained, unless written notice of an intention to oppose the renewal of such license *has been served* on the holder not less than seven days before the commencement of the general annual licensing meeting. In *Ex parte Portingell* the notice of opposition had not been put into the hands of the applicant himself by the person serving it; but 'had been left with a boy at the licensed premises.' The justices, however, found as a fact that the notice had reached the hands of the applicant in due time, overruled the preliminary objection that he had not been served with the notice, and refused to renew. The High Court, and now the Court of Appeal, has held that the justices were right, and notwithstanding that the sections of the Licensing

Acts which regulate the hearing of applications for renewals ought to be construed liberally in favour of applicants, we cannot see that personal service is made necessary by section 42 of the Licensing Act, 1872.

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Mr. F. A. Inderwick, the well-known Queen's Counsel, has added to his 'Sidelights on the Stuarts' a work called 'The Interregnum,' which consists of studies of the Commonwealth, legislative, social, and legal. The judges nowadays have plenty to occupy their time, except during vacations, but they must be thankful that the age of Victoria requires less variety of attainments of them than the age of Cromwell did. According to Mr. Inderwick (p. 173), 'at the present time a judge on circuit tries the prisoners in the gaol and disposes of the causes in the lists, and his business is over; but in the sixteenth and seventeenth centuries the judge may almost be said to have administered the county to which he was sent. He heard appeals from Quarter Sessions and from orders of justices of the peace. He tried questions of rating and assessments, and, when he thought it necessary or right, ordered a rate to be made on the whole county or on a particular parish for any specific purpose. Numerous entries, for instance, are to be found in which the judge of assize has ordered rates to be made with a view to paying the expenses of successful prosecutions to prosecutors who could neither themselves afford to pay nor could recover them from the parish where the offence was committed. Others in which a parish having been devastated by fire, or ravaged by disease, funds were required to rebuild the parish or to tend the sick. He was, as it were, a grand guardian to the poor, and as such heard petitions from poor people who complained of the non-administration of parish relief, and at every assize town he heard and decided disputed settlements of paupers, which formed a great part of the duties of justices of the peace. He was constantly inquiring into questions of county highways and bridges, giving his orders as to their maintenance and repair, and the proportion in which the cost was to be borne by the various parishes. He exercised a general control over the justices of the peace, directed the strict enforcement or counselled moderation in the application of penal Acts and ordinances. He heard reports of crimes and offences that had been committed and for which no person was in custody, and directed what justices were to undertake the inquiries, what examinations were to be taken, and how and where the offenders were to be tried. He exercised some jurisdiction over the payment of tithes, gave orders as to the repair or rebuilding of parish churches, and as to the rates necessarily to be made for the purpose, and made orders on lay rectors for the repair of their chancels. He heard complaints from the inhabitants of parishes and from the grand juries of the number of alehouse keepers, maltsters, and others who had to take out licenses, and ordered the local justices to suppress such houses as he found upon evidence to be disorderly or unnecessary. He heard petitions from poor people who, by reason of their poverty, had been expelled from the towns and villages, and made peremptory orders for their reception upon the inhabitants or the overseers who had driven them out. He entertained complaints of extortion by bailiffs and officers of excise, and appointed certain of the justices to inquire into the complaints and report the facts. He was, in fact, accessible to all subjects of the realm, and there was no complaint of any wrong, injustice, or misery from one end of England to the other which was not fit matter for the judge to consider if he were to do his duty in that position to which he had been called.'

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It is believed that the majority of school managers throughout the country hastened to avail themselves of the benefits of the Elementary Education Act, 1891 (54 & 55 Vict. c. 56). But that Act is permissive only, and the 'fee-grant' is only given to such managers of schools 'who are willing to receive the same,' so that questions may possibly arise as to the manner in which the managers ought to signify their willingness to receive the fee-grant, and as to the date at which, or the period within which, their determination to receive it ought to be communicated to the authorities. The Act, which came into operation on September 1 last, is quite silent on these points. What would happen if no such communication was made? We think that, on the general principle that every person is to be presumed to accept what is for his own benefit, silence would be presumed to give consent after a reasonable time had elapsed within which refusal might have been signified. More difficult questions might arise in the case of the managers not being unanimous. By section 3 of the Act of 1870 the term 'managers' includes all persons who have the management of any elementary school, whether the legal interest in the schoolhouse is or is not vested in them, and unless there be anything in the trust deed or other document constituting the managers to the contrary, a difference might prove fatal to the grant, as at common law the consent of all would be requisite. It is believed, however, that in by far the greater number of cases the consent of the majority has been made sufficient. Where the school is managed by a School Board, this sensible provision has been made by section 30, subsection 6, and rule 1 of schedule 3 to the Act of 1870, by which 'every question' arising at a School Board meeting 'shall be decided by a majority of votes of the members present and voting on that question.'

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It is probable that if the Legislature had foreseen the invention of the roofing material called 'duroline,' the combustible nature of which has just been the subject of discussion in *Payne* v. *Wright*, section 19 of the Metropolitan Building Act, 1855, would have been somewhat modified. That section provides that the roofs of buildings in the metropolis 'shall be externally covered with slates, tiles, metal, or other incombustible material.' Since that section was passed 'duroline' has been invented, and has been for some time in use in the roofs of such large buildings as the Royal Aquarium, Olympia, and Doulton's Works. The material consists of a network of iron wire, coated with an oleaginous compound which is waterproof and nearly transparent. Unfortunately the coating is combustible, and if a lighted coal or piece of stick falls upon it, it ignites and burns away, leaving the network uninjured. But in spite of this it seems to be doubtful whether it is not actually safer than incombustible glass, over which its light weight gives it a great advantage. Lighted objects, for instance, which would

break and fall through glass, would be prevented by the wire network from falling into and setting fire to an unlighted building, while in case of a fire inside a building the network would to some extent prevent the rush of air. Notwithstanding, however, an ingenious contention that, as the material as a whole was not capable of being consumed by fire, it was incombustible within the meaning of the section, the Court felt itself bound with regret to give the words of the enactment their literal sense. Until, therefore, an alteration is made in the law, this material, which is, we believe, actually used on powder mills outside the metropolis, is tabooed within it. One loophole there is. It appears that after exposure for a year or two the material loses its combustibility to a great extent. By the aid of a friendly finding of fact in this direction, the large buildings which have had it in use for years may be able to resist the onslaught of the London County Council.

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Section 19 of the Summary Jurisdiction Act, 1879, enacts that 'where, in pursuance of any Act, whether past or future, any person is adjudged by a conviction or order of a Court of summary jurisdiction to be imprisoned without the option of a fine, and such person is not otherwise authorised to appeal to a Court of Quarter Sessions, he may appeal to a Court of Quarter Sessions against such conviction or order.' This was intended to be a general enactment, giving an appeal against a sentence of imprisonment, but not otherwise. In many Acts, however, as in the Municipal Corporations Act, 1882 (see section 219), and the Corrupt and Illegal Practices Prevention Act, 1883 (see section 54), the general rule has been deviated from by giving an appeal to quarter sessions against any conviction whatever. Amongst the Acts of 1891 which empower justices to convict summarily, we find that the Markets and Fairs (Weighing of Cattle) Act (see section 3) allows no appeal, but that an appeal is given by the Mail Ships Act, 1891 (see section 7), and notably by the Public Health (London) Act, 1891 (see section 125). The Post Office Act, 1891, which allows justices to impose either fine or imprisonment, is left to the operation of the Summary Jurisdiction Act, 1879, with the result that an appeal lies against a sentence of imprisonment, but not otherwise.

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The graphic and usually accurate Mr. Grant Allen has surely fallen into a slight error in his recent novel called 'Dumaresq's Daughter.' A will is being witnessed, and the witness who attests in the presence of the solicitors of the testator is able to see the name of the person who takes the whole benefit of the will, and, indeed, can hardly help seeing it. Surely the ordinary practice is so to fold a will up that the names of the legatees cannot be seen by the attesting witnesses.

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Commercial Failures.—According to *Kemp's Mercantile Gazette*, the number of failures in England and Wales gazetted during the week ending November 28 was 100. The number in the corresponding week of last year was seventy-three, showing an increase of twenty-seven, being a net increase in 1891 to date of 118.

## 'LAW JOURNAL REPORTS' FOR DECEMBER.

The Law Journal Reports for this month are prefaced by the Rules of the Supreme Court, June, 1891, the order assigning Mr. Justice Vaughan Williams to be the judge to whom matters under section 94 of the Bankruptcy Act, 1883, are to be referred, and the rules under the Summary Jurisdiction Acts. The number also contains indices and tables of cases in the Privy Council, Chancery, Queen's Bench, and Probate Divisions.

Twelve cases in the Privy Council are reported (pp. 33–79), of which the first, *Callender* v. *The Colonial Secretary of Lagos* decides, with reference to the Bankruptcy Act, 1869, that if the scope and object of an Imperial statute leads to the conclusion that the Legislature intended it to affect a colony, and the words used are calculated to have that effect, they must be so construed. *Forth* v. *Power* was an attempted but ineffective evasion of the Crown Land Act, 1861, New South Wales. *The Commissioner of Stamps* v. *Hope* was a special case on appeal from a judgment of the Supreme Court of New South Wales under the Colonial Act (44 Vict. No. 3) in a matter of probate duty. In *Donelly* v. *Broughton* it was held that the rules which govern Courts of Probate in England apply to testamentary papers executed by Maoris. *Macleod* v. *The Attorney-General of New South Wales* was a case under the Criminal Law Amendment Act, 1883, of that colony, and decided that a bigamous marriage contracted in the United States was not within the jurisdiction of the colonial Courts. *In re Lake's Patent* requires clear evidence of the inadequacy of remuneration which will justify the prolongation of a patent. In *The Owners of the Pleiades* v. *The Owners of the Jane* their lordships declined to entertain a question of contributory negligence which was not raised in the Court below. *In re Jablochkoff's Patent* denied to patentees whose rights were older than the Act of 1883 a right to confirmation without the corresponding qualification introduced by the Act of 1852. *Pollard* v. *Harragin* was a case under the Rules of the Supreme Court of Trinidad and Tobago. *Lemestre* v. *West* involved a conflict between the claims of purchasers and of volunteers under a marriage settlement. *M'Leod* v. *M'Nab* shows that under the Revised Statutes of Nova Scotia, series 5, c. 89, a mere reference to a will or codicil is not sufficient to revive it. According to *Davies* v. *The National Fire Insurance Company of New Zealand*, when a contract of insurance is reduced to writing the terms cannot be qualified by evidence of an alleged oral contract made prior to the policy.

In the Chancery Division (pp. 745–856), in which twenty-three cases appear, by *Dowse* v. *Gorton* in the House of Lords priority is given to executors carrying on with the approval of the creditors their testator's business, on the claims of the creditors. In *Montgomery* v. *Thompson*, the 'Stone Ale' case, the House affirmed the decisions of the Courts below. *Lowther* v. *The Caledonian Railway Company* was an arbitration case under the Lands Clauses Consolidation Act, 1845. *In re Bathe* (C. A.) defines the duties of a master in lunacy. *Fishburne* v. *Hollingshead* was a case of registration under the International Copyright Act, 1886. *In re Robinson's Settlements Trusts* denied to a tenant-for-life without impeachment of waste compensation for unworked mines under land sold to a railway

company. *Bellamy* v. *Davy* defined the rights of contractors and sub-contractors, and the latter's lien on purchase-money. *In re Thomas* was a case of a tenant-for-life's right to retain a wasting security. *Ashburner* v. *Sewell* was an instance of a vendor's right to rescind the contract on a purchaser's objection to title. *The Attorney-General* v. *The Vestry of St. James and St. John, Clerkenwell*, settled questions under the Metropolis Local Management Act, 1855, the Nuisances Removal Act, 1855, and the Public Health Act, 1875. *In re Applebee* was a case of the extinction of a debt by the appointment of the debtor as executor. *In re Dodworth* admits the description of 'gentleman' as sufficient for the filing of an affidavit. In *Archer's Case* the acceptance by a director of a company of an indemnity from the promoter was held not to be a misfeasance or breach of trust under section 165 of the Companies Act, 1862. In *Hall* v. *Hall* a gift of 'furniture, goods, chattels, and effects whatsoever the same may be or wheresoever the same may be situate' was held to pass all the testator's property real and personal. According to *In re Russell & Co.* a creditor cannot demand a compulsory winding-up, under the Winding-up Act, 1890, of a company in course of voluntary liquidation unless he can show that his rights will be prejudiced by the voluntary winding-up. *In re Reynolds* involved a power of appointment not within section 27 of the Wills Act. *Dashwood* v. *Magniac* (C. A.) decided in favour of the validity of a local custom by which annual cuttings of beech were held not to be waste and to be annual profits to which the tenant-for-life was entitled. *The Earl of Jersey* v. *The Uxbridge Rural Sanitary Authority* distinguished between the property of the defendants which was and that which was not liable to be taken in execution for the costs of an action. *In re The Opera* (*Lim.*) settled questions of the priorities of debenture-holders and execution creditors of a company in course of winding-up. *The Duke of Sutherland* v. *Heathcote* decides that there may be a grant of an exclusive license to work minerals, and express words are not needed to exclude the grantor; but there is a presumption against such a lease being exclusive. The subject of *In re Robson* was the meaning of a bequest of a 'desk with the contents thereof.' In *Hicks* v. *Ross* the sum was estimated which was required for the redemption of a perpetual annuity. *In re Owthwaite* was an instance in which the additional powers of the Trust Investment Act, 1889, were held not to be applicable.

In the Queen's Bench Division the first of the twenty-seven cases is *Regina* v. *The Guardians of Woolwich Union*, which expounds the scheme of the Valuation (Metropolis) Act, 1869. In *Stogdon* v. *Lee* (C. A.) the limits of a married woman's contractual powers are defined. In *Cleaver* v. *The Mutual Reserve Fund Association* it was held, on the ground of public policy, that the defendants were not liable to pay the sum insured on a husband's life for the benefit of a wife when the latter had been convicted of her husband's murder. It was held in *The Coupé Company* v. *Maddick* that the hirer of a chattel is responsible for damage done to the chattel through negligence. *Clarke* v. *Ramuz* (C. A.) decides that upon a contract of sale of real estate, the vendor remaining in possession is bound, until completion, to keep the premises in the same condition as at the date of the contract of sale. *Smith* v. *Baker*, in the House of Lords, is a comprehensive decision on the liability of a master to his servant for injury sustained by the latter both under the Employers' Liability Act, 1880, and under the general law. *Brace* v. *The Abercarn Colliery Company*, and *Huggins* v. *The London and South Wales Colliery Company* (C. A.) were decisions under the Coal Mines Regulation Act, 1887, s. 12, subs. 1. *Moul* v. *Groenings* (C. A.) was a copyright case in connection with the reproduction of a foreign musical work in England. *Thomas* v. *Searles* (C. A.) involved questions under the Bills of Sale Acts, 1878 and 1882. In *Wilson* v. *Statham* County Court costs only were allowed in an action remitted from the High Court to the County Court. *In the Matter of the Agricultural Holdings Act*, 1883 (C. A.) construed sections 29 and 61 of that Act. In *Hamlyn* v. *Wood* (C. A.) a covenant or warranty was held not to be implied in a contract unless it is absolutely necessary to give efficacy to the transaction. In *Walter* v. *Everard* (C. A.) an apprentice, on attaining the age of twenty-one, was held bound to fulfil the terms of an indenture made before he was of age as they were fair and provident terms. *Pelton Brothers* v. *Harrison* (C. A.) defined the limits of operation of a judgment obtained against a woman during coverture after she had become discovert. *Spurling* (*appellant*) v. *Bantoft* (*respondent*) was a market case under section 13 of the Markets and Fairs Act, 1847. *In re Jones* decided that a collier's wages were not 'salary or income' within the Bankruptcy Act, 1883, s. 53, subs. 2, which could be set aside for the benefit of creditors. *In re The Onward Building Society* (C. A.) illustrated the effect of a sale and transfer after the winding-up order. In *Wiedemann* v. *Walpole* (C. A.), the breach of promise case, it was held that the non-answering of a letter was no admission of the truth of its contents. According to *The Earl of Shrewsbury* v. *Garfield* no appeal lies to the High Court, without leave, from the decision of a judge of a County Court. In *Price* v. *Crouch* a collusive compromise of an action between plaintiff and defendant was not allowed to prejudice the plaintiff's solicitor in respect of costs. In *M'Nair & Co.* v. *The Audenshaw, &c. Company* (C. A.) it was held that an appeal to the Court of Appeal from the decision of a judge on an interpleader issue at the trial of the issue without a jury must be brought within twenty-one days. *Devereux* v. *Clarke* was an action for libel in the criticism of a book in which particulars of justification were required. Points of practice were settled in *Gurney* v. *Small* under Order XIV., rule 1, and Order III., rule 6. In *Smith* v. *Gronow*, where a lease was made voidable on bankruptcy of the lessee, the proviso was held inapplicable where the lessee had assigned before bankruptcy. In *Smith* v. *Bailey* (C. A.) the owner of a traction-engine bearing his name and address was held not liable for injury done to the plaintiff through the negligence of a hirer. *Walker* v. *The Crystal Palace District Gas Company* was a taxation case involving refreshers. *Rockett* v. *Clippingdale* was a decision under the County Courts Admiralty Jurisdiction Act.

In the Probate Division there are twenty-two cases. In *Hall* v. *Hall* (C. A.) was discussed what amounts to condonation of a wife's adultery. In *Moore* v. *Moore* the Court declined to act upon the decree of a foreign Court. *The New Pelton* was a case under the Thames Bye-laws, rule 18. *In the Goods of Boehm* was a case of rectification of a *bonâ fide* mistake in a will. *O'Shea* v. *Wood* (C. A.), involved questions of dis-

covery, inspection, production of documents, and privilege. *Lewin* v. *Lewin* proceeded on the Matrimonial Causes Act, 1878, s. 4. In *Tyler* v. *The Merchant Taylors Company* the Court pronounced in favour of interlineations and alterations in a will. *In the Goods of Barker* was a case in which administration with the will annexed was granted to the attorneys of an absent sole executor. *Taplin* v. *Taplin* saddled the costs of a successful Queen's Proctor's intervention on the co-respondent, though he did not appear on the intervention. In *White* v. *Davernay* the official solicitor was appointed a guardian *ad litem* of a defendant who was a minor. *The Orion* was a decision under the Order in Council of June 24, 1885. *In the Goods of Juppe* gave to the words 'other effects' the meaning of a residuary bequest. *In the Goods of P. A. Fraser* involved the concurrent effect of English and Scotch testamentary papers. *In the Case of the Goods of Dickinson* the Court appointed as administrators persons mentioned by an intestate as executors in an unexecuted paper. *In the Goods of Mary Mann* was a case in which a partial intestacy was provided for by a partial administration. *In the Case of J. B. Seaman* was a case of two wills, English and Canadian. *In the Goods of Sophia B. Cormack* limited, in the circumstances, the bond given by an administratrix to the amount of the net balance only. In *Clarke* v. *Clarke* the Court refused to issue an attachment against a husband for non-compliance with an order to secure his wife's costs. *In the Goods of Sarah Moore* granted administration to an intestate's son instead of her husband. *The Hero* involved the Admiralty jurisdiction of County Courts. *The P. Caland* was a collision case under the regulations. *In the Goods of Mary Shepherd* settled questions of discovery and inspection of old testamentary papers.

In the five Magistrates' Cases, *Fenwick* v. *The Croydon Rural Sanitary Authority* decided a number of questions under the Public Health Act, 1875. *Regina* v. *Hannay* was a music-hall licensing case under the Metropolis Management Act, 1878, ss. 11, 12, 13. *Kennedy* v. *Cowie* was under the Conspiracy and Protection of Property Act, 1875, s. 7. *Regina* v. *Marsden* (C. C. R.) construed section 4 of the Criminal Law Amendment Act, 1885. In *Fortescue* v. *The Vestry of St. Matthew, Bethnal Green*, section 72 of the Paving (Metropolis) Act, 1817, was held to have been repealed by section 119 of the Metropolis Local Management Act, 1855.

## THE REGISTRATION APPEALS.

The annual decisions on appeals from revising barristers are apt to prove disappointing to those who have to look to them for guidance. When exclusive cognisance of these matters was reserved to the Court of Common Pleas, the same judges, sitting year by year to exercise the jurisdiction, had a chance to acquire special knowledge of registration law, though even then the conditions were not favourable to their doing so. Since the merger of the Common Pleas in the Queen's Bench Division the practice seems to be to vary as much as possible the composition of the Divisional Courts before which the appeals come. There is consequently a want of familiarity on the part of the judges with the law they are called upon only at long intervals to interpret—law which has much increased and is ever increasing in complexity. It must be added that appellants and respondents alike appear to select their counsel without regard to special qualifications. Appeals can now, it is true, be carried to the Court of Appeal, but only by leave of the Divisional Court, and that leave is too often refused when most needed. The inevitable result of such a system is uncertainty and inconsistency. We cannot say that the decisions of the present year, which we now proceed to examine, as a whole form any exception to the rule, though some of them will be useful precedents.

The case of *Hall* v. *Metcalfe* was unsatisfactory for two reasons. In the first place, it was irregular in form, being (to use an expression of Mr. Justice Williams in *Prior* v. *Waring*, 17 Law J. Rep. C. P. 73; 5 C. B. 56) a joint, not a consolidated appeal. It has been repeatedly held that a revising barrister has power to consolidate appeals only where the facts are alike. Here the facts differed, and the cases fell into two distinct groups. There should, therefore, have been two appeals—one as to the stall-holders, of whom Allen was the type; and the other as to the stand-holders, represented by Abbott. We are aware that in more than one instance of late years a similar irregularity has passed unnoticed. Nevertheless, it is settled law that the Court has no jurisdiction to hear such appeals, even with the consent of the parties. Both in *Prior* v. *Waring* and *Robson* v. *Brown*, 26 Law J. Rep. C. P. 81; 1 C. B. (N.S.) 34, the judges took the objection without waiting for counsel to raise it.

The second fault we find with the case is that it did not state the facts sufficiently to enable a decision to be given on the only serious question raised—the question, namely, whether the persons objected to were occupiers, or were mere licensees having the use and enjoyment, but not the occupation, of the plots of ground in respect of which they were entered on the list as qualified. The test would be whether Horner, the lessor or licensor, retained the control of the whole market or not; and, as to this, the case as hitherto reported was altogether silent. Instead of remitting it for a fuller statement on which the real rights could have been determined, the Court was content with upholding the decision of the revising barrister in favour of the votes, apparently on the negative ground that the facts as stated were not inconsistent with his conclusion. But neither were they inconsistent with the opposite conclusion. Bearing in mind the cases of *The London and North-Western Railway Company* v. *Buckmaster*, 44 Law J. Rep. M. C. 29, 180; L. R. 10 Q. B. Div. 70, 444, and *Smith* v. *Lambeth*, 52 Law J. Rep. M. C. 1; L. R. 10 Q. B. Div. 327, we should say it may well be that the stall-holders had exclusive enjoyment, but not occupation, of the qualifying tenements, and the stand-holders, not even exclusive enjoyment, but a mere preferential right depending on their presence. Mr. Justice Wright's doubt, as to its being necessary to the qualification of a 10*l.* occupier that he should occupy as owner or tenant, will, we venture to think, disappear if he should ever find it necessary to form an opinion on the subject. In the present case the voters occupied as tenants if they occupied at all.

In *Body* v. *Halse*, *Hunt* v. *Halse*, and *Fenning* v. *Halse* the Court had to decide what is meant by the expression 'to witness a signature.' It was contended by the appellants that a lodger claim could be well attested by one who had not seen the claimant sign. The form of attestation requires the witness to declare as follows: 'I have witnessed the above signature of the above-named (claimant) at the date stated above'—

*i.e.* the date of the claimant's signature. Mr. Justice Wright put the question in a nutshell when he asked, 'Do not the words, "I have witnessed the above signature," mean "I saw it made"?' The Court answered that question in the affirmative, and their decision will, it may be hoped, check to some extent the loose practices that prevail in the making of lodger claims.

The appeal in *O'Connor* v. *Nicholson* was so obviously one which the Court had no jurisdiction to hear that we find a difficulty in understanding why it was not struck out as soon as it was opened. By section 41 of 6 & 7 Vict. c. 18, it is enacted that in a revising barrister's Court 'no party or other person shall appear or be attended by counsel.' The appellant, who had been called to the bar, claimed to represent other persons in a revision Court, and the revising barrister refused to hear him. That refusal was not stated to have affected the decision upon any claim or objection. If it had, there might have been a person entitled to appeal, but that person would not have been Dr. O'Connor. Instead of striking out the case the Court allowed the appellant to argue it. He seems to have relied upon two grounds: one, that he did not appear for any 'party or other person;' the other, that he did not appear as 'counsel.' The first argument placed him at once in a dilemma, for the words 'party or other person' must include all who have any *locus standi* in a revision Court; and if the association whom the appellant claimed to represent were not within the prohibition, it could only be because as to them no prohibition was necessary. But the true view of the matter is that an agent employed by an association to attend a revision Court must be regarded as representing the individual voters for whom the association acts; and these are the parties referred to in the section.

But the substantial point was, whether the appellant had appeared as counsel. Not many years since a case was argued in a revision Court by counsel regularly briefed on both sides. This was clearly within the mischief of the Act, and illegal; and in any case it is difficult to maintain that a barrister appearing in Court for another person is not acting in his professional capacity as counsel. But many revising barristers have been disposed to stretch a point so far as to allow an appearance by one who is not in regular practice at the bar and is acting gratuitously, or even in part discharge of the duties of some salaried office. On the whole we rather regret that the Court should have thought it necessary, in a case not properly before it, to pronounce an opinion in favour of a literal interpretation of the section.

*Jones* v. *Pritchard* raised a question as to the right of the four canons of Bangor to vote in respect of a residence which belongs to all, and is occupied by each in rotation for three months of the year. The substance of the objection taken to their votes was that all were not joint occupiers for the qualifying twelve months, but each was a separate occupier for three months only. On the facts stated the objection seems to have been a good one. It is true that where several persons occupy a house jointly, the absence of any, or for that matter all, during part or the whole of the qualifying period, would not signify so long as the house is kept up for their joint use. But here the case found that each in turn had exclusive occupation of the house, maintaining his own separate establishment of servants. The revising barrister seems to have been impressed by the circumstance that the arrangement was voluntary, and could have been altered by consent of the canons. But the question was not what they might have done, but what they did. However, the barrister took a different view, and hence the appeal. We hesitate to accept the report (in the *Times*) of what took place at the hearing. If it be correct, the Court, having before it a plain and simple point of law with which alone it had jurisdiction to deal, proposed to remit the case to the revising barrister in order that he might state facts with regard to a totally different point which he had not raised, and had no power to raise. It is true that the proposal was subject to the consent of the parties, but we fail to see how any consent could have justified such a proceeding. The respondent's counsel refused to agree, and ultimately the appeal was dismissed, but whether on the merits, or not, does not appear from the report.

The question raised in *Arnold* v. *Sharpe* as to the duty of the revising barrister with regard to duplicate entries in the lists of county electors is by no means a simple one, and the Court refused all assistance towards solving it on the ground that it did not relate to the insertion of a name in any list, and therefore was not a subject for appeal. This is a narrow construction of the clause (6 & 7 Vict. c. 18, s. 42) by which the right of appeal is given. For if substance rather than form be regarded, when an entry is marked as a duplicate it is expunged for all practical purposes from the list of Parliamentary electors or burgesses or both, as the case may be. It is often a matter of some importance to a man whether he is to vote in one division of a borough or another, when he is qualified in both, and it does not seem reasonable that he should have no redress if the barrister misconstrues the enactment regulating the selection of the entry for voting.

In *Lord* v. *Fox* the revising barrister had transferred the name of an elector from Division 3 of the occupiers' list to Division 1, although the elector had made no claim. This was, in effect, to insert in the list of Parliamentary electors a name which had been omitted therefrom by the overseers. The law only allows this to be done when due notice of claim has been given, and the apparently irrelevant fact that the name has been entered in the list of burgesses or county electors can hardly be a ground for dispensing with the notice of claim. The Court so held, and allowed the appeal. It has been suggested, but, we think, without good ground, that the result might have been different if *Ballard* v. *Robins*, 47 Law J. Rep. C. P. 50; L. R. 3 C. P. Div. 92, had been brought to the notice of the Court. The only case which, in our opinion, lends any support to the decision appealed from is one which was cited against it, *Greenway* v. *Bachelor, Jacob's Case*, 53 Law J. Rep. Q. B. 179; L. R. 12 Q. B. Div. 376. There it was certainly held that a man's name might be expunged from the list of burgesses on an objection addressed only to his qualification as a Parliamentary voter. But that authority has not been generally approved.

## *DOWSE* v. *GORTON* IN THE HOUSE OF LORDS.

If a testator's business is carried on after his death in accordance with the provisions of his will, his executors are entitled to be indemnified out of the assets which the testator has authorised to be employed in the business, and the persons with whom the executors deal in

carrying on the business are entitled to be subrogated to the executors' right of indemnity. Where the business is similarly carried on with the sanction of the testator's own creditors, similar rights in favour of the executors and persons dealing with them exist against the testator's own creditors who, but for that sanction, would not of course be bound, as the beneficiaries are, by the direction in the will authorising the executors to carry on the business. These are well recognised rules of administration, to which, however, the Court of Appeal in *Dowse* v. *Gorton*, 58 Law J. Rep. Chanc. 403; L. R. 40 Chanc. Div. 536, laid down two limits as to the rights of the subsequent creditors as against the testator's own creditors: first, that if the executors are themselves indebted to the testator's estate, their right to indemnity and the right of the subsequent creditors by way of subrogation to the executors' right must fail to the extent of the executors' indebtedness; and, secondly, that the right of the executors to indemnity and the right of the subsequent creditors by way of subrogation to the executors' right are subject to the prior claims of the testator's own creditors in respect of the assets existing at his death—in other words, that the indemnity in question as against the testator's own creditors exists only in respect of such part of the estate as has come into existence or changed its form since the testator's death. The first of these limits seems to be in direct accordance with the law of trusts and the doctrine of subrogation; but the second one is based on less obvious principles, and appears to be quite unsupported by previous authority. The case went to the House of Lords (60 Law J. Rep. Chanc. 745; L. R. (1891) App. Cas. 190), where the order was varied by rejecting the second limit imposed by the Court of Appeal. The result, therefore, is that there is no difference in this respect between assets which come into the hands of the executors at the time of the death of the testator and property which, in their capacity of executors, they afterwards acquire in carrying on that business. The judgment of Lord Macnaghten in the case under appeal is, we think, a distinct contribution to this branch of the law, and will well repay perusal. Dealing with this particular point, and referring to the indemnity as limited by the order of the Court of Appeal to that part of the testator's estate as having been 'acquired by the executors since the death of the testator,' he continues: 'I am not aware of any authority for splitting the assets in that way. If a testator's business is carried on after his death in accordance with the provisions of the will (which, I think, is the true view in this case), the indemnity of the executors is only limited by the amount of assets which the testator has authorised the executors to employ in the business. If the business is carried on by the executors at the instance of the creditors without regard to the terms of the will, the executors, I suppose, have the ordinary rights of agents against their principals. But I can see no reason in any case for limiting the indemnity to that portion of the assets which may have come into existence or changed its form since the testator's death.

The judgment of the same learned judge deserves the attention of pleaders on an important point of practice. The proceedings in *Dowse* v. *Gorton* were commenced both by action and originating summons. The writ in the action asked for usual administration only, and no statement of claim was delivered and no affidavits filed in the action. The summons on which affidavits were filed also asked for the usual administration only. Lord Macnaghten, after remarking that the question of wilful default could not, consistently with well-recognised principles, be raised on this state of the pleadings, continued: 'Indeed, I apprehend it would not be competent for an applicant on an originating summons to ask for or obtain otherwise than by consent an order founded on breach of trust or inquiries pointing to wilful default.' This is an important limitation to the nature of the relief obtainable by this procedure.

# Reviews.

## THE LAW SOCIETY'S LIBRARY.

*Catalogue of the Printed Books in the Library of the Incorporated Law Society.* By F. BOASE, Librarian. London. 1891.

WE have nothing but praise to bestow on this catalogue. Admirably printed and arranged, with references to the shelves on which the books can be found, it reflects the highest credit on the librarian. We learn from the preface that the library now contains about 36,466 volumes, and we have found by turning over the pages of the catalogue that amongst them appears to be every book which either student or practitioner can possibly want.

## THE REVISED REPORTS.

THE first volume of the 'Revised Reports,' which was issued a few months ago, contains more than 200 cases extracted from 1 Cox, 1 Vesey Jun., and 1–3 Durnford and East, covering a period of about five years from 1785 to 1790. The revision of 'the books,' which has been so frequently talked of, seems now likely to be accomplished. The system on which Sir Frederick Pollock and his assistants (Messrs. Campbell and Saunders) have proceeded is so fully described in the general introduction to the first volume, and the description is so much needed by the profession, that we hope that the introduction will be reprinted with the second volume, which is, we believe intended to appear before the end of the year. 'There can be no doubt,' it is stated in this introduction, 'about retaining a case that has been more than once or twice judicially cited, or has been frequently cited in argument within the last generation . . . Where a case has been reversed or expressly overruled, the burden of proof will then have to be carefully sifted; but it may well hold its ground if the authorities now in force are not intelligible without reference to it, or if it is so well known as to have taken a classical standing in the history of the law. Other grounds for omitting cases (or, where judged proper, parts of cases) will be that the decision relates to matters now obsolete by reason of changes, statutory or otherwise, in practice or law; that the point decided is now too well settled to need citation of authorities, or is covered by better and later authority; that no final decision of the case is reported; that the question turned on the construction of special and unusual words or on the application of settled rules of law to special and unusual facts; finally, that in one way or another the case is not—perhaps never really was—of any general

interest.' This 'perhaps' is very considerate to the old reporters, who beyond doubt have amongst them reported many hundreds of cases which even their contemporaries would have 'willingly let die.'

## PARKER ON ELECTION AGENTS AND RETURNING OFFICERS.

*The Powers, Duties, and Liabilities of an Election Agent and of a Returning Officer.* By Frank R. Parker, Solicitor and Parliamentary Agent. Second Edition. London: Knight & Co. 1891.

The new edition of Mr. Parker's work on election agents and returning officers may be regarded as one of the shadows cast before by the coming General Election. Great pains have been taken to make it a complete 'practical text-book and manual for workers in Parliamentary elections.' The statutes and the reported cases of the past seven years have been incorporated, and the book has been revised throughout and in great part rewritten. It is not merely a legal treatise, but contains much useful advice, evidently founded upon experience, upon such matters, for instance, as the shape, position, and internal arrangements of a polling-station and of a room for counting votes, and upon questions of policy, such as the relations of a candidate to political clubs and associations, and the advisability upon other than legal considerations of presenting an election petition. There is a copious supply of forms which seems sufficient for all possible requirements; and there are facsimiles of the various irregularly marked ballot papers which have been held good or bad by the Courts. On questions of law the book will generally be found a trustworthy guide by those for whom it is written. We note a few points, not practically important, in which there is room for improvement. Sometimes there is a little want of proportion in the discussion of incidental matters—*e.g.* in the remarks on surnames and christian names at pp. 168, 169. The statement (p. 77) that imprisonment on mesne process, or for debt, does not disqualify a candidate is somewhat out of date. On p. 63 we are told that aliens were 'originally excluded from Parliament by reason of the jealousy of foreigners during the reign of William III.,' while on p. 66 it is said, no doubt correctly, that an alien has always been ineligible. The author's uncertainty on this point, and also the doubt he expresses (p. 68) as to the eligibility of a person naturalised by certificate under the Naturalisation Act, 1870, proceed, we think, from his not accurately appreciating the scope of section 3 of the Act of Settlement. That clause was aimed not against aliens (who were already subject to some at least, and probably to all, of the disabilities it imposes), but against naturalised subjects and denizens, and, as it would seem, natural born subjects whose place of birth, though within the dominions of the Crown, was not within the three kingdoms or their dependencies. It was not repealed by the Act of 1870, because it was intended to remain in force so far as not inconsistent with the provisions of that Act. But it is material to observe that 1 Geo. I. st. 2, c. 4, which required the disabling provision of the Act of Settlement to be inserted in every Naturalisation Bill, has been repealed by 7 & 8 Vict. c. 66. It is a strange assertion (p. 63) that the clergy are excluded from the House of Commons because they are members of or represented in the House of Lords. The Lords Spiritual sit in the Upper House, but the clergy are no more represented by them than the commonalty are by the Lords Temporal. Besides, the clergy are represented in the House of Commons, though they do not sit there. The truth of the matter is that the clergy, as one of the estates of the realm, had their own organisation apart from the baronage and the commons. When they ceased to tax themselves in convocation they acquired, without express legislation, the right, since recognised by statute, to vote at Parliamentary elections in respect of ecclesiastical benefices. They not unnaturally claimed to have also acquired the right to be elected; and the claim was allowed by the Newport election committee in 1785 (2 Luders, 269). *Horne Tooke's Case* shortly after was made the occasion for passing the Act 41 Geo. III. c. 63, which made the clergy thenceforth ineligible. On p. 356 Mr. Parker says that 'the writ of summons to the House of Lords must be issued before the disqualification' of a peer to vote as a Parliamentary elector 'attaches.' The proposition thus broadly stated is not warranted by the authority quoted (*Bedford*, C. & R. 95; P. & K. 143). There the peerage was created by the writ, and did not exist until the writ was issued. We see no reason to doubt that a peer deriving title by descent or from a patent issued to himself is disabled from exercising the Parliamentary franchise from the time of his predecessor's death in the one case and of the passing of the patent in the other.

## THE CRIMINAL LAW OF CANADA.

*A Bill relating to the Criminal Law of Canada.* Ottawa. 1891.

This gigantic bill, which bears a striking resemblance to the Criminal Code Indictable Offences Bill introduced by the late Sir John Holker in the British House of Commons in 1878, contains 1,005 clauses. The most noticeable are clauses 681–683, by which the evidence of the defendant and of the husband and wife of the defendant is made admissible in certain specified cases, but inadmissible in others. We should have expected to find a clause making such evidence generally admissible.

# Correspondence.

## INCOME-TAX REPAYMENTS.

Sir,—We hope you will allow us to supplement the letter we wrote to you this time last year, and which you were good enough to publish, showing the result of our endeavours to enlighten the income-tax payer as to his rights. The thirty-fourth Inland Revenue report which has just appeared enables us to bring down our figures to the end of the financial year 1889–90. About five years ago we issued 'Income Tax: How to get it Refunded,' and a new edition has appeared yearly as soon as any changes in the law have been decided upon. The thirty-first Inland Revenue report was the first to show the effect of the circulation of the book. The number of persons claiming abatement had suddenly increased in one year by 14,870; the following reports showed further increases of 8,415 for 1887–88, 4,873 for 1888–89, and 8,788 for 1889–90. In the four years, therefore, that followed the first appearance of the

book relief was obtained by 36,946 persons, who, it is fair to assume, would not otherwise have claimed it. The money thus actually refunded to claimants amounted to 298,704*l.* during the four years; but this is very far from representing the whole amount refunded to claimants, for, strange to say, in no part of their reports do the Board of Inland Revenue give an account of money repaid under the exemption clause. Now, as far as our experience goes, exemption claims are at least ten times as numerous as abatement.

Besides these claims, there are others, on account of life insurance premiums. These have increased during the past three years from 98,622, with relief on 3,169,122*l.*, to 114,461, with relief on 3,585,127*l.*, an increase of 15,839 claims, with relief on 416,005*l.* Nor is this all, for very considerable reductions have been made in assessments, and very large sums have been refunded on overcharged professional and trade profits. Comment would be superfluous on the eloquent figures we have succinctly given above, and which are vouched for by the official reports.

We are convinced that there are still at least a hundred thousand who would get a refund on abatement or exemption if they would only go to the trouble of claiming or of entrusting their claims to us.

THE INCOME-TAX REPAYMENT AGENCY.
25 Colville Terrace, London, W.

# Unreported Cases.

## ARCHES COURT OF CANTERBURY.

LORD PENZANCE, the Dean of the Arches, held a public sitting of his Court on November 25 at his room in the House of Lords, and was attended by Mr. Cyrus Waddilove, the registrar, and Sir John Hassard, his lordship's official secretary.

### BOYER *v.* THE BISHOP OF NORWICH.

This was a proceeding instituted by the Rev. C. E. P. Boyer against the Hon. and Right Rev. the Lord Bishop of Norwich for refusing to institute him to the living of Brantham, in Suffolk, to which he had been nominated by the patron (Sir Alexander Dixie), who is a Roman Catholic. The bishop raised a demurrer, on the contention that there was no ground of action.—The Dean of the Arches, in giving judgment, said: This case came before the Court on an objection to the admission to the libel—practically a demurrer to it. The libel states that under the provisions of certain statutes made by the governing body of Emmanuel College, Cambridge, the heir of Sir Woolston Dixie had secured to him the right of nominating a fit person to be presented by Emmanuel College to the living of Brantham, in Suffolk. Sir Alexander Dixie, claiming to be such heir, has nominated the promovent to the college, and the college has presented him to the living. The respondent is the Bishop of Norwich, and he has refused to institute the promovent upon the ground that Sir A. Dixie at the time when he exercised his right of nomination was a Papist, which fact is admitted by the libel to be true, and that by the Act passed in 13 Anne, c. 13, all nominations by Papists are made void and of no effect. Whether the nomination in the present case is within this statute is the question, and the only question, to be determined. The words are, every Papist 'is hereby made incapable to present, collate, or nominate to any benefice, prebend, or ecclesiastical living, school, hospital, or donative,' &c. The case was admirably argued; but when both the general intent of the statute and the words of the particular enactment are adverse, argument is rather uphill work. The first contention of the promovent is that the words which I have quoted should be read *reddendo singula singulis*, so that the words 'present' or 'collate' are alone applicable to the word 'benefice,' the word 'nominate' applying only to school, hospital, &c. The objection to this contention is that it does violence to the grammatical construction of the sentence. To this it was replied that the previous statute had used very similar language and applied it in the manner suggested. But the language was not identical—it was changed, and the fair inference from the change made in it is that a different result was intended. It was next contended that, assuming incapacity to have been imposed upon 'nomination' as well as 'presentation' the 'nomination' intended was a different sort of nomination from that which has taken place in the present case. But why so? The word 'nominate' is general and subjected to no qualification in the statute. To restrict it by construction should only be done upon some very clear reasoning of the intent. The argument ran thus—that where the nomination is absolute it may be admitted that the statute applies. In that case the duty of presentation becomes merely ministerial, but where there is anything of discretion or judgment to be exercised by another the nomination is not absolute in the possessor of the right, and this, it is contended, takes it out of the statute. The Court was reminded that it was contrary to well-known principle to extend a penal enactment by inference or construction, but this statute requires no extending to make it applicable to the case in hand. Its plain words apply to the present case, they coincide with the general purpose of the Act, and the only question is one of restriction, and not extension. The suggested distinction, therefore, cannot be accepted by the Court. But if it could, I fail to see what there is in the present case to render this nomination anything short of absolute. True, it must be exercised within a prescribed area, but within that area it is absolute enough; and as to the word 'fit,' that is a condition which applies to all rights of presentation. The last argument, if I understood it rightly, was to this effect: That, assuming the nomination to be void, the presentation by the college which followed it might endure as a valid presentation made in their own right upon the lapse of Sir A. Dixie's right of nomination. I will only say of this that to so treat the presentation would do violence to the entire case of the promovent as made on the face of his libel; that it would do violence to the rights of the college, who never selected him as their nominee; and, lastly, that it would be absolutely inconsistent with the language of the presentation itself. The objection to the libel must prevail.—Mr. Dibdin: On the part of the bishop, I ask for costs.—The Dean of the Arches: Yes.—Sir Walter Phillimore, Q.C., and Mr. A. B. Kempe were counsel for the promovent, Mr. Boyer; Mr. L. T. Dibdin appeared for the bishop.

## COUNTY COURTS.

### STAMP ACT, 1891, S. 12, SUBS. 5, AND S. 15, SUBS. 4.

On Tuesday, November 24, at the Croydon County Court, before his Honour Judge Lushington, the case of *Bland* v. *Taylor & Co.* was heard. This was an action to recover 11*l.* 7*s.* 6*d.* arrears of rent under a written agreement for a yearly tenancy of 32*l.* 10*s.* per annum. On a previous occasion the plaintiff had been nonsuited in consequence of the agreement being unstamped, but he had now had it stamped with 6*d.*, and had paid a penalty of 10*s.*, and it bore two stamps, a sixpenny and a penalty.—Warde objected that the agreement was insufficiently stamped, as the rent being 32*l.* 10*s.*, the stamp ought to have been 5*s.*—His Honour said, as the agreement bore a penalty

stamp, he must assume that it was properly stamped.—Warde submitted that, under the Act, denoting and penalty stamps were totally distinct, and that whilst a denoting stamp was conclusive evidence that the document was properly stamped, a penalty stamp was only evidence that a penalty had been paid without regard to the sufficiency of the stamp.—His Honour held that the penalty stamp was conclusive evidence of the proper duty having been paid, and that, in the present case, 6*d.* must be held to be the proper stamp on the agreement at a rental of 32*l.* 10*s.* per annum.—Bockett appeared for the plaintiff; Daniel Warde (counsel) for the defendants.

LANDLORD AND TENANT.

At the Newcastle County Court, on December 1, his Honour Judge Jordan gave judgment in the case of *Vernon* v. *Powell*, which was tried at the Stone County Court The plaintiff sued the defendant for a quarter's rent in lieu of notice. The short facts were that the defendant took the house in April and agreed to pay a proportion of the quarter's rent up to June, and then go on as a tenant from year to year, subject to a quarter's notice. This the defendant did, but quitted possession on June 15 without giving notice. The agreement was not in writing, and the question was whether the plaintiff was entitled to the quarter's notice or not. If he was, he was entitled to recover the quarter's rent (3*l.* 10*s.*). In the case of *King* v. *Grafton*, 21 Law J. Rep. Q. B. 278, there was a precisely similar agreement; and Lord Campbell held that the tenancy did not commence before June 24. So here the tenancy did not commence before June 24; and as the defendant had quitted possession on June 15 he was in the position of a person who had taken a house by verbal agreement for a period not exceeding three years without entry. And upon this state of facts the law was that no action would lie for rent or for damages for not occupying, as in the case of *Edge* v. *Strafford*.—His Honour said: If the agreement had been in writing, I need not say that the plaintiff would have been entitled to recover the 3*l.* 10*s.* as damages for its breach. For these reasons there must be judgment for the defendant, with costs.

WILL—CONSTRUCTION—EXECUTORY DEVISE.

On December 1 his Honour Judge Jordan gave judgment in the case of *Palmer* v. *Yelland*, at the Newcastle County Court. John Harry Palmer sued William Yelland to recover 18*l.* 11*s.*, under the following circumstances: In the year 1872 William Mason was the owner of one-half of three dwelling-houses in London Road, Newcastle, and his daughter, Ann Palmer, was the owner of the other moiety of the fee-simple of the said dwelling-houses. Her father died in 1872, and devised his moiety of the dwelling-houses to her for life, 'and after the decease of my said daughter to the child, if only one, or the children, if more than one, of my said daughter, who either before or after this limitation shall take effect in possession, shall attain the age of twenty-one years, as tenants in common.' Ann Palmer died in October, 1884, intestate, and left three sons who had attained the age of twenty-one years, and a daughter who at that time was an infant. The plaintiff was the eldest son and heir-at-law of his mother, and took her moiety. In 1885 the plaintiff and his two brothers sold their interest in the three houses to the defendant, and the defendant admitted that between the time of his purchase and the time when the daughter attained the age of twenty-one he had received 18*l.* 11*s.* as rent for the fourth share in the moiety, which fourth vested in the daughter when she attained her majority, and he was willing to pay that sum to the person or persons entitled to it.—His Honour stated that the case was argued before him at the last sitting of the Court, and he took time to consider his judgment. For the plaintiff, it was contended that he was entitled, as heir-at-law to Mason, to recover the 18*l.* 11*s.*, for that his sister's share had descended to him during the time of her minority, and only vested in her upon attaining her majority. He was of opinion that the devise of the moiety to the plaintiff, his brothers, and sister was an executory devise, which vested the whole of the moiety in the plaintiff and his two brothers, and opened to let in the sister when she arrived at twenty-one. This was so decided in *Lechmere* v. *Lloyd*, L. R. 18 Chanc. Div. 524, an authority which was recently followed in *Dean* v. *Dean*, 60 Law J. Rep. Chanc. 553. And, further, he was of opinion, upon the authority of *Furneau* v. *Rucker*, reported in the *Weekly Notes* for 1879, that the income arising from the three houses vested absolutely during the minority of the sister, not in the plaintiff alone, as heir-at-law, but in him, and his two brothers, as devisees and tenants-in-common. The result was that the plaintiff was only entitled to recover 6*l.* 4*s.*, or one-third of the 18*l.* 11*s.*, which was paid into Court after a tender, and, therefore, a verdict must be for the defendant, with costs.—Mr. Watson appeared for the plaintiff in this case, and Mr. Sproston for the defendant.

LAND TAX—EXCESSIVE DISTRESS—JURISDICTION OF COMMISSIONERS—LIABILITY OF TAX COLLECTOR.

On Tuesday, October 20, at the Frome County Court, His Honour Judge Caillard gave judgment in the case of *Padfield* v. *Smith*. This case was heard at the August Court, when His Honour Judge Caillard took time to consider his judgment. His Honour said: This action is brought to recover 30*l.* damages from the defendant Samuel Smith, a collector of land tax, for trespass upon certain land belonging to the plaintiff, and for an illegal distress by seizing and selling a cow and calf also his, under a warrant from the Inland Revenue authority, to recover 30*s.* alleged to be due by the plaintiff for land tax. The defendant has paid 11*l.* 11*s.* 2*d.* into Court in satisfaction of the plaintiff's claim, and has filed a notice to the effect that the amount so paid in is 'the overplus coming by the distress levied on the plaintiff's goods and chattels for land tax, after deducting the said land tax, and also the costs and charges of taking, keeping, and selling the said distress.' The 30*s.* claimed was for two years' land tax at 15*s.* for each year, the first 15*s.* being in respect of the assessment for 1888–89, and the second of the assessment for 1889–90. The defendant has admitted that the first 15*s.* was not due, and he has accordingly paid that into Court as part of the 11*l.* 11*s.* 2*d.* He further admitted by his learned advocate, Mr. Ames, that the land tax upon the land in question had been redeemed. Even without this admission I should have found, without hesitation, upon the evidence adduced on the plaintiff's behalf, that the land tax was redeemed very many years ago in 1799, and has never since been paid, nor even (save for the two years above mentioned) been claimed in respect of that land. The defendant's contention, however, is that the plaintiff ought to have appealed to the land tax commissioners, who alone had jurisdiction in the matter, and that he having failed so to appeal, the assessment for 1889–90 held good, and the amount (15*s.*) was legally due and could be levied for, and it followed that this Court had no jurisdiction. This argument for the defendant is rested upon the statute 38 Geo. III. c. 5, and in particular upon sections 8, 9, 17, and 23 of that Act. By section 8 the commissioners are to appoint assessors, and a routine to be followed is prescribed, certain notices to be given, &c., and any person aggrieved by the assessment and intending to appeal to the commissioners may then give notice of the appeal to the assessor, and the appeal is to be heard by the commissioners, whose determination is to be final without any further appea

upon any pretext whatever. Section 17 enacts that, if any person refuses or neglects to pay the amount he is assessed in upon demand by the collector, it shall be lawful for the collector to levy the sum assessed by distress, and sale of the goods of the persons so neglecting or refusing to pay, and that, if any question or difference shall happen upon taking such distress the same shall be determined and ended by the commissioners. Section 23 provides that all questions or differences which shall arise touching any of the rates or assessments or the collecting thereof shall be heard and finally determined by the commissioners in the manner by the Act directed, without further trouble or suit in law in the King's Bench or any other Court whatever. No witness was called on the part of the defendant, but it may be taken that, apart from the fact that the land tax had been redeemed, and supposing, therefore, that it had not, all formalities touching the assessment, the warrant, the distress, and the sale were complied with, the question of excessive distress only being raised by the plaintiff. He throughout, from the very first of there being any demand made upon him for the land tax, insisted upon the fact of its having been redeemed, and refused to appeal to the commissioners. For the defendant, the following authorities were cited: *Patchett* v. *Bancroft*, 7 Durn. & East; Term Rep. 367; *Allen* v. *Sharpe*, 17 Law J. Rep. Exch. 209; *In re The Land Tax Assessment for the Holborn Division of the County of Middlesex*, 5 Exch. Rep. 548; *Regina on the Prosecution of Whittle and Robinson* v. *The Commissioners of Land Tax for the Tower Division of Middlesex*, 2 E. & B. 694; same case, 22 Law J. Rep. Q. B. 386; and *Simpkin* v. *Robinson*, 45 L. T. Rep. (N.S.) 221. Mr. Metcalfe, the learned counsel for the plaintiff, cited and relied upon *Charleton* v. *Alway*, 9 Law J. Rep. Q. B. 237; 11 Ad. & E. 993, and also *Hodgson* v. *Pearson*, 31 L. T. Rep. (N.S.) 679. I am of opinion that the present case comes within the authority of *Charleton* v. *Alway*, and is governed by it, and, therefore, that the Commissioners of Land Tax have not, whilst this Court has, jurisdiction to deal with the matter, and the plaintiff must succeed. In *Charleton* v. *Alway* there had been an assessment to the land tax in a gross sum for vicarial and rectorial tithes. The tax had been redeemed on the latter, but not on the former tithes. The defendant, the collector, on the refusal of the plaintiff to pay in respect of the rectorial tithes (but who had paid the residue of the assessment), distrained on him under section 17 of 38 Geo. III. c. 5, for the amount withheld. On the trial before the Lord Chief Baron Abinger he was of opinion that the plaintiff was entitled to a verdict, which was found accordingly; but he reserved leave, on a point not now material, to move for a nonsuit. There was a motion for a new trial on the ground that, the plaintiff not having appealed to the commissioners, the rate must be held good against him, and a rule was granted on this point. After argument on this rule *nisi*, the Court (consisting of Lord Denman, Chief Justice, and Mr. Justice Littledale, Mr. Justice Patterson, and Mr. Justice Williams) reserved judgment, which was delivered by the Lord Chief Justice. It is to be noticed that *Patchett* v. *Bancroft* was cited by the defendant's counsel. I quote briefly from his lordship's judgment only those passages which are most directly in point. 'The land tax on the rectorial tithes had in this case been redeemed, therefore neither the commissioners nor the assessors had any jurisdiction in respect of such land tax. It was, however, included in the assessment, but in one undivided sum with the land tax on the vicarial tithes, both being in the occupation of the plaintiff. This was incorrect at all events, even if the rectorial tithes had not been redeemed. . . . The plaintiff did, in fact, pay the land tax on the vicarial tithes, and the distress was really made for that on the rectorial tithes, 1*l.* 19*s.*, which was known to the collector to be disputed. The only question is, whether the plaintiff ought to have appealed to the commissioners? We think that he was not bound to do so. Being assessed in respect of that which was not subject to the land tax, he had as much right to treat the assessment as a nullity as if it had been in respect of property not in his occupation (see *The Governors of Bristol Poor* v. *Wait*, 3 Law J. Rep. M. C. 71; 1 Ad. & E. 264). The verdict therefore, is right. . . . The rule must be discharged.' I am not aware that this case has ever been in any way impeached; it certainly has not been by any of the cases cited for the present defendant. The very substantial difference between them and *Charleton* v. *Alway* is, without going further into details, that in every one of those there was an unredeemed and so existing land-tax or some other existing taxes or duties, and therefore the question whether the commissioners have or not exclusive or any jurisdiction when the land tax has been redeemed was not, and of course could not, be raised. In *Simpkin* v. *Robinson*, for instance, which was much relied upon for the present defendant, and in which the expressions of the Court as to the exclusive jurisdiction of the commissioners under 38 Geo. III. c. 5, are undoubtedly strong, the land-tax had not been redeemed, and the dispute was as to the manner of assessing and the amount of the rate made and not appealed against. *Charleton* v. *Alway* was not cited in that case, nor could it usefully have been for the very reason which I have pointed out as constituting the difference between it and the other cases—viz. the redemption on the one hand and the non-redemption on the other of the land-tax. The Court in *Simpkin* v. *Robinson* dealt only with what was before it, and not with the other and totally different state of circumstances which was before the Court in *Charleton* v. *Alway*. *Hodgson* v. *Pearson* is also in favour of the plaintiff in this way: The main point there was whether, where a manor has once been charged with land tax and the land tax once redeemed, any after inclosure of the waste lands will render the manor liable to re-assessment. The decision of the Court of Common Pleas was taken, it is true, upon a special case stated without pleadings, and was in the negative. Not a suggestion was made by the special case or otherwise on the part of the Land Tax Commissioners, who defended the action, or of the defendant, the collector, that the matter was one for the commissioners, and not for the Court. There had apparently not been any appeal to the commissioners, but proceedings had been taken against the collector for a distress which had been paid out, and in consequence of these proceedings the special case had been ordered to be stated. Hence it is to be inferred that the question of redemption or no redemption is not for the commissioners, but for the ordinary Courts, and this certainly upholds the opinion that, where the land tax has actually been redeemed, the commissioners have no jurisdiction. Before concluding, I must not omit to mention that sections 20, 118, and 121 of 43 & 44 Vict. c. 19 (the Taxes Management Act) were cited to me for the defendant. Section 20 provides that no evidence shall be given in the trial of an action against a commissioner, &c., or a collector, of any cause of action other than such as is contained in such notice. It was contended that the notice in the present case did not include 'excessive distress.' It does not do so *nominatim*, but the terms of the notice might perhaps include it. However, the opinion I entertain upon the effect of the land tax having been redeemed renders it unnecessary to decide this point. Sections 118 and 120 relate to powers conferred upon the commissioners over the collectors and to obligations imposed upon the collectors as between themselves and the commissioners, and consequent penalties, but cannot affect the rights of third persons, as against either commissioners or collectors, in

such a case as the present. It follows from what I have said above that the defendant Samuel Smith was a trespasser and wrongdoer *ab initio*, and it remains for me to award the damages against him. The payment into Court is clearly insufficient. He had no right to make any deduction out of the proceeds of sale, since he had none to distrain or sell. The auction sale was peculiar, the plaintiff himself having purchased the cow and calf seized by the defendant. Upon the evidence I cannot find that the plaintiff suffered any loss by the mere sale, but he is entitled to be repaid the full proceeds of it, and, under the circumstances [there was trespass on plaintiff's premises as well as illegal seizure], to something more. He will have judgment for 15*l.*, including the money paid into Court. I am prepared to certify under section 119 of the County Courts Act, 1888. The plaintiff will have costs on scale B, with all special allowances.—Metcalfe (barrister) appeared for the plaintiff, and Ames (solicitor, Frome) represented the defendant.

## PALATINE COURT.

### THE WHALLEY FRAUDS.

In the Lancashire Chancery Court, Liverpool, on November 30, before Vice-Chancellor Bristowe, the motion *Whitworth* v. *Anderson*, arising out of the Whalley frauds, came on for hearing.—Mr. Rotch (with whom was Mr. Lawrence) appeared for the plaintiff, Mrs. Elizabeth G. Whitworth, a widow, in the Isle of Man. He said that the case arose out of the gigantic frauds of the late Mr. Whalley, a well-known solicitor in Blackburn. The total defalcations amounted, he believed, to 100,000*l.*, and as a consequence there had been widespread misery and ruin, and many families had been reduced to absolute beggary. Whalley had carried out the frauds in a variety of ways. People who had confidence in him deposited deeds in his custody, and his method had been in some cases to suppress the original mortgage deeds, and to get new mortgages on the property in order to be enabled to carry on extensive speculations. In an action, *Brewer* v. *Haydock*, the Court had appointed a receiver to the estate. Mr. Mather, solicitor, of Liverpool, had been engaged in investigating the affairs of the late Mr. Whalley, but the difficulties in his way were enormous. There was a mass of mortgages, and the difficulty was to find out whether or not mortgages had been suppressed and reissued, and who were the legal holders. For more than a month a staff of clerks had been scheduling the deeds. Mrs. Whitworth had, through Mr. Whalley, advanced 450*l.* to Mr. J. W. Anderson, a Southport builder, on the security of some property at Birkdale. The deeds were left with Mr. Whalley, who duly paid Mrs. Whitworth the interest, and at Whalley's death she applied to the receiver, Mr. Waterworth, for the mortgage deed. He found the original mortgage from Mr. Anderson to Mrs. Whitworth in Whalley's safe, but the other title deeds had been removed, and there were some pencil marks on the mortgage deed which showed that it had been re-engrossed, and a new security prepared therefrom to Mr. Chievley for 550*l.* Further inquiry showed that Mr. Whalley had obtained this 550*l.* on the same property from Mr. Chievley, suppressing Mrs. Whitworth's mortgage. Mrs. Whitworth brought this action to have it declared that she was entitled to priority in respect of her mortgage, to have a receiver appointed until the trial of the action, and to have the deeds in Mr. Chievley's possession deposited in Court. Ultimately the Vice-Chancellor decided that upon receiving the affidavits of Mr. Mather and the cashier to the effect stated he would order that the receiver in *Brewer* v. *Haydock* be at liberty to hand over the deed to Mrs. Whitworth, or her nominee. He declined to make an order as to costs of the affidavits.

## THE BARRISTERS' BENEVOLENT ASSOCIATION.

The general meeting of this association was held in the Middle Temple Hall on Thursday, November 26. Lord Justice Bowen presided, and was supported by the Lord Chancellor, Lord Herschell, Mr. Justice Smith, the Attorney-General, and Mr. Murphy, Q.C. There was a good attendance of the members of the bar.

The report of the committee, which was read by Mr. Edmund Macrory, the secretary, stated that 3,517*l.* 11*s.* 4*d.* had been distributed during the past two years among 131 applicants. In all there had been 154 applications for assistance. Ninety-six new members joined the association in 1889, and only ten in 1890, and the association now consisted of 743 members, as against 817 in 1889 and 942 in 1886. The committee appealed to the members of the bar not only to maintain the association in its past usefulness, but also to add, by exertion and contributions, to its means of meeting the ever-increasing demands upon it.

The Chairman, in moving the adoption of the report, referred to the deaths of Mr. Justice Manisty, Mr. Baron Huddleston, and Mr. R. G. Arbuthnot, who were among the association's best and most constant friends. He was astonished to find that the number of annual subscribers had diminished so completely. The fault was certainly not due to any defect in the natural generosity of the great profession to which they belonged. He assured them that there was no waste in the administration of the funds entrusted to the committee, and that the whole of the money was well spent.

The Attorney-General, in seconding the motion, thought the society perhaps lost somewhat from the fact that its funds were administered with absolute privacy. That, however, was the only way in which the funds could be dispensed. He appealed for greater support from members of the bar. They had not been able in the past to relieve all the cases that had come under their notice; neither had they been able to give so much as they would have liked to those to whom assistance had been extended.

The report and statement of accounts were received and adopted.

On the motion of Mr. Justice A. L. Smith, seconded by Mr. Murphy, Q.C., the Lord Chancellor was appointed one of the trustees of the association, in place of the late Mr. Justice Manisty.

Lord Herschell moved, and Mr. Crump, Q.C., seconded, the appointment of the committee of management, which was agreed to.

Sir W. Phillimore, Q.C., moved, and Mr. Meadows-White, Q.C., seconded, a vote of thanks to his Honour Judge Eddis for auditing the accounts of the association.

The appointment of Mr. Henry Davidson as one of the auditors, in place of the late Mr. Arbuthnot, was unanimously agreed to.

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How to Earn a Living at the Bar.—Mr. Henry St. John Raikes, of 6 Crown Office Row, Temple, writes to the *Times* as follows: 'I trust that, in the interests of the public, wealthy young barristers, and lastly, but by no means least, of one "X. Z. Y.," you will give your readers an opportunity of perusing the following advertisement, clipped from the pages of one of your contemporaries of yesterday's (26th) date. It runs: "Law.—To Barristers.—A gentleman recently called, with some capital, can be introduced to good practice by an established solicitor.—Address X. Z. Y., Horncastle's, 61 Cheapside, E.C." The fact that the advance of civilisation has placed it within the power of a barrister with some capital to obtain a practice in the manner indicated opens up a pleasing vista of possibilities.'

## CALENDAR OF THE COUNTY COURTS.

FROM DECEMBER 7 TO DECEMBER 12.

| No. of Circuit | His Honour | Dec. 7 | Dec. 8 | Dec. 9 | Dec. 10 | Dec. 11 | Dec. 12 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | — | Northwich | Warrington | Birkenhead | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | Middlesbrough | York | Tadcaster | Easingwold | Knaresborough | Ripon |
| 16 | Judge Bedwell | Hull | Scarborough | Hull | Hull | Hull | — |
| 22 | Judge Harington | Stratford-on-Avon | Coventry | Warwick | Rugby | Bromyard | — |
| 26 | Judge Jordan | Longton | Uttoxeter | Hanley | Burslem | Tunstall | Market Drayton |
| 47 | Judge Bristowe | — | Lambeth | Greenwich | Lambeth | Lambeth | — |
| 54 | Judge Metcalfe | Weston-supr-Mare | Wells | Axbridge | — | — | — |
| 55 | Judge Machonochie | Fordingbridge | Dorchester | Bridport | Weymouth | Blandford | — |
| 57 | Judge Paterson | — | Williton | Langport | Bridgwater | Taunton | Tiverton |
| 58 | Judge Edge | East Stonehouse | East Stonehouse | East Stonehouse | East Stonehouse | East Stonehouse | Tavistock |

# House of Lords Register.

NOVEMBER 26, 27.

*Dreyfus Brothers & Co.* (*Lim.*) v. *Peruvian Guano Company* (*Lim*) (original and cross appeals from the Court of Appeal—Questions of payment or allowance of freight and landing charges).—Part heard.

NOVEMBER 30.

*Salt* v. *Marquis of Northampton* (Mortgage—Insurance of one life against another—Mortgage or assignment of policy—'Once a mortgage always a mortgage'—Appeal from Court of Appeal, reported 59 Law J. Rep. Chanc.).—Dismissed (Earl of Selborne, Lord Bramwell, and Lord Morris; Lord Hannen dissenting).

*Dreyfus Brothers & Co.* (*Lim.*) v. *Peruvian Guano Company* (*Lim.*).—Part heard.

DECEMBER 1.

*Dreyfus Brothers & Co.* (*Lim.*) v. *Peruvian Guano Company* (*Lim.*).—Judgment reserved.

*Anglo-American British Electric Light Corporation* (*Lim.*) v. *King, Brown & Co.* (with concurrence of H.M.'s advocates—Patent—Validity—Prior publication—Appeal from the Court of Session in Scotland—'Court of Session Cases,' Fourth Series, Vol. xvii., p. 1266).—Part heard.

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, LOPES, L.J., and KAY, L.J.

THURSDAY, NOVEMBER 26.

*Law* v. *Local Board of the District of Redditch* (appeal of plaintiff from judgment of Hawkins, J., dated November 14, at trial without a jury at Birmingham).—Dismissed.

FRIDAY, NOVEMBER 27.

*In re L. C. Alexander, ex parte L. C. Alexander* (appeal of debtor from order of Mr. Registrar Giffard, dated November 2, for receiving order on application of P. J. D. A. Lindoe).—Dismissed.

*Bird and others* v. *Jubber* (appeal of plaintiffs from judgment of Lawrance, J., dated June 5, at trial without a jury in Middlesex).—Dismissed.

SATURDAY, NOVEMBER 28.

*Stumore* v. *Campbell* (appeal of plaintiff from judgment of Smith, J., dated June 1, at trial without a jury in Middlesex).—Allowed.

MONDAY, NOVEMBER 30.

*Henderson* v. *Underwriting and Agency Association* (*Lim.*) (appeal of plaintiff from order of Lord Chief Justice and Wright, J., dated November 9, directing stay of proceedings unless payment into Court or security given).—Dismissed.

*Regina* v. *Judge of the East Stonehouse County Court and T. W. How* (Q. B. *Crown Side*) (appeal of T. W. How from order of Mathew, J., and Smith, J., dated November 11, to hear application in Three Towns Banking Company).—Dismissed.

*Leaver* v. *Channing* (appeal of plaintiff from order of Lord Chief Justice and Wright, J., dated November 6, setting aside final judgment signed by plaintiff).—Dismissed.

TUESDAY, DECEMBER 1.

*Grant* v. *Anderson & Co.* (appeal of plaintiff from order of Lord Chief Justice and Wright, J., setting aside writ and subsequent proceedings).—Dismissed.

*Brown* v. *Dukes* (application of plaintiff for new trial on appeal from verdict and judgment, dated July 22, at trial before Mathew, J., with a special jury at Guildford).—Refused.

*Turner* v. *Battle* (application of plaintiff for new trial on appeal from verdict and judgment, dated August 11, at trial before Day, J., with a special jury at Leeds).—Refused.

*Greenwell* v. *Linton and Wife* (application of defendant A. F. Linton for new trial on appeal from verdict and judgment, dated October 28, at trial before Pollock, B., with a special jury in Middlesex).—Refused.

WEDNESDAY, DECEMBER 2.

*Ruth* v. *Surrey Commercial Dock Company* (application of defendant company for judgment or new trial on appeal from verdict and judgment dated November 8, at trial before Lawrance, J., with a special jury at Guildhall).—Dismissed.

*Welch, Perrin & Co.* v. *Anderson, Anderson & Co.* (application of defendant company for judgment or new trial on appeal from verdict and judgment at trial before the Lord Chief Justice and a special jury at Guildhall).—*Cur. adv. vult.*

## APPEAL COURT II.

Before LINDLEY, L.J., BOWEN, L.J., and FRY, L.J.

THURSDAY, NOVEMBER 26.

*In re North Australian Territory Company* (*Lim.*) *and Companies Acts* (appeal of S. G. Sheppard and another (liquidators) from order of Kekewich, J., dated July 9, refusing to make directors liable for alleged misfeasance).—Allowed.

FRIDAY, NOVEMBER 27.

*In re Wyatt, dec. White* v. *Ellis* (appeal of F. R. Ward and another from order of Stirling, J., dated July 8, varying certificate of chief clerk).—Part heard.

SATURDAY, NOVEMBER 28.

*In re Wyatt, dec. White* v. *Ellis.*—*Cur. adv. vult.*

*People's Co-operative Permanent Building Society* v. *Shaw* (appeal of defendant in person from judgment of North, J., dated June 18).—Dismissed, the appellant not appearing.

MONDAY, NOVEMBER 30.

*In re Bell Bros. (Lim.) and Companies Acts* (appeal of company and T. H. Bell and others from order of Chitty, J., dated July 21).—*Cur. adv. vult.*

TUESDAY, DECEMBER 1.

*M'Clatchie* v. *Haslam* (appeal of defendant from judgment of Kekewich, J., dated August 8, 1890).—*Cur. adv. vult.*

*In re Rev. J. T. Darby's Estate. How* v. *Draper* (appeal of defendant J. R. N. Bainbridge from order of Kekewich, J., on originating summons, dated January 13).—Allowed. *In re Rev. J. T. Darby's Estate. How* v. *Draper* (appeal of defendants A. E. Draper and others from order of Kekewich, J., dated January 13).—Part heard.

WEDNESDAY, DECEMBER 2.

*Lichenstein* v. *Haeseler* (North, J.) (appeal of defendant from order of Collins, J. (sitting as vacation judge), dated August 26, restraining breach of agreement or divulging trade secrets; restored after security given).—Dismissed.

*Whitley* v. *Challis* (appeal of defendant from order of Kekewich, J., dated November 6, for receiver to be also manager of hotel business).—Allowed.

*In re A. G. Sharpe, dec. In re H. A. Bennett, dec. Masonic and General Life Assurance Company* v. *Sharpe* (appeal of defendant J. A. Bennett from judgment of North, J., dated July 17).—Part heard.

## ADDITIONAL CAUSE LIST.

HIGH COURT OF JUSTICE.—QUEEN'S BENCH DIVISION.

*Michaelmas Sittings*, 1891.

### ADDENDA TO THE CROWN PAPER.

Surrey (Croydon)—Erwin *v.* Collins and another
Cheshire—Woolley *v.* Meredith
Glamorganshire—Regina *v.* Justices of Glamorgan (ex parte Applegate)
Glamorganshire—Same *v.* Same (ex parte Evans)
Surrey (Lambeth)—Durant and another *v.* Cloake
London—Regina *v.* Dutton
Middlesex (Clerkenwell)—Browne *v.* Stern and another
Durham (Sunderland)—Lamb *v.* Marshall
Brecknockshire (Builth)—Sharpe *v.* David and others
Metropolitan Police District—Regina *v.* Lushington, Esq., Metropolitan Police Magistrate, and Tunbridge
London—Cook *v.* Gordon
Middlesex (Bloomsbury)—Brown and another *v.* Rooke
Metropolitan Police District—Regina *v.* Bros, Esq., Metropolitan Police Magistrate, and Messrs. Pearce and Heatley
London—Rideal *v.* Kegan Paul, Trubner & Co.
London—St. Hill *v.* Same
Durham (Stockton-on-Tees and Middlesbrough)—Langburn *v.* Robinson
Kent (Rochester)—Goodwin *v.* Brooke
London—Williams *v.* Taperill and another
Norfolk—Jackson *v.* Copland
Lancashire (Ashton-under-Lyne)—Brannigan *v.* Robinson
Hampshire (Christchurch)—Burdew, jun. & Co. *v.* Bicker
Middlesex (Edmonton)—Alberry *v.* White and others
Staffordshire—Regina *v.* Right Hon. Baron Hatherton and others, Justices, &c. Licensing Justices for Penkridge Division (ex parte Adams)
London—Binks *v.* India Rubber, &c. Co.
Nottinghamshire—Garforth *v.* Beam
Metropolitan Police District—Regina *v.* Newton, Esq., Metropolitan Police Magistrate, and Eighhurst and others
Sussex—Regina *v.* Clarkson and others
Flintshire—Connah *v.* M'Walter
London—Regina *v.* London County Council (ex parte Akkersdyk)
Same—Same *v.* Same (ex parte Same)
Same—Same *v.* Same (ex parte Femenia)
Same—Same *v.* Same (ex parte Same)
Somersetshire—Regina *v.* H. C. Henley and others, Justices, &c. and Hutchins (ex parte Smale)
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Lancashire—Grundy *v.* Horwich Local Board of Health
Gloucestershire (Bristol)—Clements *v.* Clements and another
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Staffordshire (West Bromwich)—Willetts *v.* Watt & Co.
London—Goodrum *v.* Tyser Line (Lim.)
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Lincolnshire (Parts of Holland)—Regina *v.* Justices for Parts of Holland and H.M.'s Commissioners of Sewers
Cumberland (Whitehaven)—Wood *v.* Carron Iron Ore Co.
Surrey (Chertsey)—Regina *v.* Judge of County Court at Chertsey and Wells
Leicestershire (Lutterworth)—Moore *v.* Red, White and Blue Friendly Society
Harrogate—Warr *v.* Giullaume, Toneoh and another

## NOTICES FOR THE WEEK.

ROTA OF REGISTRARS.

MONDAY, December 7.—Court of Appeal No. 2: Mr. Ward. Mr. Justice Chitty: Mr. Clowes. Mr. Justice North: Mr. Godfrey. Mr. Justice Stirling: Mr. Rolt. Mr. Justice Kekewich: Mr. Lavie. Mr. Justice Romer: Mr. Pugh.

Tuesday, December 8.—Court of Appeal No. 2: Mr. Pemberton. Mr. Justice Chitty: Mr. Jackson. Mr. Justice North: Mr. Leach. Mr. Justice Stirling: Mr. Farmer. Mr. Justice Kekewich: Mr. Carrington. Mr. Justice Romer: Mr. Beal.

Wednesday, December 9.—Court of Appeal No. 2: Mr. Ward. Mr. Justice Chitty: Mr. Clowes. Mr. Justice North: Mr. Godfrey. Mr. Justice Stirling: Mr. Rolt. Mr. Justice Kekewich: Mr. Lavie. Mr. Justice Romer: Mr. Pugh.

Thursday, December 10.—Court of Appeal No. 2: Mr. Pemberton. Mr. Justice Chitty: Mr. Jackson. Mr. Justice North: Mr. Leach. Mr. Justice Stirling: Mr. Farmer. Mr. Justice Kekewich: Mr. Carrington. Mr. Justice Romer: Mr. Beal.

Friday, December 11.—Court of Appeal No. 2: Mr. Ward. Mr. Justice Chitty: Mr. Clowes. Mr. Justice North: Mr. Godfrey. Mr. Justice Stirling: Mr. Rolt. Mr. Justice Kekewich: Mr. Lavie. Mr. Justice Romer: Mr. Pugh.

Saturday, December 12.—Court of Appeal No. 2: Mr. Pemberton. Mr. Justice Chitty: Mr. Jackson. Mr. Justice North: Mr. Leach. Mr. Justice Stirling: Mr. Farmer. Mr. Justice Kekewich: Mr. Carrington. Mr. Justice Romer: Mr. Beal.

## LAW STUDENTS' SOCIETIES.

DEBATING.—The ordinary weekly meeting of this society was held at the Law Institution, Chancery Lane, on Tuesday, December 1; Mr. Douglas in the chair.—The subject for discussion—'That, in view of the depopulation of the agricultural districts, a change in our land laws is urgently needed'—was opened by Mr. Woodhouse.—Mr. Harry Watkins opposed.—The debate having been declared open, the following gentlemen spoke: In the affirmative, Messrs. Clarke, Stevens, Herbert Smith, Meadmore, Johnston, Goodheart, and Anderson. In the negative, Messrs. Watson, Arnold, Sinclair-Cox, and Pritchard.—Mr. Woodhouse replied.—On the motion being put to the meeting, it was carried by a majority of three. —The subject for discussion at the next meeting of the society, on Tuesday, December 8, is: 'That the case of *Low* v. *Bouverie*, 60 Law J. Rep. Chanc. 594; L. R. (1891) 3 Chanc. Div. 82, was wrongly decided.

LIVERPOOL.—At a meeting of this association on Monday, November 30, Mr. F. Archer (president) in the chair, a joint debate was held on the following subject for discussion with the representatives from the Manchester Students' Society: 'Should the devolution of real estate upon the death of an intestate be assimilated to that of personalty?'—Mr. Dunderdale opened in the affirmative, which was also supported by Messrs. Hartt, Cobbett, Tumber, and Wragg, delegates from the Manchester Society.—Mr. Hood opened in the negative, which was also supported by Messrs. Stone and Martin, representatives of the Liverpool Association, and Mr. Style.—The question was decided in the affirmative by the unanimous judgment of the Court, consisting of Messrs. Archer, Warr, and Hawkins. — The delegates were afterwards entertained to a dinner and smoking concert, held in the Lancashire and Yorkshire Hotel, and a most enjoyable social evening was spent together.

## OBITUARY.

IN the person of the late MR. JAMES S. FRASER-TYTLER, of Woodhouselee, Midlothian, who died at the close of last week in Melville Street, Edinburgh, at the age of seventy-one, Scottish law and the University of Edinburgh have lost a distinguished member. He was the second son of the late Mr. James Tytler, of Woodhouselee, and grandson of the celebrated Lord Woodhouselee, the Scottish Judge of Session; his mother was Elizabeth, daughter of Mr. Maurice Carmichael, of East End. He was born in 1820, and was educated at the University of Edinburgh, where he took the usual degrees. He was admitted in early life a Writer to the Signet, and had held for some years the post of Professor of Conveyancing in Edinburgh University, of which he was also a D.C.L. Professor Fraser-Tytler married in 1850 Miss Mary Elizabeth Blair, only child of Mr. Alexander Blair, by whom he has left a family of four daughters and a son. Mr. Fraser-Tytler was also an active magistrate for the county of Midlothian. Sir Bernard Burke relates a romantic story about the origin of the name of Tytler being added to the original Fraser, and reminds his hearers that the house has been distinguished by its devotion to Scottish literature for no fewer than five generations.

THE CHRISTMAS VACATION JUDGES. — Mr. Justice Collins and Mr. Justice Jeune will be the Christmas Vacation judges. The former will sit during the first part, and the latter will take the second half of the Vacation.

## HONOURS AND APPOINTMENTS.

MR. S. LUCAS HUNT, solicitor, of Great Yarmouth, has been appointed a Commissioner to administer Oaths. Mr. Hunt was admitted in November, 1878.

Mr. Herbert E. Bridger, of Hampstead, has been appointed a Commissioner for Oaths. Mr. Bridger was admitted in 1884.

Mr. John Montagu George Aine Luff, M.A. Cantab., Wimborne Minster, has been appointed a Commissioner for Oaths. Mr. Luff was admitted in 1887.

Mr. Martin Benson Lawford (of the firm of Longueville & Co.), Oswestry, has been appointed a Commissioner for Oaths. Mr. Lawford was admitted in 1878.

Mr. Oswald Henry Cochrane, M.A. Oxon (of the firm of Belk and Cochrane), Middlesbrough, has been appointed a Commissioner for Oaths. Mr. Cochrane was admitted in 1884.

Mr. Alexander Nathaniel Yalman Howell, Portsmouth and Southsea, has been appointed a Commissioner for Oaths. Mr. Howell was admitted in 1884.

Mr. Evan Coleman Davies (of the firm of Hobbs, Davies & Mawer), of Wells, Somerset, has been appointed a Commissioner for Oaths. Mr. Davies was admitted in 1885.

Mr. Henry Yates Barker (of the firm of Carrington & Barker), of Chester, has been appointed a Commissioner for Oaths. Mr. Barker was admitted in 1884.

Mr. John Edward Humphreys of Llanrwst, has been appointed a Commissioner for Oaths. Mr. Humphreys was admitted in 1883.

Mr. Thomas Leathes Johnston, of Walkden, near Manchester, has been appointed a Commissioner for Oaths. Mr. Johnston was admitted in 1878.

JUDGE BARBER.—We are sorry to learn that Judge Barber has resigned in consequence of ill health. His Honour was appointed County Court Judge in 1889, and is joint editor of 'Dart's Vendors and Purchasers.'

THE LAW AGAINST SPIES IN FRANCE.—The Commission of the French Army has arrived at an agreement with the Government with regard to the modification of the measure which has been introduced into the Chamber of Deputies for rendering the penalties against spies more severe, and these penalties are now to be graduated, from that of death to simple imprisonment, according to the gravity of the offence. The penalty of death is to be applied to any soldier, sailor, army or naval official, State official, or other person intrusted with secrets bearing upon the defence of the territory who is guilty of conspiring with one or more persons to give information for the purposes of espionage, and to any person who by means of a disguise, by making use of a false name or business or by concealing his profession and nationality, shall obtain admission to any fortified place or seaport, intrenched camp, defensive works, man-of-war, and military or maritime establishment, and, with the object of espionage, shall collect information relating to the defence of the territory or the external safety of the State. Penal servitude for life will be inflicted upon those who are detected in taking plans or in conducting topographical operations. Penal servitude for various periods will be inflicted upon those persons who are accomplices before the act of the above offences, while the divulgation of secrets relating to the defence of the territory through the Press will entail imprisonment from two to five years, and fines ranging from 120*l.* to 400*l.*

THE PROPOSED OPENING OF LINCOLN'S INN FIELDS.—In addition to the clauses which the London County Council have undertaken to insert in their General Powers Bill, to secure, if possible, the opening of Lincoln's Inn Fields for public use and recreation, notice has also been given of a privately promoted bill to deal exclusively with this question. Under this bill it is proposed either to purchase compulsorily the gardens for public recreation, or to transfer the rights of the existing trustees to the London County Council. These trustees were originally appointed in the reign of George II., when an Act was obtained to enclose these gardens, which comprise seven acres, and to vest them in twenty-one trustees, who were empowered to levy a rate for their maintenance upon the proprietors and inhabitants of the surrounding houses. The vacancies occurring in the board of trustees have been, and still are, filled from among those upon whom the rate is leviable.

THE ARREST OF ENGLISHMEN IN FRANCE.—An important meeting of the Coventry Technical Institute committee was held on November 30 to consider what steps should be taken with regard to the arrest of Mr. Walter Bednell at St. Etienne as a spy, Mr. Bednell having been sent out by the committee to learn French systems of weaving. A letter was read from Mr. Ottley, British Vice-Consul at Lyons, stating that he had again seen the judge before whom Mr. Bednell had been taken, but who still refused him permission to see the accused, believing the accused to be an accomplice of the other man Cooper, and responsible in a secondary degree. It was also stated that a summons had been issued against Mr. Bednell for neglecting to make the necessary report to the police as a foreigner domiciled in the country. The committee decided to ask Mr. Ottley to engage counsel for Mr. Bednell's defence, they as fellow-citizens agreeing to defray the expense. A letter from Mr. Ballantine was also read stating his willingness to proceed at once to St. Etienne if he could be of any service in the case

A HOUSEHOLDER'S LIABILITY.—An interesting point with respect to the liability of householders was decided on December 2 in the Marylebone County Court. An Italian costumier, Madame d'Alessandri, of Norfolk Terrace, Bayswater, sued her neighbour, a Mr. Marks, for damage caused in her fitting-room by a defect in the defendant's cistern. One day in October the complainant's fitting-room was suddenly flooded and considerable damage was caused. Amongst other things a pink dinner dress, which was part of a wedding trousseau, was ruined, and the fitting-room rendered so damp that Madame d'Alessandri was unable to receive her clients, and had to wait on them at their houses. On the part of the defendant it was contended that the landlord, and not the occupier, was liable for the damage, and it was stated that the defendant had made frequent complaints about the cistern, but they had not been attended to. Judge Stonor held that, apart from special agreement, either or both the landlord or the occupier was liable, and the question which bore the loss must be decided between them. The plaintiff had brought her action against the occupier and was entitled to judgment. Eventually judgment was given for the plaintiff for 21*l.* and costs.

HOME CURE FOR DEAFNESS.—A Book by a noted Aural Surgeon, describing a System of Curing Deafness and Noises in the Head, by which a self-cure is effected at home. The Rev. D. H. W. Harlock, of the Parsonage, Milton-under-Wychwood, writes: 'Try the System by all means; it is first-rate, and has been of the *utmost service* to me.' Post free, 4d. DE VERE & Co., Publishers, 22 Warwick Lane, London, E.C.—ADVT.

LOCAL GOVERNMENT ACT COMMISSION. — The commissioners appointed under the Local Government Act, 1888, met on December 2 at their offices, No. 21 Northumberland Avenue, the Earl of Derby presiding, to hear the adjourned case for an adjustment between the counties of Kent and London. Mr. Meadows White, Q.C., and Mr. English Harrison appeared for London, and Mr. J. S. Dugdale, Q.C., M.P., and Mr. Low for Kent. The commissioners, after hearing argument, determined that the property of the old county of Kent, valued at 450,000*l.*, should be apportioned between intra-metropolitan and extra-metropolitan Kent in the proportion of ratable values on April 1, 1889, and that the Kent County Council should retain the property and purchase London's share therein upon this basis.

INCORPORATED LAW SOCIETY.—The president (Mr. W. M. Walters), the vice-president (Mr. R. Pennington), and the council of the Incorporated Law Society entertained a large company at dinner at their hall on December 2. Among the guests were the following: Lord Hobhouse, Lord Shand, Mr. Justice Smith, Mr. Justice Romer, Admiral Sir A. Phillimore, Sir John Bridge, Mr. T. Bucknill, Q.C., Professor Holland, Mr. Woollcombe, Mr. Venning, Mr. Scrutton, Mr. Haselfoot, Mr. Finch, Mr. F. G. Davidson, Mr. Wilberforce, Mr. Blaxland, Mr. Whateley, Mr. Blake, Mr. Blyth, Mr. Knight Watson, Mr. Shearme, Mr. H. M. Cotton, Mr. Buckle, Mr. Wainwright, Mr. Stewart, Mr. Williamson, and Mr. Bucknill. The following members of the council were also present: Sir A. K. Rollit, Sir Thomas Paine, Mr. Keen, Mr. Cunliffe, Mr. Addison, Mr. Morrell, Mr. Roscoe, Mr. Margetts, Mr. Godden, Mr. L. W. Lewis, Mr. J. A. Hughes, Mr. Bremridge, Mr. Ellett, Mr. Hunter, Mr. Follett, and Sir Richard Nicholson.

## BIRTHS.

On Nov. 27, at 2 St. Andrew's Terrace, Plymouth, the wife of H. Penrose Prance, Solicitor, of a son.

On Nov. 28, at 68 Palace Gardens Terrace, W., the wife of George Somes Layard, Barrister-at-Law, of a son.

On Nov. 29, at 7 Rawdon Street, Calcutta, the wife of J. C. Macgregor, Esq., Barrister-at-Law, of a son.

On Nov. 30, at Braemar, New Eltham, the wife of Herbert Hugh Cooke, Solicitor, of a daughter.

## MARRIAGES.

On Nov. 25, at St. Jude's, Southsea, Surgeon-Captain Colledge, Army Medical Staff, son of the late W. G. Colledge, Esq., Bengal Civil Service, to Frances Alice, eldest daughter of the late C. H. Spitta, Esq., Barrister-at-Law, of Lahore, Punjaub, India.

## DEATHS.

Lost overboard from the Royal Mail Company's steamer Atrato which left Southampton on the 11th ult., Reginald H. Coke, Barrister-at-Law, aged 28 years, eldest son of Henry Coke, Esq., of Liverpool and Rossett, Denbighshire.

On Nov. 19, at 36 Anson Road, Tuffnell Park, Jackson Wyman Smart, Solicitor, of 9 Old Jewry Chambers, E.C., aged 40.

On Nov. 20, of rheumatic fever, at The Bailey, Skipton (the residence of her brother, Thomas Parkinson Brown), Eliza Margaret (Lizzie), youngest daughter of the late Thomas Brown, Solicitor, Skipton.

On Nov. 27, at 70 St. Mark's Square, West Hackney, Eliza Blackwell, the wife of George Palmer, Solicitor, aged 62.

On Nov. 27, at the Manor House, Stockland, Bridgwater, John Cabel Roope, eldest son of the late Richard Roope, Barrister-at-Law, aged 37.

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# The Law Journal.

*SATURDAY, DECEMBER* 12, 1891.


## 'OBITER DICTA.'

IT is announced that final appeals from the Queen's Bench Division will be taken daily in Court of Appeal No. I. until the end of the sittings. This arrangement is, however, subject to the hearing of interlocutory and bankruptcy appeals. Out of a list of sixty-four final appeals only some twenty-five have as yet been disposed of, and, as the sittings end on the 21st inst., a large number must, as we recently ventured to predict, inevitably stand over until the Hilary Sittings.

MR. JUSTICE MATHEW has put his foot down with regard to applications for postponement of cases in Mr. Justice Stirling's list of witness actions. In about ten days he has disposed of more than seventy cases out of a list of a little over ninety, and in a few more days he will probably finish the whole, unless any of the remaining cases should prove exceptionally heavy. The learned judge has certainly an expeditious method of getting through the work, and the secret of his success is, we take it, his determination to disregard everything that is irrelevant to the issue before him, a determination which he quickly imposes upon counsel. Upon the occasion of one of the frequent applications made to him for postponement, he humorously remarked that he felt judicially vexed at the number of these applications. There was an outcry that suitors were eager to have their cases tried, yet, no sooner did a judge appear, than everybody took to flight.

IT is said that the Lord Chancellor does not intend in future to appoint men over seventy years of age to the office of County Court judge. This is satisfactory as far as it goes, but we could wish that the limit had been fixed at sixty, as that appears to us to be quite a maximum age for a man to commence a judicial career. It is also stated that future County Court judges will be required to reside within their districts.

THE Court of Appeal has granted a new trial in *Ferrand* v. *The Bingley Township District Local Board* on the sole ground that the verdict was against the weight of evidence. The action was for trespass by pulling down an obstruction erected by the plaintiff upon what the defendants alleged to be a public footway, and the jury had found for the defendants—that is, in favour of the right of way claimed. The judgments were unanimous, and the Court again enunciated, with full recognition, the rule that if the evidence was such that no reasonable men acting carefully could find for the party on whom the burden of proof rested a new trial would be refused, but pointed out that the Court had never said that it would not interfere in a case where the difficulties in the way of the victorious side were so great that the jury must have acted wrongly. The observations of the Master of the Rolls in connection with that part of the Judicature Act, 1890, which directs motions for new trials to be made to the Court of Appeal, instead of to the High Court, will be found in the LAW JOURNAL for 1890 at p. 637. Since those observations were made the number of applications for new trials has enormously decreased. Whether the result of *Ferrand's Case* will be to make them more frequent remains to be seen, but we cannot help thinking that it will.

A QUESTION of considerable importance to solicitors was decided by the Court of Appeal in the case of *Stumore* v. *Campbell & Co.* (noted last week). The plaintiff having recovered a judgment against a Colonel Betty, an arrangement was arrived at between the plaintiff's solicitors and the defendants, who were the solicitors for Colonel Betty, in pursuance of which Colonel Betty paid a sum of money to the defendants to be handed over to the plaintiff when the balance of the judgment debt had been provided for by bills of exchange. Colonel Betty died, however, before this could be carried out, and the plaintiff thereupon sought to attach the money in the defendants' hands under Order

XLV., rule 1, as being a debt 'owing' from them to Colonel Betty's estate. Mr. Justice Smith held that, although the money was paid to the defendants for a specific purpose, yet that they could, in an action by Colonel Betty's executors, have successfully counterclaimed for the amount due to them for costs, which was more than the sum they held. He was, therefore, of opinion that the money could not be attached. The Court of Appeal, however, adopted the contrary view, and held that, as the judgments on claim and counterclaim were quite independent, except for the purposes of execution, the executors could have obtained judgment for the amount, although the defendants might have obtained judgment for a larger amount upon their counterclaim, and that there was therefore a debt 'owing' from them to Colonel Betty's estate which might be attached to satisfy the plaintiff's judgment. The Court took occasion to point out, not for the first time, that the Judicature Acts, by introducing counterclaims, had not given rights which did not exist previously, but had merely altered the procedure so as to admit of two cross-claims being dealt with in one and the same action.

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In the case of *In re Keays* the Court of Appeal had last week to consider the question of what amounts to 'rash and hazardous speculation' in a solicitor such as to justify the Court in suspending his order of discharge under section 28 of the Bankruptcy Act, 1883. The solicitor in question, who carried on a large practice in London, had engaged with another person in a scheme for developing certain land in Wales, which resulted in the loss of his entire fortune of 35,000*l.* and further liabilities to the extent of 17,000*l.* Beyond the payment from time to time of large sums of money, it appeared that the solicitor took no part in the management of the venture. The Master of the Rolls was of opinion that his conduct had been 'most rash and almost reckless,' and added that 'any solicitor in practice who undertakes another business which is speculative is almost sure, if he becomes bankrupt, to be found guilty of 'rash and hazardous speculation.' Lords Justices Lopes and Kay expressed themselves in similar terms, and the decision is therefore one which demands the careful attention of solicitors.

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The Court of Appeal has reversed the judgment of the High Court in the *Maybrick Insurance Case*, but it has yet to be seen whether the House of Lords will not in its turn reverse the judgment of the Court of Appeal. In commenting on the judgment of the High Court (see *ante*, p. 490) we expressed the opinion that it was substantially correct, but suggested that those entitled to a reversionary interest in the policy might claim the insurance money on the death of the convict. The Court of Appeal appears to have thought that the convict might be deemed to be dead already, and that the insurance money might be handed over at once to the executors of Mr. Maybrick for the benefit of his estate, the effect of which judgment we presume to be that the executors would hold the insurance money for the immediate benefit of those to whom the reversionary interest in it was bequeathed. And this appears to be just. For why should an insurance company be excused from paying insurance money, to secure which premiums have been paid to it, on the ground that one of two successive titles has turned out to be bad?

An authoritative decision on the following important point of trade-mark practice is still 'to seek' and is greatly to be desired. A firm is in possession of a trade-mark which they propose to register. One of the partners, with the knowledge and consent of the others and in perfect good faith, signs the application in his own name and is duly entered as 'proprietor' in the Register of Trade-marks. How is the mistake to be rectified? He cannot assign to the other partners and register the assignment, because according to his own showing he has never been proprietor at all and has therefore nothing to assign. Besides, in such a case the necessary condition as to the devolution of the goodwill could not be complied with. Of course he can apply to the Court to rectify the register. But what sort of rectification should be asked for? Will the Court substitute the name of the firm for that of the partner, or will it merely expunge the name of the latter and leave the former to apply for registration in the usual way? On this point the authorities are at present hopelessly divided. According to *In re Rust & Co.*, 44 L. T. (N.S.) 98, substitution can, according to *In re Riviere*, 55 Law J. Rep. Chanc. 545, and *Ex parte Kingsford*, 6 P. O. R. 413, it cannot, be ordered. Surely some definite rule of practice might be arrived at. Meanwhile the only safe course is to draw the notice of motion in the alternative form given in *Ex parte Lawrence*, 44 L. T. (N.S.) 98.

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The decision of North, J., in *Morris Wilson & Co.* v. *The Coventry Machinists Company* (1891), 8 P. O. R. 353, is of considerable practical importance. Both under the Patent Law Amendment Act, 1852 (cf. *The Edison Telephone Company* v. *The India Rubber Company*, L. R. (1881) 17 Chanc. Div. 137), and under the Patents Act, 1883 (cf. *Ehrlich* v. *Ihles* (1887), 4 P. O. R. 115), it has been the almost invariable practice to put a defendant who, having delivered particulars of objections, wishes at some subsequent time to amend them by adding more, on the following terms: 'That the plaintiff may discontinue his action within a fixed time, and, if he does, the defendant must pay the plaintiff all the costs incurred by the plaintiff during the interval between the time at which the particulars he obtains leave to deliver ought to have been delivered and the time at which they are delivered under the order giving leave.' Mr. Justice North has now extended this rule to actions for the infringement of registered designs, although there is no provision in that part of the Patents Act which relates to designs for the delivery of particulars at all. This decision is eminently reasonable and convenient; and all that now remains to be desired is the statutory extension to registered designs—*mutatis mutandis*—of section 29 of the Patents Act of 1883.

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In *Hicks* v. *Ross*, 60 Law J. Rep. Chanc. 853, Mr. Justice Kekewich had to consider the principle on which the sum to be paid to a person entitled under a will to a perpetual annuity, who is desirous of receiving an immediate cash payment in lieu of the annuity, ought to be calculated. In the case of life annuities it was the former practice of the Court to direct investment in consols of such a sum as would produce the annuity, treating the investment as a permanent 3 per cent. security. 'Events,' as the learned judge remarks,

'have shown such provision to be imperfect, and I am afraid that some annuitants have suffered accordingly.' However, his lordship stated that he had adopted the same practice in providing for a life annuity out of new consols, treating the interest as 2½, to which it is reducible in 1903, instead of 2¾ per cent. In the case of an out-and-out payment of a sum in lieu of a perpetual annuity such a mode of ascertaining the amount would obviously give the annuitant too much, because it proceeds on the view that till 1903 the income will be in excess of the demands on it. In arriving at the proper solution Mr. Justice Kekewich was guided by the provisions of the National Debt Supplemental Act, 1888, under which, in granting Government annuities, the Commissioners for the Reduction of the National Debt are bound to treat 2½ per cent. as the rate of interest governing their calculations, and held accordingly that the amount of cash to be paid to the redeemed annuitant is such a sum as, at the price of the day, will purchase 2½ per cent. stock sufficient to produce the annuity.

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In the case of *In re Russell, Cordner & Co.*, 60 Law J. Rep. Chanc. 805, Mr. Justice North held that the Companies (Winding-up) Act, 1890, has not altered the rule under the Companies Act, 1862, s. 145—viz. that to enable a creditor to obtain an order for the compulsory winding-up of a company when there is a voluntary winding-up, he must satisfy the Court that his rights 'will be prejudiced by a voluntary winding-up' (see *per* Lord Justice Cotton in *In re The New York Exchange (Lim.)*, 58 Law J. Rep. Chanc. 111; L. R. 39 Chanc. Div. 422). In the case before Mr. Justice North the creditors were pretty evenly divided in their wishes for a supervision order on the one hand and a compulsory order on the other hand; but the large majority of shareholders preferred the supervision order. The old rule was not disputed, but it was contended that the Companies (Winding-up) Act, 1890, had made a material difference in the rule, conferring as it does much larger powers of investigation in a compulsory winding-up than are given by the Act of 1862. In one sense there is much force in the argument—that is, if a creditor makes out a case for investigation, there is now stronger reason for making a compulsory order than before the Act of 1890. This was allowed by the learned judge, but, as he thought that the petitioner had not made out any such case, he dismissed the petition for a compulsory order and made a supervision order.

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In *Russell* v. *Russell* two persons not parties to the proceedings had imputations cast upon them in Court, one of them being mentioned by name and the other by an initial letter. The usual and commendable practice is for counsel to abstain from mentioning names of persons being neither parties nor witnesses in any unpleasant connection as far as is reasonably practicable, but it may be pointed out that the practice, so far from being recognised by the law, is rather discouraged by it. In *Lound* v. *Grimwade*, 57 Law J. Rep. Chanc. 725, it was held by Mr. Justice Stirling that a bond founded upon a consideration including promises that criminal proceedings should be so conducted that the name of a certain person should not be mentioned, or should be mentioned in such a way as not to damage him, was founded on an illegal consideration, on the ground that any contract having a tendency, however slight, to affect the administration of justice is illegal and void. It is clear law, too, that no action lies against a witness for defamation by words spoken in the course of a legal proceeding (*Seaman* v. *Netherclift*, 46 Law J. Rep. C. P. 128), and it has even been held that no action will lie for words used in an affidavit in the course of a legal proceeding, though untrue to the deponent's knowledge, and false in fact (*Revis* v. *Smith*, 25 Law J. Rep. C. P. 195).

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In connection with the auspicious betrothal of the Duke of Clarence to Princess Victoria of Teck, with the approval of the Queen, it may be worth while to direct attention to the curious provisions of the Royal Marriage Act, 12 George III. c. 11. The preamble recites that His Majesty, from his paternal affection to his own family, and from his royal concern for the future welfare of his people, and the honour and dignity of his crown, was graciously pleased to recommend to Parliament to take into their serious consideration whether it might not be wise more effectually to guard members of the royal family from marrying without the consent of His Majesty, his heirs, or successors; that Parliament had taken this weighty matter into their serious consideration; that they were 'sensible that marriages in the royal family are of the highest importance to the State, and that therefore the kings of this realm have ever been entrusted with the care and approbation thereof;' and that they were thoroughly convinced of what His Majesty had thought fit to recommend upon this occasion. Then at last comes the enactment, 'That no descendant of the body of his late Majesty King George the Second, male or female (other than the issue of princesses who have married or may hereafter marry into foreign families) shall be capable of contracting matrimony without the previous consent of His Majesty, his heirs, or successors, and that every marriage or matrimonial contract of any such descendant without such consent first had and obtained shall be null and void to all intents and purposes whatever'—which enactment is strictly construed, as appears from *The Sussex Peerage Case*, 11 Cl. & Fin. 85, where it was held to apply to marriages contracted outside the British dominions. It is provided, however, that if any of the royal personages subject to the Act, being above the age of twenty-five years, shall persist in contracting a marriage disapproved by the sovereign, such personage may give notice to the Privy Council, and at any time from the expiration of twelve months after such notice given, may contract the marriage disapproved of, 'unless both Houses of Parliament shall before the expiration of the said twelve months expressly declare their disapprobation of such intended marriage.'

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The Royal Marriage Act, it will be observed, extends to the descendants of King George the Second in perpetuity, with the exception only of the issue of princesses who marry into foreign families, and extends to contracts to marry as well as contracts of marriage. Sooner or later, perhaps, the time may come when some or one of the many and increasing royal personages who come within the Act will desire to be released from its obligations, but it is perfectly clear that such release

will be obtainable by Act of Parliament alone, and that, if the conditions of the Act be not complied with, or some amending Act shall not have been passed, any promise of such personage to marry, if broken, could not be sued upon, while if the marriage should take place, the issue would be illegitimate.

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It will not be necessary to apply to Parliament for any grant in connection with the marriage of the Duke of Clarence. The Prince of Wales's Children Act, 1889 (52 & 53 Vict. c. 35), after reciting the desire of Parliament 'to prevent the necessity for repeated applications to Parliament on behalf of Her Majesty's family, and to establish the principle that the provision for children should hereafter be made out of grants adequate for that purpose which have been assigned to their parents,' grants the annual sum of 36,000*l.* to certain official trustees of His Royal Highness the Prince of Wales. These trustees are directed to 'hold the annual sum granted to them under the Act, and any accumulations of that sum, whether arising by investment or otherwise, in trust for all or any one or more of the children of His Royal Highness Albert Edward, Prince of Wales, in such shares and at such times and in such manner, and subject to such conditions and powers of revocation (including, if it is thought fit, a condition against alienation) as His Royal Highness, with the sanction of Her Majesty the Queen may by order appoint.'

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The *Times* has printed occasional letters from correspondents complaining of the proposed general abolition of second-class accommodation by the railway companies. We have already discussed the legal aspects of the question (see *ante*, p. 702); but what is everybody's business is nobody's business, and it is extremely doubtful whether any person or body of persons will be bold enough to dispute the right of the companies to act as they please. It may be observed, however, that either the Board of Trade or the town councils or the county councils would equally have power to call in the aid of the Railway and Canal Commission; and also that if the companies are legally wrong in the step which they propose to take, no lapse of time during which they may not have been proceeded against will be any defence in case of their being proceeded against in the distant future, unless, indeed, they should have procured the substitution of new enactments for those which at present regulate the imposition of passenger fares.

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There is a considerable amount of danger in acting upon a suggestion from the owner of property to use it in a particular way before the negotiations in respect of it are complete. Witness the case of *The London Printing and Publishing Alliance* v. *Cox*, 60 Law J. Rep. Chanc. 707. A., the owner of the copyright in a picture, sent a photograph of it to the defendant with a letter suggesting that the latter should publish it in a well-known paper of which he was proprietor. Before the publication in that paper the copyright in the picture was assigned to the plaintiff K., who duly registered his proprietorship at Stationers' Hall, and arranged to sell the copyright to the plaintiff company. The company did not register themselves as proprietors in the place of K. The defendant subsequently published his paper containing an engraving of A.'s picture, and thereupon the company and K. took these proceedings against him for having infringed the copyright. Mr. Justice Williams treated the letter from A. as a license, but held that it was not equivalent to a partial assignment, and did not affect the assignment to A. In *Tuck* v. *Canton*, 51 Law J. Rep. Q. B. 363, the owners of the copyright in a picture entered into an agreement with the plaintiff in the following terms: 'The sole right to reproduce these subjects in chromos or in any other form of colour printing to be vested in you for the term of two years from date of first delivery; while, in case of an order for reprinting 2,000 pairs at the price of 3*s.* per pair, this right to be vested in you absolutely.' Mr. Justice Mathew held that the plaintiff, having had a mere license given to him, was entitled to sue for violation of it without having registered it. In the second edition of Mr. T. E. Scrutton's 'Law of Copyright,' p. 170, the learned author comments unfavourably on that case, and says: 'Moreover, the decision seems open to this further objection; the registered proprietor of copyright may assign all his copyright in parts, or give licenses covering all methods of reproduction, so that no right remains in him; yet none of these will need to be registered, and so the purpose of the Act may be defeated.' Mr. Justice Williams's decision in the recent case would defeat not the purpose of the Act, but the granting of the license, as, according to his lordship, the plaintiff took his assignment unaffected by the previous license. On appeal, the Lords Justices held that A.'s letter was not a license, but a mere suggestion, but (Lord Justice Lindley dissenting) that on the true construction of the arrangement between K. and the plaintiff company the copyright had passed to the latter, who could not sue, as their title as owners had not been registered. The defendant thus escaped, and the action against him was dismissed. We understand, however, that there may be an appeal to the House of Lords.

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The recent trial of the Salvation Army bandsmen was, in more senses than one, remarkable. Mr. Willis, Q.C., will, no doubt, state a case, and any comment on the verdict must of course be withheld until after the points of law have been disposed of by the Court above. It is, however, permitted to us to express a sincere hope that the plan of cross-examining a jury on the grounds or logic of their verdict will not become fashionable. An average juryman has a very fair idea of justice and usually finds a common sense verdict; but, if he is to be called upon to explain and defend it, especially to a keen-witted and judicial critic, it is more than probable that the result will be chaos.

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The moral aspects of the recent *cause célèbre* in the Divorce Court do not come within our province, but all members of the profession are deeply interested in the question, which was brought prominently forward, of the limits imposed on counsel when cross-examining a witness. The mere suggestion of a certain class of offence is enough to wreck the happiness and shatter the nervous system of many men. It is, therefore, nothing less than wanton cruelty to put such a weapon in the hands of counsel unless something much stronger

than bare suspicion justifies its use. If this can be said of the sterner sex, it is surely not too much to expect a more chivalrous sense of duty when a woman's chastity is in question. So long as the rules of cross-examining remain as at present, the public have a right to look to the leaders of the bar for protection against any abuse of so powerful a weapon for good or evil, and if at any time they look in vain, public opinion (which is very strong on this subject) will certainly make itself heard and felt in other quarters. Meantime the remarks of the president, in his summing up of the case referred to, contained a warning which solicitors engaged in preparing evidence cannot afford to neglect.

## THE LESSEE'S CONTRACT NOT TO ALIENATE.

Every tenant for a time certain, however short, may assign or underlet to such extent as he pleases, except so far as he may be expressly restricted by his contract from doing so. Such is the effect of a *dictum* of Lord Eldon in *Church* v. *Brown*, 15 Ves. 258, and such is beyond doubt the law of England. It has become so common, however, for landlords expressly to provide against alienation, and it is so uncommon for alienation to take place against the will of the landlord where no such provision is made, that we doubt very much whether the tenant's common law right of alienation is generally known to laymen. Mr. Gladstone, for instance, in his speech on introducing the Irish Land Bill in 1881, in founding an argument on this general and ancient right, spoke of it as of a right but little known, and thought it prudent to refer to legal authorities for its existence. Be this as it may, however, it is upon the express restriction upon alienation that most legal controversies have arisen. Mr. Bolton and Mr. Warmington last session introduced a bill to put an end to these controversies and to mitigate certain alleged hardships upon lessees in connection with covenants against alienation, which passed the House of Commons and all but passed the House of Lords, when Lord Salisbury (see *ante*, p. 581) suddenly intervened and stopped all further progress. In view of the probable reintroduction of the measure next year, it is desirable to consider the whole subject with some care.

The contract against alienation is either absolute, to the simple effect that the tenant will not assign or underlet without the written consent of the landlord, or qualified, to the effect that while the tenant will not assign or underlet without such consent, the landlord, on his part, will not unreasonably or arbitrarily withhold it. In the absolute form, no doubt, this contract allows the landlord to require a pecuniary consideration for the license. Such requirement in the case of a long lease at a low rent may be reasonable enough, but in the ordinary case of, say, a twenty-one years' lease, it may be unreasonable and extortionate to a great degree, and we believe it would be generally considered sharp practice to require the pecuniary consideration in the case of a lease for not more than twenty-one years. In Mr. Bolton's bill it was rather roughly proposed that no pecuniary consideration should be required, and also that the landlord should be disentitled to arbitrary refusal of the license in every case. This was going too far. In the case of a short lease of a furnished house it would be unreasonable to require a landlord to accept any new tenant who might be proposed to him, while in the case of a long lease of an unfurnished house it might be unreasonable to exclude the pecuniary consideration for the license. Mr. Bolton's proposals, therefore, though good in principle, require some modification.

It is well known, or ought to be well known, that section 14 of the Conveyancing Act, which grants 'relief against forfeiture' for breaches of covenant generally, excludes from its operation the covenant not to alienate. Mr. Bolton would repeal the excluding provision, and let in the power to grant relief to cases of breach of covenant against alienation. Is his proposal right or wrong? On the whole, we think it is right. It is no doubt difficult, if not impossible, to get at the proper measure of damages for breach of covenant against alienation, so that forfeiture seems peculiarly applicable to it, and the argument that alienation must always be wilful, whereas other breaches may frequently be traceable to causes beyond the tenant's control, is a weighty one against alteration of the law. But cases may so frequently arise where the landlord's consent, from his absence beyond seas or other causes, may not be obtainable, and an underletting may be so frequently to the advantage of the landlord, as well as of the tenant, that we think that the arguments for alteration are the stronger. It must never be forgotten that neither by underletting nor assignment does the tenant rid himself of his original liability to the landlord, who in fact by this kind of alienation gets two strings to his bow; he may sue either the lessee or the assignee; he may either sue the lessee or distrain upon the sub-lessee. Above all, the landlord will still have the Court to protect him, as the power to grant 'relief against forfeiture' is, and no doubt will continue to be, an entirely discretionary power.

On the whole, we think that Mr. Bolton's proposal to repeal the provisions of the Conveyancing Act which exclude the covenant against alienation from the benefits of 'relief against forfeiture' is quite a reasonable one, which ought to find its way to the Statute-book during the course of next session. The other proposals of Mr. Bolton, to read into every lease the clause against refusal of license to assign or underlet, and to prohibit the taking of a premium for the license, are well worthy of consideration, but certainly ought not to be accepted in their entirety. Perhaps the best plan for the reformers to adopt would be to have their bill introduced in the House of Lords, where it could be more scientifically and carefully discussed than in the House of Commons.

A point well worth attention in connection with this subject is the power to alienate a tenancy from year to year. This power is undoubted (see *Allcock* v. *Moorhouse*, L. R. 9 Q. B. Div. 366), but is little exercised. The exercise of it, however, might in many cases be highly inconvenient to landlords, who in selecting tenants rely on their personal knowledge. It might also be considered whether assignment by operation of law, as from a deceased tenant to his personal representatives, has not at present a too extensive operation, both as it affects the landlord and as it affects the representatives of a tenant. If, for instance, an agricultural tenant should die on September 30, 1892, his personal representatives would be saddled with the farm, and the landlord would be saddled with them till September 29, 1894.

## SERVICE OUT OF THE JURISDICTION.—VI.

(*Continued from p.* 736.)

We now propose to consider the position of persons *domiciled or ordinarily resident in Scotland or Ireland*, under Order XI.

1. The first point of interest in connection with this subject was decided in *Lenders* v. *Anderson*, 53 Law J. Rep. Q. B. 104; L. R. (1883) 12 Q. B. Div. 50. In that case the plaintiff sued the defendant, a Scotchman domiciled in Scotland, for alleged breach within the jurisdiction of a contract, which by its terms was to be performed within the jurisdiction. Mr. Justice Field allowed service of the writ of summons out of the jurisdiction for the purpose of raising the question as to whether such service was valid. The defendant moved to set the service aside, and the plaintiff contended that rule 1 (*e*) and rule 2 of Order XI. must be read together, and that the fair construction of them when so read was that in cases coming within the last clause of rule 1 (*e*), ('unless the defendant is domiciled or ordinarily resident in Scotland or Ireland'), it was meant not to take away the discretion of the Court or judge to allow service out of the jurisdiction, but merely to render it subject to the considerations as to the balance of convenience, mentioned in rule 2. Baron Huddleston and Mr. Justice Grove, however, declined to take this view—which derived no support from the history of the exception—and held that where a defendant is domiciled or ordinarily resident in Scotland or Ireland there is no power to allow service out of the jurisdiction in actions for breach of contract, under Order XI., rule 1 (*e*).

2. The next point deserving of notice is the question how far rule 1, clause (*e*) ('any relief is sought against any person domiciled or ordinarily resident within the jurisdiction') is applicable to Scotland or Ireland. In the case—put by Mr. Baron Huddleston in the course of the judgment in *Lenders* v. *Anderson* (*ubi sup.*)—of a person domiciled or ordinarily resident in England being *temporarily* resident in Scotland or Ireland, no difficulty could arise, and service out of the jurisdiction would be allowed if the judge in his discretion thought that the balance of convenience required it. The case of a company * having its registered head office in Scotland or Ireland, but having at the same time branches and one chief office within the jurisdiction, was one of very considerable difficulty. In *Jones* v. *The Scottish Accident Insurance Company*, 55 Law J. Rep. Q. B. 415; L. R. (1886) 17 Q. B. Div. 421, the facts were these: The plaintiff, as executrix of her husband, sued the defendants upon a policy of insurance against accidents effected with them by the deceased. The defendants' registered head office was in Edinburgh, but they had numerous branches and agencies throughout England, with a chief office for England in London. The insurance in question was effected by the plaintiff's husband with, and the premium was paid to, an agent of the defendants at Liverpool. It was held by Mr. Justice Day, and on appeal by Mr. Baron Pollock and Mr. Justice Cave, that the defendants were not domiciled or ordinarily resident within the jurisdiction within the meaning of Order XI., rule 1 (*e*).

'A corporation,' said Mr. Baron Pollock, 'in effect resides in the place where it carries on its business, and carries on business in the place where its chief office is situate. If we hold that a company is domiciled where it has an agent for local business, we come to the absurd conclusion that it is domiciled in every town in England, Scotland, and Ireland, where it has an agency.' Mr. Justice Cave was 'of the same opinion,' but not altogether for the same reasons. 'It would be absurd,' said his lordship, 'to say that an *individual* was ordinarily resident in England because he had a branch establishment there; and why should we not deal in the same way with a company?' Again, the old Companies Act (8 & 9 Vict. c. 16, s. 135) provided that service should be effected at the principal office, or at one of the principal offices, if there be more than one, or personally upon the secretary. The principal office was, therefore, regarded as the place where the company carries on its business. It may, perhaps, be permissible to point out with regard to this decision (1) that, to have held the company to be domiciled at its *chief* office in England would not have logically involved the Court in 'the absurd conclusion' that it was also domiciled at each of its *branch* offices, and (2) that the very Act of Parliament on which Mr. Justice Cave relied evidently contemplated the possibility of a company having more than one principal office. But whatever one may think of the *ratio decidendi* in this case, the actual decision was clear enough. Only one loophole was left for English suitors who had dealt and had had the misfortune to quarrel with Scotch or Irish companies. In *Jones* v. *The Scottish Accident Insurance Company* (*a*) the policy had not been effected with the *chief* office in London, but with an *agent* at Liverpool, and (*b*) no attempt was made to serve a writ upon the chief office within the jurisdiction. It might have been argued that the decision in that case was limited by the special circumstances under which it was given, and would have been different if the points to which we have just alluded had not been present. But even this way of escape was closed. In *Watkins* v. *The Scottish Imperial Insurance Company*, 58 Law J. Rep. Q. B. 495; L. R. (1889) 23 Q. B. Div. 285, the circumstances were practically identical with those of *Jones* v. *The Scottish Accident Insurance Company*, except that here (*a*) the policy had been effected with the defendants' inspector of agency at the London office, and (*b*) it was on the London office that the writ had been served. Mr. Justice Mathew and Mr. Justice Grantham held that the defendants were 'domiciled' only at their registered office in Scotland, that they were also 'ordinarily resident' in that country, and that service of the writ must be set aside. The law was, therefore, clearly settled that a company having its registered office in Scotland, but also carrying on business within the jurisdiction of the High Court, could not—in the absence, presumably, of its own consent (*The Tharsis Sulphur, &c., Company* v. *La Société Industrielle et Commerciale des Métaux*, 58 Law J. Rep. Q. B. 435)—be made amenable to the process of that Court by service either out of or within the jurisdiction. The decision in *Harvey* v. *Dougherty* (1887), 56 L. T. 322, that where an action is properly brought against one trustee within the jurisdiction service on other trustees out of the jurisdiction may be allowed under Order XI., rule 1 (*g*), could not be utilised for the purpose of weakening the effect of the decision under consideration, because, according to *Watkins* v. *The Scottish Imperial Insurance Company*,

* Which is by Order LXXI., rule 1, included in the definition of 'person.'

a company having its registered office in Scotland or Ireland could not be properly or duly served within the jurisdiction at all.

*(To be continued.)*

# Reviews.

## A MANUAL OF BANKING LAW.

*Banking and Negotiable Instruments.* A Manual of Practical Law. By FRANK TILLYARD, B.A., of the Middle Temple, Barrister-at-Law, late Vinerian Scholar, Oxford University. London: Adam and Charles Black. 1891.

THE object of the author of this little treatise, he tells us, is to deal concisely and simply with the practical legal questions which arise in the course of a banker's business. A considerable part of the book has accordingly been devoted to the consideration of the various kinds of securities which a customer when desirous to borrow might bring to his bankers. In Chapter XVII. the author has dealt with the difficult and important question of negotiability. Here he is on treacherous ground, and, to quote his own words, if he appears unduly dogmatic he must plead the view of the client who is said to have preferred a wrong opinion to no opinion at all. This is, we fear, a rather dangerous doctrine for a text-writer, and probably the client who is quoted had good reason to repent if he acted on the principle here enunciated. The book contains a good general view of the law, but it is not deep enough to be of much use to the lawyer. A couple of omissions may be worth pointing out. We observe in the case of *The Governors and Company of the Bank of England* v. *Vagliano* that the reference is only given to the *Times* Reports. The Factors Act, 1889, was in 1890 extended to Scotland.

## SMITH ON BILLS, &c.

*A Handy Book of the Law of Bills, Cheques, Notes, and I O U's.* Entirely Rewritten. By JAMES WALTER SMITH, Esq., LL.D. (Lond.), B.A. Oxon, of the Inner Temple, Barrister-at-Law, Author of 'Handy Book of Joint-Stock Companies,' 'Partnership,' 'Banking,' 'Master and Servant,' 'Public Meetings,' 'Husband and Wife,' and 'Legal Forms for Common Use.' Fifty-sixth Thousand. London: Effingham Wilson & Co. 1891.

THE law as to negotiable instruments has been to a great extent codified by the Bills of Exchange Act, 1882, of which the author of the present little treatise pronounces an extremely favourable opinion. He speaks of it as 'a model of codification;' a masterly exposition at the hands of the Legislature. There can be no doubt that the Act is a long step in the right direction, but still it does not supersede the necessity of an explanatory treatise. The reader will here find the law compendiously treated in twenty-four short chapters. The work, however, seems scarcely brought to date on some points. Thus, we should certainly have expected some reference at least to the decision of the House of Lords in the great case of *The Bank of England* v. *Vagliano.*

## CHAPMAN ON INCOME-TAX.

*Income-tax: How to get it Refunded.* Instructions for Assessment and Appeal, and for obtaining from the Inland Revenue Repayment of Income-tax deducted from Government Pay and Pension, Annuities, Coupons, Dividends, Rent, Interest, &c.; also Repayment of Income-tax on Over-assessed Commercial and Professional Incomes, on Premiums of Life Insurance Policies, and on Contracts for Deferred Annuities. By ALFRED CHAPMAN, Esq. Eighth Edition. London: Effingham Wilson & Co. 1891-92.

THE author of this little manual commences with a complaint with which a good many persons will heartily sympathise with regard to the severe pressure of the income-tax upon all classes, and particularly on those with small incomes. The natural desire, therefore, of the income-tax payer is how to escape over-assessment, how to appeal in proper cases, and how to get back income-tax which has been wrongfully charged or deducted. The work gives a very good *résumé* of the subject, and the author acknowledges the great assistance which he has derived from friendly notices and criticisms.

## HISTORY OF THE LAW OF PRESCRIPTION.

*The History of the Law of Prescription in England.* Being the Yorke Prize Essay of the University of Cambridge for 1890. By THOMAS ARNOLD HERBERT, B.A., LL.B., of the Inner Temple, Barrister-at-Law. London: C. J. Clay & Sons, Cambridge University Press Warehouse, Ave Maria Lane. 1891.

THIS volume contains the successful essay for the Yorke Prize in the University of Cambridge for the year 1890. As the essay was originally sent in it comprised a history of limitation, but Mr. Herbert has come to the conclusion that that portion of his work is better omitted. This view has also been shared, he tells us, by the examiners of the work. The reason will be found on pages 4 and 5, where Mr. Herbert comes to the conclusion that prescription proper, as treated by Coke and Blackstone, is distinct from limitation, and does not apply to corporeal hereditaments. The term 'prescription' is, as most lawyers are aware, derived from the Roman law term *præscriptio*, but comparatively few, we believe, are aware of the fact that that term in turn was borrowed from the Greeks. The essay is pleasantly written, and contains a good deal of information. Its pages are occasionally enlivened by lighter matter. Thus, in Chapter IV., where the question what things may be prescripted for is discussed in some forty-eight pages, we have a pleasant little dissertation on the law relating to prescription for swans, which are of 'so superior and ethereal a nature as to have caused Lord Coke in the report of a case of *Regina* v. *Lady Joan Young*, 7 Rep. 15b, to burst forth into an eulogium and to quote the Latin poet in praise. The substance of Lord Coke's eulogium is that the swan is so affectionate and true a husband that Nature has conferred on him a gift beyond all others, 'that he is to die so joyfully that he sings sweetly when he dies:

> '"Dulcia defectâ modulatur carmina linguâ
> Cantator cygnus funeris ipse sui."'

We have observed a slight mistake in the table of cases, as the case of *Davies* v. *Sear*, which is referred to twice

both under the plaintiff's and defendant's name, does not appear in the page mentioned. This is, however, a very trifling blemish, and we have not noticed any other mistake.

## FLETCHER ON DILAPIDATIONS.

*Dilapidations.* A Text-book for Architects and Surveyors. In Tabulated Form. Fourth Edition. Corrected to the Present Time, with all the most Recent Legal Cases With the Conveyancing and Law of Property Act, and the Agricultural Holdings (England) Act. By Bannister Fletcher. London: B. T. Batsford. 1891.

The author of this work commences his introductory observations by putting a question to his readers: 'When one considers,' he asks, 'the numerous arts and sciences that the professional man must have at least some acquaintance with, a list of which the reader will find given at some length by that grand old writer Vitruvius in the first chapter of his first book, is it to be wondered at that dilapidations are not more studied?' This he follows up shortly with another question. Assuming that the young architect and surveyor truly desires to be well grounded in the practice of dilapidations, from what books must he derive his knowledge? A formidable list of authorities is then given. Here, however, the cost of the books and the time necessary to wade through the ponderous volumes referred to, present matter for grave consideration. The author, therefore, proposes to put what is necessary in short and simple form. His plan is first to consider the rights and liabilities of the various parties—lessors, lessees, &c.; next the various covenants, with their meanings and value; 'then dilapidations and waste, going practically into what they are and how to ascertain them.' Next, Mr. Fletcher schedules dilapidations under the respective trades to which they belong. The duties of surveyors follow. Other subjects considered are, How to Prepare for Actions, and Who can Maintain them, and Against Whom they can be Brought. Lastly, the author undertakes to explain what amounts to a waiver, and when injunctions can be obtained. In the appendix are to be found answers to questions. The work will be found serviceable and readable, though here and there it would have been better if less technical language had been employed, and if references to more recent authorities in the nature of case law had been given.

## ESSAYS IN JURISPRUDENCE AND LEGAL HISTORY.

*Essays in Jurisprudence and Legal History.* By John W. Salmond, M.A., LL.B. (Lond.), a Barrister of the Superior Court of New Zealand. London: Stevens & Haynes. 1891.

The author of this work in his preface, written in New Zealand, tells us that the essays have been written at the ends of the earth, and he accordingly trusts that their defects may be charitably attributed, so far as may be, to the obvious difficulties attending historical research in regions so remote. Portions of the book have already appeared in substance in the *Law Quarterly Review*, other parts are now published for the first time. Wherever written, however, Mr. Salmond's book contains a great deal of information which is given in a very readable form. Four main subjects are discussed—the history of the laws of evidence, the history of the law of prescription, the principles of civil liability, and the history of the law of contract. In the first, and so far as we have been able to judge, the best of the essays, that on the law of evidence, the history of the law of evidence is divided into three periods, the first of which deals with rules establishing conclusive proof, the second with those as to exclusion of witnesses; the third, the modern rules, consisting for the most part of the rules for the exclusion of evidence. The origin of the ordeal of fire and trial of battle are considered under the head of 'Medical Judgment.'

## WARAKER ON NAVAL WARFARE.

*Naval Warfare of the Future.* A Consideration of the Declaration of Paris, 1856: its Obligation and its Operation upon Maritime Belligerents. By Thomas Waraker, LL.D., Barrister-at-Law. London: Swan Sonnenschein & Co. 1892.

In his preface Dr. Waraker tells us that his aim is to call attention to the existing state of affairs, to consider the advantages possessed by England and the dangers with which she is threatened, and to examine the policy and the legal aspects of changes in the conduct of warfare which it was assumed to make at the Congress of Paris, 1856. He is much impressed by the apathy of Englishmen with regard to all matters connected with the navy. The Naval Estimates, he tells us, are presented to almost empty benches. The debate is hardly a serious one. After some introductory observations on the position of England and the mistake which, in the author's opinion, was made at the Congress of Paris, Dr. Waraker's work is divided into three parts. In the first part he considers the nature of international law, concluding with an enunciation of certain general propositions which he desires should be kept in view in the following pages, where they are developed and applied. In the second part he considers the usages of war. The third part of his work is principally devoted to a statement of the supposed evil results to England of the terms established by the Declaration of Paris. The work is cleverly written, and the arguments are stated with considerable skill; but at the same time we think it may be considered very doubtful whether Dr. Waraker has at all established his case.

# Unreported Cases.

## COUNTY COURTS.

### ACTION AGAINST THE POLICE COMMISSIONER.

In the Westminster County Court, on December 2, an action came before his Honour Deputy-Judge Scott. The plaintiff, August Tessier, a French cook, sued Sir Edward Bradford, the Commissioner of Police, for the return of 30*l.* 10*s.*, money belonging to the plaintiff, and 10*l.* as damages for the detention of the money.—Mr. Hall, in opening the case, said that on October 1 last Mrs. Tessier and a female lodger were arrested by the police and charged with taking money from the pockets of a Mr. Seaton. The police searched the plaintiff's house, and in a room not used by the lodger found 30*l.* 10*s.* in gold, which they took possession of and had still got. When

the women were brought up there was no prosecutor and they were discharged. In consequence of the detention of this money plaintiff had had to leave his house, as he could not pay his rent. Whatever Mrs. Tessier might have done, there could be no ground for saying that her husband, the plaintiff, should have his money taken. There had been an offer by Messrs. Wontner to pay over 23*l.* 10*s.* if the action was withdrawn and no costs asked for. The Act, he found, provided that all moneys coming into the hands of the police in this way, and not being refunded, went to the Police Superannuation Fund, and that, no doubt, made the police so anxious to retain the money. (Laughter.)—Evidence in support of this statement was given, and Mr. Danckwerts, in cross-examination, showed that, although the charge was dismissed, the magistrate ordered the case to be brought under the notice of the Public Prosecutor. Mr. Danckwerts submitted that there was no case for him to answer. Plaintiff had not proved that the money ever came to the hands of Sir Edward Bradford. It had not got beyond Mr. Anderson, one of the assistant-commissioners, whose duty it was to see to these things. Further, there had not been a month's notice given of the intention to bring this action.—His Honour held that, as no notice had been given and entered, there must be a nonsuit upon that ground only. He refused to give the defendant costs. He said that the plaintiff could, of course, bring another action.—Mr. Marshall Hall and Mr. Probyn were counsel for the plaintiff, and Mr. Danckwerts appeared for the defendant.

### VESTRIES AND HIGHWAYS.

An interesting case, in regard to actions against vestries for accidents caused by alleged defects in the highways under their control, was tried at the Brompton County Court on Tuesday, December 8, before his Honour Judge Stonor. The plaintiff, Mr. Madder, claimed 50*l.* damages from the vestry of Kensington for serious injuries caused by his being thrown out of a cart in the Uxbridge High Road, at Notting Hill, in consequence of the pony which was drawing it tripping and falling over a grid or grating belonging to a sewer, which rose an inch to an inch and a half above the level of the roadway. The plaintiff's arm was broken in two places, and he was incapacitated from work for twelve weeks, and still suffered from the effects of the accident. At the conclusion of the plaintiff's case, an objection was taken on the part of the defendants that the notice of action required by 25 & 26 Vict. c. 106, in the case of public authorities, was insufficient, as it stated that the accident occurred in Silver Street (a street adjoining the high road) and not in the high road. On the authority of several cases cited by counsel, his Honour held that the notice was insufficient, and that under the Act he was bound to enter a verdict for the defendants. He suggested that, in case of an appeal, the parties should agree on the damages at 40*l.*, or some other sum, or leave them to be assessed by the jury. But the counsel for the defendants was not authorised to consent to this course, and eventually his Honour entered judgment for the defendants, without costs.

### IMITATING COUNTY COURT PAPERS.

At the Huddersfield County Court, on Thursday, November 26, before his Honour Judge Heaton Cadman, J. W. Piercy said he was instructed by the Huddersfield Law Society to bring before his notice the conduct of Donald Noble, of Bradford, in connection with actions in this Court. The president of the Society (Mr. R. P. Berry) would have been present, but he was out of town, and the duty devolved upon him (Mr. Piercy) as secretary. Mr. Noble was a draper, of Lumb Lane, Bradford, and frequently had occasion to sue people in this Court. It appeared he was in the habit of issuing notices which, in the opinion of the Law Society, were calculated to mislead people into thinking that they were notices from the County Court. The notices were partly written and partly printed, and closely resembled in the heading those of the Court. They were signed by Alexander Cooke, who was cashier, he believed, of Noble, and it seemed to him it was intended to suggest that the registrar or some officer of the Court had signed them. Mr. Berry wrote to Noble, saying that two printed forms of application for money in respect of County Court actions, where orders had been made against parties which appeared to be in close imitation of the authorised forms of the Court, had been brought before the attention of the Law Society. He was desired to bring the matter before the attention of the Court, and ask his Honour's directions at the next Court day. A reply was received from Mr. J. H. Richardson, solicitor, of Bradford, explaining that Noble had no intention of making defendants believe that the notice emanated from the County Court. Although he (Mr. Richardson) did not approve of it, he did not see that any exception could be taken to it. It was a notice in the proceedings, and as such was properly headed with the title of the action. Anyone receiving it could not be misled. He (Piercy) knew that the notice had misled many people, and that people had come to the Court thinking they had been issued from there.—His Honour said he agreed that to a person who was not an expert in County Court practice the notice would convey the idea that it was a County Court notice, and not from the plaintiff. It spoke as if proceedings were only being withheld during such time as instalments were paid. He thought it was a highly improper document, and whether Mr. Noble or his solicitor approved of it, he did not. He was not sure it was not almost contempt of Court. He hoped after this that Noble and Cooke would discontinue the practice, at any rate in the district over which he had control, because if in the future it came before him he should take some further steps. He hoped they would acquaint him (Noble) with his views, and tell him that if he had come to the Court he would have had the pleasure of hearing that he (his Honour) considered it a most disgraceful abuse of the liberty of the subject.—Mr. Piercy said he would acquaint the defendant with his Honour's view.

### DEEDS OF ARRANGEMENT ACT, 1887.

At the Liverpool County Court, on December 2, his Honour Judge Collier delivered judgment in the case of *A. Lyons & Co.* v. *Nelson* as follows: The plaintiffs in this action sued the defendant for 46*l.* 14*s.* 9*d.* upon a guarantee of which the following is a copy:—

'Liverpool: Nov. 14, 1889.

'To Messrs. A. Lyons & Co.

'In consideration of your supplying goods to Mr. William Lewis, clothier and outfitter, of No. 5 Cayneau Street, Liverpool, I hereby guarantee payment for such goods to the amount of 50*l.*, and I agree that, in case the said William Lewis fails, neglects, or refuses to pay for any goods you may have supplied him with from time to time by reason of my having given you this guarantee, I will be responsible for and pay to you for such goods to the amount of 50*l.* as aforesaid. And I agree and covenant that the guaranty shall remain and be in force against me as long as the said William Lewis shall be indebted to you for goods supplied.

'WILLIAM NELSON.'

The question for me to decide is whether the defendant has been discharged from his suretyship by acceptance by the plaintiffs from the principal debtor of a sum of money in discharge of the debt. The guarantee was dated November 14, 1889. On June 10, 1890, Messrs. T. Theo-

dore Rogers & Co., accountants, wrote the following letter to the plaintiffs:—

'30 North John Street, Liverpool:
'Messrs. Lyons & Co. 'June 10, 1890.
'*Re* William R. Lewis.

'Dear Sirs,—Acting on the instructions of the Manchester creditors we attended the meeting of creditors called by Mr. W. Rudd, solicitor, of this city for yesterday, and although the debtor was not in attendance at the hour fixed for the meeting, he subsequently attended and submitted a statement of his affairs prepared by himself as per copy on fly. He also presented his cash-book and ledger for examination, which, on the face of them, appear to have been fairly well kept. He commenced business in November, 1889, with a borrowed capital of 10*l.*, and obtained the opening parcel from a local firm under the guarantee of a friend. The deficiency, as shown, he accounts for by losses on soiled goods sold by auction and by excess of expenses over profits. He had no offer to make, but was willing to leave himself entirely in the creditors' hands. Some of the creditors present at the meeting expressed an opinion that the stock was very much less in value than shown by the debtor in his statement, but, be this as it may, it is evident that to take any proceedings either in bankruptcy or by means of a deed of assignment would swallow up the greater portion of the estate in costs, and it is, therefore, with the approval of the Manchester creditors, proposed that he should hand over the whole of his assets to us for realisation, and that we should, after deducting costs and charges in connection with the matter, distribute the balance of the proceeds *pro ratâ* amongst the creditors, each creditor receiving his share in settlement of his claim.

'This is undoubtedly the most economical manner of handling what must be at best a very bad case, and we trust that the course taken will meet with your approval.

'Please be good enough to sign the enclosed form of assent, and return to us together with a statement of your claim. 'Yours faithfully,

'T. Theodore Rogers & Co.'

[Here follows statement of claim.]

. . . . . .

The plaintiffs signed and returned the form of assent, which was in these words:—

'To Messrs. T. Theodore Rogers & Co. ,1890.
'*Re* Wm. R. Lewis.
'Scotland Road and Handfield Place,
'Liverpool.

'We hereby agree to the arrangement proposed in your circular letter of June 10, 1890, and agree to accept your cheque for our *pro ratâ* share of the net proceeds of the assets in connection with the above matter in settlement of our claim against the debtor.

'Signature.
'Address.'

Sometime afterwards (I have not the date) they gave Messrs. Rogers & Co. this receipt:—

'No.
'*Re* W. R. Lewis.
, 1890.

'Received T. Theodore, Rogers & Co.'s cheque for the sum of pounds shillings and pence, being a dividend of 1*s.* 1½*d.* in the pound on £ , which we accept in full discharge of our claim against W. R. Lewis.

'£ [Signature of creditor].'

It was contended that the letter of June 10 and the reply thereto together formed a deed of arrangement within the meaning of the Deeds of Arrangement Act, 1887 (50 & 51 Vict. c. 57), and that as it had not been registered it was void under section 5 of that Act. It was not contested on behalf of the defendant that the document came within the meaning of the interpretation given to the words 'deed of arrangement' in the Act referred to. I consider the point a doubtful one; but I have come to the conclusion that they do come within the interpretation, and that not having been registered they are as a deed of arrangement void. This being so, it follows that the receipt is the only document upon which the defendant can rely for his defence. It will be observed that the receipt is a receipt for a cheque. In the case of *Goddard* v. *O'Brien*, reported in L. R. 9 Q. B. Div. 37, it was held, notwithstanding the well-known doctrine laid down in the case of *Comber* v. *Wane*, Stra. 426—viz. that payment of a smaller sum than the debt is not satisfaction of the debt—that the payment by negotiable instruments (in that case a cheque also) of a less sum than the debt was a satisfaction of the debt. I think the decision in that case is applicable to the present one. On its authority I hold that the receipt of the cheque was a good satisfaction for the principal debt, and, therefore, that the surety is discharged. My judgment is therefore for the defendant.—On the application of the plaintiffs, a stay of execution was granted for fourteen days to give the plaintiffs an opportunity of appealing, if they felt disposed to do so.—Mr. W. F. Taylor (instructed by Mr. Herbert J. Davis, of Liverpool) for plaintiffs; Dr. Commins (instructed by Mr. F. Murphy) for defendant.

## THE PENAL SERVITUDE ACT.

The following circular has been issued by the Home Secretary to judges, recorders, and chairmen of quarter sessions:—

Home Office, Whitehall:
November 30, 1891.

Sir,—Your attention has no doubt been already called to the Penal Servitude Act of last session, which came into force immediately on its passing on August 5 last. Its more important provisions are those contained in section 1, which reduces the minimum sentence of penal servitude from five to three years, and which abolishes altogether the minimum punishment for unnatural offences.

On the passing of this Act it became necessary to decide how the system of remission of sentences of penal servitude by the grant of licenses, which was settled after the passing of the Penal Servitude Act, 1864, should be applied to the sentences of three and four years which the new Act authorises, and how it should be modified to meet some of the other provisions of the Act, particularly those of section 3. After consulting the directors of convict prisons and the prison boards for Scotland and Ireland, I have come to the conclusion that sentences of three or four years penal servitude should be subject to the same rules as sentences of five years and upwards, but that some general modifications in the rules as to the grant of licenses are now desirable.

Of these modifications the chief are (1) that in future male convicts should be allowed to earn marks during the nine months of separate confinement with which each sentence commences, in the same way as during the remainder of their sentence, so that the maximum remission which they can earn will be increased in each case by two months, and will in future be exactly one-fourth part of the whole sentence; (2) that convicts serving remanets of former sentences, in consequence of the revocation or forfeiture of their licenses, should be allowed to earn marks under the remanets in the same manner as convicts under original sentences. (This is provided for in section 3 of the Act of last session.)

The adoption of these modifications much simplifies the rules with regard to the grant of licenses, and it will be

well, therefore, that I should briefly summarise them, so that reference to previous circulars on the subject may not be necessary:—

1. Remission of sentence by grant of license is earned by industry, accompanied by good conduct. Only a convict who gains by steady industry the maximum number of marks during each day of his sentence, and who incurs no deduction of marks by misconduct, will obtain the maximum remission.

2. The maximum remission obtainable will be, for male convicts, one-fourth of the sentence; for female convicts, one-third of the sentence.

The following tables show the minimum period that must be served, and the maximum remission that can be granted, under each of the ordinary terms of penal servitude:—

*Scale of Remission for Male Convicts.*

| Sentence of Penal Servitude | Minimum Period to be undergone | | Maximum Remission to be earned | |
|---|---|---|---|---|
| | Years | Months | Years | Months |
| 3 years | 2 | 3 | 0 | 9 |
| 4 „ | 3 | 0 | 1 | 0 |
| 5 „ | 3 | 9 | 1 | 3 |
| 6 „ | 4 | 6 | 1 | 6 |
| 7 „ | 5 | 3 | 1 | 9 |
| 8 „ | 6 | 0 | 2 | 0 |
| 9 „ | 6 | 9 | 2 | 3 |
| 10 „ | 7 | 6 | 2 | 6 |
| 12 „ | 9 | 0 | 3 | 0 |
| 14 „ | 10 | 6 | 3 | 6 |
| 15 „ | 11 | 3 | 3 | 9 |
| 20 „ | 15 | 0 | 5 | 0 |

*Scale of Remission for Female Convicts.*

| Sentence of Penal Servitude | Minimum Period to be undergone | | Maximum Remission to be earned | |
|---|---|---|---|---|
| | Years | Months | Years | Months |
| 3 years | 2 | 0 | 1 | 0 |
| 4 „ | 2 | 8 | 1 | 4 |
| 5 „ | 3 | 4 | 1 | 8 |
| 6 „ | 4 | 0 | 2 | 0 |
| 7 „ | 4 | 8 | 2 | 4 |
| 8 „ | 5 | 4 | 2 | 8 |
| 9 „ | 6 | 0 | 3 | 0 |
| 10 „ | 6 | 8 | 3 | 4 |
| 12 „ | 8 | 0 | 4 | 0 |
| 14 „ | 9 | 4 | 4 | 8 |
| 15 „ | 10 | 0 | 5 | 0 |
| 20 „ | 13 | 4 | 6 | 8 |

3. The earning of marks and grant of remission will extend to reconvicted license-holders serving the remanets of former sentences.

In a previous circular letter I requested special attention to the fact that, if a convict after his release on license, and whilst his license is still in force, commits a fresh offence and is convicted of it on indictment, such a conviction entails the forfeiture of the convict's license (Penal Servitude Act, 1864, s. 9), and the effect of forfeiture is that, in addition to the sentence which may be pronounced by the judge for the fresh crime, whether it be one of imprisonment or of penal servitude, the convict must serve a term of penal servitude equal to that portion of his previous sentence of penal servitude which remained unexpired when his license was granted.

Thus, if a male convict who is released one year before the expiration of his sentence of penal servitude, and who therefore holds a license for one year, is convicted on indictment during that year and is sentenced to a term of imprisonment, he is liable, after the expiration of the imprisonment, to undergo one year of penal servitude; and of this under the rule now adopted he will be able to earn three months' remission.

Again, if in the same case the convict is sentenced to a term of five years' penal servitude, he will be liable to serve, in addition to the five years, his remanet of one year—*i.e.* six years' penal servitude in all (Penal Servitude Act, 1891, s. 3 (2); and, under the rule now adopted, he will be able by industry and good conduct to obtain the remission of one-fourth of the six years—*i.e.* eighteen months.

The same remarks apply to the case of female license-holders, except that the maximum remission obtainable is one-third instead of one-fourth.

I ask for special attention to this point, because it is evidently important to judges and chairmen of quarter sessions that before passing sentence on reconvicted license-holders they should know the exact effect of the forfeiture of license involved in the conviction. At the same time it is to be borne in mind that the forfeiture cannot be regarded merely as part of the punishment of the new offence; it is, properly speaking, a part of the punishment of the original offence revived in consequence of the violation of those express conditions on which alone the convict obtained his release.

4. In consequence of the larger remission which women convicts earn, the remanets which they have to serve when they incur forfeiture of license are generally much longer than those of male convicts, and directions have been given that all such cases shall be brought under the consideration of the Secretary of State (but not necessarily for release) when the convicts have served one year of their remanets.

5. Female convicts under sentences of five years and upwards, whose industry and conduct in prison are good, are in certain cases released to refuges nine months before the ordinary time for release on license. The release in this case is under a license containing special conditions as to their residence in the refuge, and, in case of misconduct or attempt to escape, they are brought back to the prison and required to serve the usual time for remission.

With regard to life sentences, to which the ordinary rules as to remission are necessarily inapplicable, the rule now is that each case is specially submitted to the Secretary of State after twenty years, and considered on its merits, but no promise is given to the convict of release at that period, and in certain cases, where a death sentence has been commuted to penal servitude for life, the license has not been granted after twenty years.

I am, Sir,
Your obedient Servant,
HENRY MATTHEWS.

## LAW AND PROFESSIONAL NOTES.

By T. F. UTTLEY, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### A JUDICIAL DEFINITION OF SLANDER.

THAT is the title given by the daily papers to an *obiter dictum* of Mr. Justice Lawrence at the Manchester Assizes, where an auctioneer and valuer sued a quarry master for having slandered him by saying he was 'Nowt but a —— highway thief and robber and a —— scamp,' and that he had lost him a job through not getting an agreement stamped. The judge pointed out that when one calls a man a d——d thief one does not say that he has stolen anything; that is abuse merely; but if one calls a man a thief, that is slander. The incidents of this case point to the evil effects of the practice of husbands assigning all their property in order to avoid executions. It is high time measures were taken to make such assignments absolutely void, for, as it is, creditors are everywhere shamefully defrauded by such practices. With reference to the stamping of an agreement, counsel contended that

it was no part of an auctioneer's duty to do such business. The jury, however, in this case found for the plaintiff. Is it generally known that, in future, in order to enter the auctioneering business, an examination has to be passed in various elementary subjects?

### A PRIVILEGED OCCASION.

Such was stated to exist in a case at these assizes where a plaintiff, a workman formerly in the employ of the firm defending, sought to recover an amount for work done and for slander. In the course of the arguments, the defendants' counsel submitted that the occasion was privileged. The plaintiff asserted that if a manager, and afterwards an employer, gave a man his reasons for dispensing with his services, it must be held to be slander. It was not slander if a man gave the reason which was in his mind. It need not even be a reasonable reason. The judge, in his address to the jury, pertinently pointed out that there was no doubt a privileged occasion must be reasonably used. The question of privilege was one entirely for him, the point for the jury being whether the language used was such as amounted to malice. If a manager believed goods were being wasted, and stated that as the reason for dismissal of a workman, the occasion would be privileged, even though it were stated in the presence of fellow-workmen. If, however, the manager had gone into the street and brought in outsiders to hear the statement made, then it would be different. The jury returned a verdict for the defendants. Subsequently the defendants' counsel asked for costs and for a certificate for a special jury, but plaintiff's counsel contended his client should not be saddled with the cost of a special jury, which was a luxury. The judge, however, thought it was a kind of luxury everyone was almost entitled to ask for, and this was a proper case for such a jury.

### THE CONTRACTS OF RAILWAY PASSENGERS. CURIOUS POINT.

A remarkable point was argued at the assizes in *Case* v. *The Lancashire and Yorkshire Railway Company*, where the plaintiff sought to recover damages for injuries sustained in a collision. It appeared that the plaintiff and some other young men arranged to go to Bolton as excursionists at a cheap rate to play a billiard match, but plaintiff being late no ticket was obtained for him, and he had to pay single fare to Bolton. When returning, he forgot he had no ticket, and got into the train notwithstanding. Almost immediately afterwards the plaintiff was injured by a Midland train running into the one wherein he was seated. His counsel argued that the real question at issue was whether the plaintiff was a passenger in the technical sense. In order to justify the contention that he was not a passenger, it must be alleged that the reason why he did not book was that he intended to defraud the company by travelling without paying his fare, whereas if the accident had not happened it would have been paid in the ordinary way when tickets were collected. Defendant's counsel submitted that the railway company had made no contract to carry the plaintiff, and, in the absence of a contract, the plaintiff, who was not there with their permission or invitation, must be regarded as a mere trespasser, to whom they did not owe any duty. Counsel referred to a case in the Exchequer Chamber in Ireland of *M'Carthy* v. *The Dublin, Wicklow, and Wexford Railway Company*. Mr. Justice Lawrance said that as far as he knew the point had never been decided. He founded his decision upon the *dicta* of the several judges in the case *Foulkes* v. *The Metropolitan District Railway*, one of the cases quoted, and it also came under the principle laid down by Lord Justice Blackburn in the case of *Marshall* v. *The York and Newcastle Railway Company*. The right of a passenger was to be carried safely, and it did not depend upon his contract with the company. This was not a question whether the plaintiff was travelling fraudulently or not. The company accepted him as a passenger, and he would have paid his fare or had a ticket given him when at the other end. His judgment must be for the plaintiff, on the ground that he was received as a passenger, and the railway company therefore had a duty cast upon them to carry him safely, independent of whether he made a contract with them for a ticket or not.

### THREE REMEDIES FOR SEDUCTION.

Two cases for damages for seduction possess some features of interest from a legal point of view. In one instance it appeared that the girl, before her father brought his action for the seduction, had already been successful in an action for breach of promise of marriage, and she had also obtained an affiliation order for payment of so much a week for the support of a child, the result of the intimacy. Mr. Justice Collins pointed out that in estimating any damages which were due to a father in such a case as this the jury were not bound to confine themselves to pecuniary loss alone. Other considerations, such as that of insult and the injury to the natural feelings of a father, were permissible. Although the daughter's damages for breach of promise were in one sense altogether distinct from any compensation which was due to the father, yet in another sense they were not so. The father had, through these damages, less cause to be dissatisfied with the matter, and so, too, in the case of the affiliation order. The jury accordingly gave but moderate damages. In the other action, tried before an assessor, he pointed out that under the law of this country a man could not recover damages for the seduction of his daughter unless he could prove that she had rendered him personal service, but, that once proved, then the father was entitled to damages, not only for those services, but also for the distress of mind and the dishonour to the family. The jury gave exemplary damages.

### NEWSPAPER CRITICISM AND LIBELLOUS MATTER.

An action for libel against the proprietor of a newspaper for statements in connection with a club, the defendant pleading that the offending letter was a fair comment on the proceedings of the club, is notable for Mr. Justice Lawrance's plain remarks to newspaper editors. An editor might not set up in his paper a statement reflecting on another man and call it comment. If a prisoner were convicted of murder, the newspaper was at liberty to discuss the conduct of the judge and jury in the case with great latitude; but, if the prisoner were acquitted, the newspaper could not even attack his character by saying he ought to have been convicted. Editors often made a mistake by putting a statement in a paper and calling it comment. It was not comment. The newspaper editor, too, thought that he was justified in printing a statement and calling upon those upon whom it reflected to defend themselves. But no man was obliged to defend himself in the columns of a newspaper, and a newspaper had no more right than an individual to criticise anybody unfairly. Merely nominal damages were given by the jury.

### THE RIGHT TO REFER A CASE.

The Salford Corporation had occasion to sue for damages for injury alleged to have been inflicted by the defendants (Messrs. Andrew Knowles & Sons, (Lim.)) on one of their roads by digging and removing the soil and minerals from underneath. After some argument and discussion it was suggested that the case should be referred to an independent counsel with a mining assessor, and this was agreed to. The *Manchester Guardian* of the 3rd inst., however, does not approve of this course, as the

following leaderette shows: 'A not unusual incident took place at the Assize Courts yesterday when the case *The Corporation of Salford* v. *Andrew Knowles (Lim.) and others* was referred by consent of the counsel. No doubt counsel were serving their clients in referring the case; but one of the main reasons for referring it was that only one judge was sitting at Manchester, that he had several cases to try, and had to get to Liverpool to open commission to-day. If this particular case had been tried, no doubt smaller and less important cases would have had to go over to next assizes, and the public have a right to complain and to know why, when two judges are sent down to try Manchester cases, one of them runs away four days before the close of the assize. Mr. Justice Collins sat on Saturday here, and on Tuesday and Wednesday in London. To-day, if he carries out arrangements, he will travel down in order to sit at Liverpool to-morrow. That is to say, a judge allotted to the Northern Circuit in order to try cases here gives up four days at Manchester for the sake of sitting two days in London. That is the net effect of the disturbance of arrangements, and while it is exceedingly inconvenient to Manchester, it is not of much use to London. No State department is worse managed, and no arrangements are more wasteful of public time than the arrangements made by Her Majesty's judges to try causes at the assizes. It is disappointing to find a new judge like Mr. Justice Collins, who, as an old member of the Northern Circuit, can hardly plead ignorance of the effect of what he has done, so readily falling into the autocratic and unbusinesslike traditions of the English bench.' In this matter, our daily contemporary might remember the maxim, 'audi alteram partem.' Some advantage would certainly accrue to metropolitan cases by having an extra judge for even only two days. Probably if commissioners had been sent down to try assize cases, none might have had to be referred.

## INCORPORATED LAW SOCIETY.

A SPECIAL general meeting of the members of the Incorporated Law Society will be held in the Hall of the society on Friday, January 29, 1892.

It will be very convenient if members who desire to move resolutions or to ask questions will give notice to that effect on or before Wednesday, January 6. Notice convening the meeting, containing the resolutions to be moved and questions to be asked, will in due course be sent to the members of the society.

By order,
(Signed) E. W. WILLIAMSON,
Secretary.

Law Societies Hall, Chancery Lane:
Dec. 9.

## LAW STUDENTS' SOCIETIES.

DEBATING.—The ordinary weekly meeting of this society was held at the Law Institution, Chancery Lane, on Tuesday, December 8, Mr. Crawford in the chair.—The subject for discussion, 'That the case of *Low* v. *Bouverie*, L. R. (1891) 3 Chanc. Div. 82, was wrongly decided,' was opened by Mr. Watson, followed by Mr. Levi; Mr. E. W. Munton, followed by Mr. Arnold, opposed.—The debate having been declared open, the following gentlemen spoke: In the affirmative, Messrs. Harry Watkins, Brownjohn, Pettitt, and Simon; in the negative, Messrs. Baldwin, Pattinson, Stevens, Pritchard, Chilcott, and Douglas. Mr. Watson replied.—The chairman summed up, and on the motion being put to the meeting, it was lost by a majority of seven.—By invitation of the committee, Mr. Candy, Q.C., will open the debate at the next meeting of the society on Tuesday, December 15. The subject for discussion is 'That the conspicuous absence of commercial cases from the Cause Lists of the Queen's Bench Division has been and is attributable to causes which are well known to the legal profession, but have not yet been dealt with by the Legislature, and that the removal of the trial of London actions from the Royal Courts of Justice to the Guildhall will have no effect in restoring this class of case to our Courts.'

## HONOURS AND APPOINTMENTS.

THE Right Hon. Lord Justice Fry has been elected Treasurer of Lincoln's Inn for the ensuing year, in succession to Mr. Napier Higgins, Q.C., whose term of office expires on January 10 next.

Mr. William Pearson, Q.C., has been elected Treasurer of the Inner Temple for the ensuing year, in succession to His Honour Judge Bristowe, Q.C.

Mr. J. D. S. Sim has been appointed Assistant-Registrar of Friendly Societies. Mr. Sim was called to the bar at the Inner Temple in 1875, and is a member of the Oxford Circuit.

The Lord Chancellor has appointed Mr. J. C. Fox (of the firm of Hare & Co., solicitors) to the office of Chief Clerk in Mr. Justice North's Chambers.

The Lord Chancellor has appointed Mr. Edward Shearme, one of the chief clerks of the Chancery Division, to be a Taxing-Master of the Supreme Court.

Mr. Samuel Alfred Newman (of the firm of C. A. Loxton & Newman), of Walsall, has been appointed a Commissioner for Oaths. Mr. Newman was admitted in 1883.

Mr. Edwin Raworth, of Harrogate, has been appointed a Commissioner for Oaths. Mr. Raworth was admitted in 1885.

## NOTICES FOR THE WEEK.

### ROTA OF REGISTRARS.

MONDAY, December 14.—Court of Appeal No. 2: Mr. Clowes. Mr. Justice Chitty: Mr. Carrington. Mr. Justice North: Mr. Farmer. Mr. Justice Stirling: Mr. Pemberton. Mr. Justice Kekewich: Mr. Beal. Mr. Justice Romer: Mr. Leach.

Tuesday, December 15.—Court of Appeal No. 2: Mr. Jackson. Mr. Justice Chitty: Mr. Lavie. Mr. Justice North: Mr. Rolt. Mr. Justice Stirling: Mr. Ward. Mr. Justice Kekewich: Mr. Pugh. Mr. Justice Romer: Mr. Godfrey.

Wednesday, December 16.—Court of Appeal No. 2: Mr. Clowes. Mr. Justice Chitty: Mr. Carrington. Mr. Justice North: Mr. Farmer. Mr. Justice Stirling: Mr. Pemberton. Mr. Justice Kekewich: Mr. Beal. Mr. Justice Romer: Mr. Leach.

Thursday, December 17.—Court of Appeal No. 2: Mr. Jackson. Mr. Justice Chitty: Mr. Lavie. Mr. Justice North: Mr. Rolt. Mr. Justice Stirling: Mr. Ward. Mr. Justice Kekewich: Mr. Pugh. Mr. Justice Romer: Mr. Godfrey.

Friday, December 18.—Court of Appeal No. 2: Mr. Clowes. Mr. Justice Chitty: Mr. Carrington. Mr. Justice North: Mr. Farmer. Mr. Justice Stirling: Mr. Pemberton. Mr. Justice Kekewich: Mr. Beal. Mr. Justice Romer: Mr. Leach.

Saturday, December 19.—Court of Appeal No. 2: Mr. Jackson. Mr. Justice Chitty: Mr. Lavie. Mr. Justice North: Mr. Rolt. Mr. Justice Stirling: Mr. Ward. Mr. Justice Kekewich: Mr. Pugh. Mr. Justice Romer: Mr. Godfrey.

## CALENDAR OF THE COUNTY COURTS.

FROM DECEMBER 14 TO DECEMBER 19.

| No. of Circuit | His Honour | Dec. 14 | Dec. 15 | Dec. 16 | Dec. 17 | Dec. 18 | Dec. 19 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | — | Altrincham | — | Warrington | Birkenhead | — |
| 14 | Judge Greenhow | Leeds | Wakefield | Leeds | Leeds | Leeds | — |
| 15 | Judge Turner | Middlesbrough | Stockton-on-Tees | Darlington | Leyburn | Stokesley | Northallerton |
| 16 | Judge Bedwell | Hull | Barnsley | — | Barnsley | — | — |
| 28 | Judge Jordan | Lichfield | Hanley | — | — | — | — |
| 47 | Judge Bristowe | — | Lambeth | Woolwich | Lambeth | Greenwich | — |
| 54 | Judge Metcalfe | Bristol | Bristol | Bristol | Bristol | Bristol | — |
| 55 | Judge Machonochie | Poole | Lymington | Bournemouth | Wimborne | Wareham | — |
| 57 | Judge Paterson | Bideford | Barnstaple | Torrington | Southmolton | Axminster | Chard |
| 58 | Judge Edge | Totnes | Kingsbridge | Crediton | — | — | — |

# House of Lords Register.

THURSDAY, DECEMBER 3.

*Anglo-American Brush Electric Light Corporation* (*Lim.*) v. *King, Brown & Co.* (with concurrence of H.M.'s advocates — Patent — Validity — Prior publication —Appeal from the Court of Session in Scotland—Reported, 'Court of Session Cases,' Fourth Series, vol. xxvii. p. 1266).—Part heard.

FRIDAY, DECEMBER 4.

*Anglo-American Brush Electric Light Corporation* (*Lim.*) v. *King, Brown & Co.*—Part heard.

MONDAY, DECEMBER 7.

*Anglo-American Brush Electric Light Corporation* (*Lim.*) v. *King, Brown & Co.*—Stand over.

TUESDAY, DECEMBER 8.

*John Batt & Co.* v. *James Fairbrother & Co.* (*Lim.*) (Contract — Construction — Counter-claim for damages of breach of contract—Loss of profits).—*Cur. adv. vult.*

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, LOPES, L.J., and KAY, L.J.

THURSDAY, DECEMBER 3.

*Welch, Perrin & Co.* v. *Anderson, Anderson & Co.* (application of defendant company for judgment or new trial on appeal from verdict and judgment at trial before the Lord Chief Justice and a special jury at Guildhall; heard December 2).—Refused.

*Hughes* v. *Cow* (application of defendant for judgment or new trial on appeal from findings and judgment at trial before Cave, J., with a common jury in Middlesex.)—Refused.

*Thompson* v. *Schmidt* (application of defendant for judgment or new trial on appeal from verdict and judgment, dated November 6, at trial before Cave, J., with a common jury in Middlesex).—Judgment entered for defendant.

FRIDAY, DECEMBER 4.

*In re F. L. Keays, ex parte F. L. Keays* (appeal of F. L. Keays from order of Mr. Registrar Brougham, dated October 30, for conditional discharge.—Dismissed.

*Hosking* v. *Pahang Corporation* (*Lim.*) (application of defendants for judgment or new trial on appeal from verdict and judgment, dated November 10, at trial before Lawrance, J., and a jury at Guildhall).—Judgment for defendants.

*Boden* v. *White* (application of plaintiff for judgment or new trial on appeal from verdict and judgment, dated November 17, at trial before Wills, J., and a jury at Guildhall).—Refused.

SATURDAY, DECEMBER 5.

*Thompson* v. *Hull Dock Company* (application of defendants for judgment or new trial on appeal from verdict and judgment, dated November 19, at trial before Denman, J., with a special jury in Middlesex).—Judgment for defendants.

MONDAY, DECEMBER 7.

*In re an Arbitration between F. Eyre and Mayor, &c., of Leicester and Arbitration Act*, 1889 (appeal of Mayor, &c., of Leicester from order of Lord Chief Justice and Wright, J., dated November 16, for appointment of arbitrator).—Dismissed.

Before the MASTER OF THE ROLLS, FRY, L.J., and LOPES, L.J.

TUESDAY, DECEMBER 8.

*Cleaver and others* v. *Mutual Reserve Fund Life Association* (appeal of plaintiffs from order of Denman, J., and Wills, J., dated July 20, directing entry of judgment for defendants on points of law raised in pleadings; heard Nov. 3).—Allowed.

*Edge* v. *Johnson* (application of plaintiff for judgment or new trial on application from findings and judgment, dated July 22, at trial before Denman, J., with a jury in Middlesex; heard Nov. 4).—New trial granted.

*Jenkins* v. *Bushby* (application of defendant for new trial on appeal from verdict and judgment, dated June 27, at trial before Wright, J., and a special jury at Cardiff; heard Nov. 6).—Judgment for the defendant.

Before the MASTER OF THE ROLLS, LOPES, L.J., and KAY, L.J.

*Regina* v. *The Judge of the City of London Court and G. F. Payne* (Q.B. *Crown Side*) (appeal of prosecutors from order of Wills, J., and Lawrance, J., dated November 9, discharging *mandamus* to hear action *Green and others* v. *Payne*).—Part heard.

WEDNESDAY, DECEMBER 9.

No sittings.

## APPEAL COURT II.

Before LINDLEY, L.J., BOWEN, L.J., and FRY, L.J.

THURSDAY, DECEMBER 3.

*In re A. G. Sharpe, dec. In re H. A. Bennett, dec. Masonic and General Life Assurance Company* v. *Sharpe* (appeal of defendant J. A. Bennett from judgment of North, J., dated July 17).—Judgment reserved.

*Hall* v. *Gittens* (appeal of defendant T. H. Gittens from order of the Vice-Chancellor, dated November 2, for payment into Duchy Court until trial).—Dismissed.

*Failsworth, Moston, Woodhouse and District Bill Posting Company (Lim.)* v. *Travis* (appeal of defendant from judgment of the Vice-Chancellor, dated April 27, for perpetual injunction against interference with plaintiff company's business within three miles' radius).—Dismissed.

FRIDAY, DECEMBER 4.

*In re J. Hunt's Will Trusts* (appeal of Walter Lee (one of the respondents) from judgment of the Vice-Chancellor, dated June 3, on petition of W. Lee).—Allowed.

*In re Boulinikon Floor Cloth and Manufacturing Company (Lim.) and Companies Acts* (appeal of T. W. Davies and another (executors, &c.) from order of the Vice-Chancellor, dated June 1, on petition of Liquidator for distribution of surplus assets).—Allowed.

*In re W. Crookell, dec. Ex parte A. Crookell and others (construction of will)* (appeal of A. Crookell and others from order of the Vice-Chancellor, dated July 9, declaring division of testator's estate between issue *per capita* and not equally).—Dismissed.

SATURDAY, DECEMBER 5.

*Jones* v. *Merioneth Permanent Benefit Building Society. Same Society* v. *Jones* (appeal of defendants from judgment of Williams, J. (sitting as an additional judge of the Chancery Division) in the first-mentioned action, dated June 1; *Cur. adv. vult* November 25).—Dismissed.

*M'Clatchie* v. *Haslam* (appeal of defendant from judgment of Kekewich, J., dated August 8, 1890; *Cur. adv. vult* December 1).—Allowed.

*In re Vendors and Purchasers Act*, 1874. *Leppington* v. *Freeman* (appeal of defendant Edith Annie Freeman from order of Kekewich, J., dated July 28, declaring trustees of settlement entitled to minerals).—Dismissed.

*Hair* v. *Geddes* (appeal of plaintiff from judgment of Kekewich, J., dated February 4).—Stand over.

*Clifford* v. *Wilmot* (appeal of defendant in person from judgment of Romer, J., dated March 17).—Varied.

MONDAY, DECEMBER 7.

*Nundy* v. *Seal* (appeal of plaintiff from judgment of Kekewich, J., dated August 8, 1890).—Dismissed, with costs.

*In re The Ailesbury Settled Estates, in the Counties of Wilts and Berks, and Settled Land Acts*, 1882-1890 (appeal of petitioner from judgment of Stirling, J., dated August 18).—Part heard.

TUESDAY, DECEMBER 8.

*In re Wyatt, dec. White* v. *Ellis* (appeal of F. R. Ward and another from order of Stirling, J., dated July 8, varying certificate of chief clerk; *Cur. adv. vult* November 28).—Dismissed.

*In re E. Ward's Settled Estates, and Settled Estates Act*, 1877. *Stickney* v. *Holmes* (appeal of defendant S. Holmes, widow, from order of Kekewich, J., dated July 16).—Dismissed.

*Haymen* v. *Cooper* (appeal of defendant from judgment of Romer, J., dated July 31).—Dismissed.

WEDNESDAY, DECEMBER 9.

*Rushford* v. *Morgan and others* (new trial) (application of defendants for judgment or new trial on appeal from verdict and judgment, dated November 2, at trial before the President without a jury, and application to read fresh evidence (restored after security given)).—Dismissed.

*Mustapha* v. *Wedlake* (appeal of plaintiff from order of Romer, J. (sitting for Stirling, J.), dated December 4, refusing to discharge order on application for trial by jury).—Dismissed.

*Hair* v. *Geddes*.—Dismissed.

*Bellamy* v. *Davey and another* (appeal of defendants F. J. Hunt and others from order of Romer, J. (for North, J.), dated July 29).—Dismissed by consent.

*In re Contract, dated July* 16, 1890, *between G. R. Stephenson and others and L. C. Cox and Vendor and Purchaser Act*, 1874 (appeal of L. C. Cox from order of Jeune, J. (sitting as vacation judge), dated September 30, as to insertion of words in lease).—Allowed.

## BOOKS RECEIVED FOR REVIEW.

LAWRANCE'S Precedents of Deeds of Arrangement. Fourth Edition. By H. Arthur Smith, Barrister-at-Law. London: Stevens & Sons (Lim.). 1892.

Manual of Theatrical Law (A). By Clarence Hamlyn, Barrister-at-Law. London: Waterlow & Sons (Lim.). 1891.

New Law of Charitable Bequests (The). By Amherst D. Tyssen, Barrister-at-Law. London: Wm. Clowes & Sons (Lim.). 1891.

Principles of Pleading (The). By Blake Odgers, Barrister-at-Law. London: Stevens & Sons (Lim.). 1892

THE LIVERPOOL BOARD OF LEGAL STUDIES.—LAW LECTURES, SESSION 1891-92.—The second course of lectures which has been arranged for this session commenced on Wednesday, December 9. The subject of the course is 'The Law relating to Shipping Contracts.' The lectures are delivered by A. T. Carter, Esq., M.A., B.C.L., Barrister-at-Law, late Scholar of Queen's College, Oxford, Vinerian Law Scholar and Eldon Scholar, Oxford, one of the authors of the 'Factors Act, 1889.' A class will be held in connection with the lectures. At the conclusion of the course an examination will be held, and in case there are not less than nine candidates two prizes of the value of 3*l.* 3*s.* and 2*l.* 2*s.* respectively will be offered for competition amongst articled clerks and bar students who have attended the course. If there are less than nine candidates only one prize of the value of 3*l.* 3*s.* will be offered. A student who has been successful in obtaining a prize in any particular course in one session shall not be eligible for a prize in the same course in any subsequent session, although he shall be eligible for a place.

COLDBATH FIELDS PRISON SITE.—The Postmaster-General, in a letter to Mr. R. Paget, vestry clerk of Clerkenwell, states that as it is now decided to retain the whole of Coldbath Fields prison site for parcel post purposes, he would be willing to remove the old prison wall and substitute iron railings from the corner of Calthorpe Street to Oldham Gardens, Farringdon Road, setting them back to increase the width of the street to sixty feet, on condition that the vestry will reset the pavement and remake the road. Originally it was intended that the entire site of the disused prison should be utilised for industrial dwellings or maintained as an open space, but the sum of 10,000*l.* has been paid to the London County Council in lieu of the reservation of even a part of the land as a recreation-ground. Having regard to the fact that Clerkenwell has now, in the inclosures of Wilmington and Northampton Squares, two public recreation-grounds besides a large playground for children at Spa Fields, it is thought that more open spaces in the parish are not needed, and that the 10,000*l.* would be more usefully employed as a contribution towards the erection of a town hall, on the line of the new thoroughfare from Holborn to the Angel, than in providing an additional pleasure or leisure ground.

COMMERCIAL FAILURES.—According to *Kemp's Mercantile Gazette*, the number of failures in England and Wales gazetted during the week ending December 5 was 102. The number in the corresponding week of last year was seventy-six, showing an increase of twenty-six, being a net increase in 1891 to date of 144.

SOLICITORS' BENEVOLENT ASSOCIATION.—The usual monthly meeting of the board of directors of this association was held at the Law Institution, Chancery Lane, London, on Wednesday, the 9th inst., Mr. John Hunter in the chair. The other directors present were Messrs. H. Morten Cotton, Samuel Harris (Leicester), Edwin Hedger, Grinham Keen, F. P. Morrell (Oxford), Richard Pidcock (Woolwich), Henry Roscoe, Sidney Smith, Frederic T. Woolbert, and J. T. Scott (secretary). A sum of 285*l.* was distributed in grants of relief, three new members were admitted to the association, and other general business was transacted.

UNITED LAW SOCIETY.—A meeting was held at the Inner Temple Lecture Hall on November 30, the subject for discussion being: 'A. travelled on a railway without having paid his fare or provided himself with a ticket, but without intent to defraud the company or evade payment of the fare, and his luggage, which was placed in the luggage-van of the train, was lost. Can he recover compensation from the company?'—Mr. S. Williams opened in the affirmative, and was opposed by Mr. Hawkins. The debate was continued by Messrs. Green, Lewis, Walton, Hildesheim, Cox, and Atkin.—The motion was carried *nem. con.*—An impromptu debate was then held.—The next debate will be held on December 14, the subject for discussion being: 'That the House of Lords needs reform.'

THE VICE-CHANCELLOR'S JURISDICTION AT CAMBRIDGE.—The following is a copy of the warrant under which the young woman, Daisy Hopkins, is now incarcerated at the Spinning House: 'To the Keeper of the Spinning House, or House of Correction, in the University and Town of Cambridge.—Whereas Daisy Hopkins hath been apprehended by the Rev. Frederic Wallis, one of the pro-proctors of the said university, within the limit and jurisdiction thereof, and hath been this day brought before me and charged with walking with a member of the university in a certain public street of the town and suburbs of Cambridge, and within the precincts of the said university, which charge, as well upon the information of the said pro-proctor as upon the examination of the said Frederic Wallis, and after having heard what the said Frederic Wallis had to allege in her defence, I do adjudge to be true: These are therefore to require and command you to receive into your custody the said Daisy Hopkins, and her safely to keep in your said Spinning House for fourteen days. Given under my hand and seal at Cambridge this third day of December, in the year of our Lord 1891.—JOHN PEILE, Master of Christ's College and Vice-Chancellor of the University of Cambridge.' 'I do certify that the above is a true copy of the warrant by virtue of which Daisy Hopkins is detained in my custody, and that the said Daisy Hopkins is not detained for any other cause.—AGNESS JOHNSTON, keeper of the Spinning House.' 'There is,' says a Cambridge correspondent, 'an evident slip in mentioning Frederic Wallis as having been heard in Hopkins's defence.' Mr. Councillor C. A. Vinter has given notice that at the town council meeting next Thursday he will ask by what authority and at whose request Superintendent Innes produced before the vice-chancellor at the Spinning House on December 3 the register of prostitutes for the borough of Cambridge, and, if necessary, he will move a resolution thereon. It is understood that eminent legal advice is being sought as to what action should be taken with regard to the sentence.

PUBLIC HEALTH (LONDON) ACT, 1891.—The Local Government Board have issued a circular to boards of guardians calling attention to section 3 of the Public Health (London) Act, 1891, which makes it the duty of every relieving officer, in accordance with the regulations of the authority having control over him, to give information to the sanitary authority of any nuisance in their district liable to be dealt with summarily under the Act. The section further provides that it should be the duty of the authority having control over the officer to make such regulations. Relieving officers will in future be required, in accordance with the regulations of the guardians, to give information of any nuisance to the sanitary authority of the district. The board suggest that before making any regulations the guardians should place themselves in communication on the subject with the sanitary authority or authorities in the union or separate parish. The sanitary authorities under the Act are the Commissioners of Sewers, the vestries and district boards, the Woolwich Local Board of Health, and in any place mentioned in schedule (C) to the Metropolis Management Act, 1855, the board of guardians for such place or for any parish or poor-law union of which it forms part, or if there is no such board of guardians, the overseers of the poor for such place, or for the parish in which it is situate. The Act comes into operation on January 1 next, but the regulations may be made before that date, and it appears to the board to be expedient that this should be done in order that the regulations may take effect on that day. No approval on the part of the board to the regulations will be required.

## BIRTHS.

On Dec. 2, at Fortune Green Lane, West Hampstead, the wife of A. Romer Macklin, Barrister-at-Law, of a daughter.

On Dec. 3, at Darragh, Croham Road, the wife of T. H. Willett, Solicitor, of a son.

On Dec. 3, at 13 Montpellier Grove, Cheltenham, the wife of Thomas Ellerson Rickerby, Solicitor, of twins—son and daughter.

On Dec. 4, at The Villas, Stoke-upon-Trent, the wife of W. Fifield Holtom, Solicitor, of a daughter.

On Dec. 5, at 6 Vicarage Gardens, Kensington, the wife of S. A. T. Rowlatt, Barrister-at-Law, of a daughter.

## MARRIAGES.

On Dec. 1, at the parish church, Bentley, Hants, Coldham C. Knight, Barrister-at-Law, younger son of the late John Knight, Esq., of Weybourne House, Farnham, to Eva Henrietta, fourth daughter of the Rev. Owen C. S. Lang, Rector of Bentley.

On Dec. 3, at St. Luke's Church, Kensington, Herbert Frederick Oddy, of Lombard Street, Solicitor, to Emily, widow of the late James Greenwood, of the Inner Temple, Barrister-at-Law.

On Dec. 8, at St. Augustine's Church, South Kensington, Campbell Keir-Mackintosh, of Dalmigavie, Inverness-shire, and the Middle Temple, Barrister-at-Law, to Elma, second daughter of John Mackintosh-Walker, Esq., of Geddes, in the county of Nairn.

On Dec. 8, at St. Martin's, Trafalgar Square, Hugh S. Heal, of Finchley, Winchester, youngest son of the late John Harris and Anne Standericke Heal, of Finchley, near London, to Harriet (Tris), only daughter of the late Fras. Douglas Fox Norton, Solicitor, of Gray's Inn, London, and Mrs. Douglas F. Norton, Northam Road, Oxford.

On Dec. 9, at the Scottish National Church, Pont Street, James P. Curran, of the Middle Temple, Barrister-at-Law, youngest son of T. G. Curran, 8 Belgrave Square, Monkstown, co. Dublin, to Jessie, only daughter of the late Thomas Corbett, of Oaklands, Clapham, and South Park, Cove, Dumbartonshire.

## DEATHS.

On Dec. 3, at Bilston, Staffordshire, John Willim Hall, Solicitor, and Clerk to the Justices of the Bilston Division of Staffordshire, son of the late John Hall, Solicitor, Newbury, aged 65 years.

On Dec. 4, at 13 Montpellier Grove, Cheltenham, Alfred, infant son of Thomas Ellerson Rickerby, Solicitor.

On Dec. 4, at 25 Augustus Road, Edgbaston, Birmingham, Fanny, wife of Thomas Horton, Solicitor.

On Dec. 5, at Clifton, Mary Anne, widow of George Peard, formerly of Barnstaple, Solicitor, and daughter of the Rev. John Davis, formerly Rector of Kilkhampton, Cornwall, aged 80 years.

On Dec. 5, at 7 Rawdon Street, Calcutta, the infant son of J. C. Macgregor, Esq., Barrister-at-Law.

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# The Law Journal.

*SATURDAY, DECEMBER* 19, 1891.


## 'OBITER DICTA.'

THE judicial staff of the Queen's Bench Division has for some time been reduced to four. One judge being in daily attendance at chambers, only three have been available for Court work, and, it having been wisely decided to keep one Divisional Court sitting continuously, there has of late been only one judge—Mr. Justice Denman—left for the trial of jury cases. There must, in any case, have been a great scarcity of judges in the Queen's Bench Division during the circuits, but the number has been further reduced by the fact of Mr. Justice Mathew's sitting as an additional judge of the Chancery Division, and, more recently, by the renewed indisposition of Mr. Justice Hawkins, which has compelled him, under medical advice, again to go abroad for the benefit of his health. The fact, however, remains that, from one cause or another, the business of the Queen's Bench Division will have been almost at a standstill for nearly a month before the Christmas Vacation.

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WE are glad to learn that Mr. Justice Stirling has sufficiently recovered from his illness to enable him to leave town for the country, and we trust that before the commencement of the next sittings he will be completely restored to health.

---

SOME weeks ago we analysed the returns of convictions for drunkenness on Sunday in the several counties of England and Wales. It appeared from that return that the Welsh Sunday Closing Act had not produced the results expected from it, and that there was more Sunday drinking in Wales than in many English counties. The case of *Regina* v. *The Justices of Glamorganshire*, which came before Lord Coleridge and Mr. Justice Smith on Monday, is a valuable commentary on that return. It was there discovered that a wholesale license from the Excise does not come within the various licensing Acts or within the Sunday Closing Act, 1881, and also that a sale of four and a half gallons of beer is not a sale by retail. Accordingly, the decision of justices who had convicted a grocer who had under an Excise license sold a cask of beer of four and a half gallons after eleven o'clock on Saturday night was quashed. It appeared from the affidavit of the justices that in the Rhondda Division of Glamorganshire, which is largely inhabited by colliers, an extensive business of this kind during the hours prohibited by the Act of 1881 for retail trading had grown up. The inference is that the trade knows the laws which govern it far better than its opponents, the temperance reformers; and one can easily see how it comes to pass that Wales does not present so favourable a record of hebdomadal sobriety as the less Puritanical parts of the United Kingdom. British working men, like their wealthier neighbours, will have their beer on Sunday, and if they can only get it in quantities of four and a half gallons, they will consider it a point of honour to consume the whole quantity before Monday morning. The *Times* impresses upon magistrates the necessity of reading Law Reports. We may, perhaps, be permitted to remind justices of the peace that in the LAW JOURNAL the cases which affect their jurisdiction are for their special benefit published in a separate form.

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THE case, when the statutes are consulted, will be found to be an extremely clear one. The Licensing Acts of 1872 and 1874, under which the sale of intoxicating liquor is subjected to so many rigorous regulations, and amongst them to the prohibition of sale within certain closing hours, apply to sale by retail only. By section 72 of the Act of 1872, nothing in the Act shall apply *inter alia* to 'the sale of intoxicating liquor by wholesale;' and by section 74 of the same Act, 'sale by retail' in respect of any intoxicating liquor means 'the sale of that liquor in such quantities as is declared to be sale by retail by any Acts relating to the sale of intoxicating liquors.' Finally, by 4 & 5 Wm. IV. c. 85, s. 19, after reciting that 'doubts were entertained as to what is a selling of beer or cyder or perry by retail,' it is enacted that 'every sale of any beer, or of any cider

or perry, in any less quantity than four gallons and a half shall be deemed and taken to be a selling by retail.' Therefore a selling of beer in casks containing four and a half gallons exactly is not a selling by retail.—Q. E. D.

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In the eyes of all who have the welfare of the Universities at heart, the occurrence of another Spinning House trouble at Cambridge is most lamentable. It is unquestionably desirable that the Universities should have a disciplinary jurisdiction over the towns for the protection of undergraduates, and it is a great pity that the authorities should exhibit either a want of judicial fairness to the unfortunate girls who are brought before them, or the ludicrous want of common sense in framing the charge which it appears has for long characterised the Vice-Chancellor's Court. It ought to have been obvious to the least instructed lay mind that no conviction 'for walking with a member of the University' would be allowed to stand. These cases, also, do harm by evoking the sentimental gush of a certain section of the press and the old outcry that unchastity in a man is as bad as it is in a woman. That is sheer nonsense—apart from the special circumstances of this case. It is the duty of University authorities to keep the young fellows under their charge as straight as possible and to wage war against prostitution. As a rule there is no such inequality of punishment in the case of the two offenders as a correspondent of the *Times* complains of. A prostitute who is sent to the Spinning House for a fortnight is not punished so severely as an undergraduate, who is pretty sure to be sent down for a term or two, if not for good. At the same time the authorities might do well to be a little more lenient in their sentences. The true solution, however, would be for the Universities to appoint legal assessors to the Vice-Chancellor, or to place an experienced counsel in the position of judge or magistrate in the Vice-Chancellor's Court.

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Mr. Justice Day tried a very bold experiment the other day under the recent statute which empowers a Court to discharge a first offender. It is undoubtedly a very grave offence for a postman to open a letter, steal a cheque, and forge the indorsement. The almost stereotyped punishment for this class of crime is five years' penal servitude, and there is certainly great danger in the practice of giving the same sentences always for a particular class of wrong-doing. It saves the trouble of thought, and the judge is in danger of not fully realising all the circumstances of the case. The postman tried by Mr. Justice Day was, it appears, in receipt of a salary at the rate of 16*s.* a week, but stated that his average weekly earnings were only about 8*s.* The judge referred a day or two afterwards to this case as one of temptation arising out of dire want, and dealt very different measure to a criminal of a different class. Few, it is to be hoped, will regret that the poor man will have another chance of becoming a decent citizen. The Lord Chief Justice has always been an advocate of light sentences, and a striking confirmation of his views has recently been afforded by Liverpool. The Recorder (Mr. Hopwood, Q.C.) has often been taken to task for extreme leniency to the prisoners convicted before him. Remarkable testimony has recently been given to the success of this policy by a return which shows a very appreciable diminution of offences tried by that learned judge during the five or six years of his tenure of the office. The Penal Servitude Act is no doubt to some extent due to the same considerations which actuate Lord Coleridge and Mr. Hopwood. Many of those who will approve of the course taken by Mr. Justice Day will regret that a far heavier sentence than four years' penal servitude was not passed on the Rev. Dr. Clutterbuck.

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The decision of the Court of Appeal in *The Marquis of Ailesbury's Case* is certainly, from some points of view, a regrettable one. The Court has sanctioned the sale of the family mansion, together with the Savernake estate, notwithstanding the natural opposition of the remaindermen. The *Times*, in an able article upon the case, observes that the sentiments of the latter were overpowered by public considerations. The interests of the tenants upon the estate form, no doubt, an important element for the consideration of the Court in exercising their discretion, but we venture to share the doubt expressed in the article whether the Legislature ever intended to give to a spendthrift tenant-for-life the power to insist upon either selling or ruining an estate, including the family mansion. The Court of Appeal, in overruling the decision of Mr. Justice Stirling, who had refused to sanction the sale of the mansion house, seem to have been chiefly influenced by their knowledge of the 'misery' resulting from handing over an estate to a mortgagee in possession, when every interest must be 'necessarily sacrificed to money-getting.' While admitting the importance of such considerations, it seems to us doubtful whether the interests of the remaindermen ought not in such a case to have prevailed.

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In *Haslett* v. *Hutchinson*, (1891) 8 P. O. R. 457, Mr. Justice Kekewich settled two points in patent practice—one of minor, the other of very considerable importance: (1) His lordship intimated that in future, when the Register of Patents is relied upon, a certified, and not as heretofore merely a plain, copy of the register must be produced. (2) He also gave judicial authority to what has hitherto been a floating impression—viz. that sections 85 and 87 of the Patents Acts, 1883–88, provide for the registration of documents dealing with legal interests only. The Register of Patents, therefore, now stands on the same footing as the Register of Ships.

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The two cases of *Price* v. *Crouch*, 60 Law J. Rep. Q. B. 767, and *Brunton* v. *The Electrical Engineering Corporation*, decided by Mr. Justice Kekewich on December 11, are of considerable interest on the subject of a solicitor's lien. In the first case the plaintiff, having employed a solicitor to commence the action, afterwards gave notice of his intention to act in person, and then personally compromised the action on the terms of receiving a certain sum, which was paid to him by the cheque of the defendant's solicitors. The plaintiff's solicitor the next day served the defendant's solicitors with notice of his lien. He had also previously informed them that in the event of a compromise he should require payment of his costs. The Court, under these circumstances, held that the plaintiff's solicitor was

entitled to an order for payment of his costs by the defendant, or for the continuance of the action for the recovery of his costs. The meaning of 'collusion' in such a case, according to Mr. Justice Denman, 'goes no further than to denote an agreement between two parties with the knowledge that they are doing an unfair thing in depriving a third party of a right he had.'

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The second case before Mr. Justice Kekewich raised, we believe, an entirely novel point—whether the retaining lien of a company's solicitor was good as against the debenture-holders who had brought an action to realise their security. By the form of the debentures they were to rank as a first charge on the company's undertaking and property as a floating security, but so that the company was not to be at liberty to create any 'mortgage or charge' in priority to the debentures. The lien, as we understand, was for costs incurred after the issue of the debentures, but before the voluntary winding up and before default was made on the debentures. Mr. Justice Kekewich decided in favour of the lien, holding that the company, while the security was a floating one, were masters of their own position, and that there was nothing to prevent their solicitor acquiring that right which the general law gave him.

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In the case of *Barnes* v. *The London, Edinburgh, and Glasgow Assurance Company* a Divisional Court decided a very interesting point as regards insurable interest. The plaintiff insured the life of her half-sister, a cripple, who died a year and a half afterwards. The company refused to pay, alleging that certain conditions inserted in the policy had not been complied with, and that the plaintiff had no insurable interest in her sister's life. It appeared that the conditions had been inserted by the company's agent without anything being said about them to the plaintiff, and that the company had given no warning to the plaintiff either at the time of insuring or afterwards as to the necessity for an insurable interest. The emphatic language of the County Court judge of Leeds, which was emphatically approved by the Lord Chief Justice and by Mr. Justice Smith, suggests that these learned judges would have been glad if they could have held the company estopped by their conduct in accepting the premiums without such warning from disputing the validity of the policy. But the words of the Act (14 Geo. III. c. 48) are absolute that the assurance is to be 'null and void to all intents and purposes whatsoever,' and it seems that a plaintiff who cannot prove an insurable interest can at most only recover back the amount of the premiums paid to the company. In this case, however, the ingenuity of the learned judge was able to discover an insurable interest. The County Court judge so held with great hesitation, on the ground that 'there was a reasonable probability that there would be nobody to undertake the child's burial in the case of her death except the plaintiff, and that she, as her sister, might feel called upon by natural affection to perform the office and spend the money upon it.' And Lord Coleridge was of opinion that where a person has entered into an agreement to incur expenses which he was not bound by law to incur, the securing repayment of that to himself in an insurable interest.

Counsel asked for leave to appeal against this decision, but the Court refused to give leave, observing that it would be unjust to the plaintiff to allow an appeal in a case involving only 21*l.* Counsel urged (if the report in the *Times* may be trusted) that 'it was a very important case to the company, who issued thousands of these policies.' Thousands of policies with reference to which the company, when sued, can plead no insurable interest! Thousands of policies in which the company's agent has inserted conditions to which the parties effecting them have never agreed! Either assertion seems incredible, and, if either were true, such a state of things would call for a searching inquiry in the public interest; but the most careful consideration of the words attributed to counsel fails to reveal any other possible sense in which they could form a relevant argument for allowing an appeal.

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As we had thought possible (see *ante*, p. 674), the High Court has taken a strict view of the conduct of the London County Council in refusing to renew two music and dancing licenses, the renewal of which had been opposed by counsel instructed by some of their own body, and has granted a *mandamus* to hear and determine the application according to law. The judgment merely extends the well-known common law disqualification of a judge on the ground of interest upon which we recently (see *ante*, p. 704) commented in connection with *Regina* v. *Gaisford* (Notes of Cases, p. 148). Whether the County Council will exercise their unquestionable discretion under 25 Geo. II. c. 36 in favour of the applicants remains to be seen; on this, the substantial point, the *mandamus* can have no effect. But it may, perhaps, be suggested as just that the same reasonable restrictions upon refusal to renew which exist in the case of licenses for the sale of intoxicating liquor by retail, under section 42 of the Licensing Act, 1872, and section 26 of the Licensing Act, 1874, should be applied by statute to music and dancing licenses under the Act of George II.

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The articles in the *Law Times* of November 14 and December 5 on 'Legal Patronage' and 'A Non-Political Chancellor' are well worth most serious consideration. It is suggested that a Patronage Board should replace the Lord Chancellor in making legal appointments, and that Lord Chancellors themselves should no longer sit in Cabinets, but should be transformed into permanent ministers of justice. The first suggestion we emphatically approve; and would suggest that ex-Lord Chancellors, who have extraordinarily little work to do, should be *ex-officio* members of a new Board of Legal Patronage. We greatly doubt, however, whether the exclusion of the Lord Chancellor from the Cabinet would redound to the public advantage. The Lord Chancellor, however, might very properly be divested of some of his present multifarious duties. There is no reason whatever, for instance, why his time should be taken up by considering the merits and demerits of the various applicants for Crown livings.

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In connection with the attack in the *Saturday Review* on the Solicitor-General for his mode of cross-examination in *Russell* v. *Russell*, attention should be

called (1) to Order XXXVI., rule 38, of the Rules of the Supreme Court by which 'the judge may in all cases disallow any questions put in cross-examination of any party or other witness which may appear to him to be vexatious, and not relevant to any matter proper to be inquired into in the cause or matter,' and (2) to Order XLVIII., rule 1, by which the application of the Rules of the Supreme Court is excluded from (*inter alia*) 'proceedings for divorce or other matrimonial causes.' In *Harvey* v. *Lovekin*, 54 Law J. Rep. P. D. & A. 1, the Master of the Rolls appears to have disliked this exclusion in connection with discovery procedure, and we cannot but think that to incorporate into the Divorce Court Rules, Order XXXVI., rule 38, as to vexatious cross-examination would be highly desirable.

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The signatures of a large number of solicitors are being obtained in support of a petition for the establishment of a Court of Criminal Appeal. So many eminent judges and others connected with the criminal tribunals of this country have expressed opinions more or less decided in favour of some safeguard against wrongful convictions that no Government can afford to ignore the subject. There are objections, no doubt, to the proposed Court, but the question is whether, in spite of certain drawbacks, it would not prove of great value, especially in cases where public sentiment runs counter to the decision come to by the Home Secretary *in camera*. The fact that Galley was forty-three years a convict before he received a 'free pardon' for an offence he never committed is one of the most startling examples of the present system. Mr. Albert Elworthy, who is untiring in his efforts to establish the right of appeal in criminal cases, has printed a revised 'Brief' for the promotion of the measure, which puts in a concise form the case for the bill.

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Only a fortnight ago (see *ante*, p. 755) we noticed the first volume of the 'Revised Reports.' The second volume is now before us, and we gather, with no less satisfaction than astonishment, from an advertisement of the publishers (Sweet & Maxwell, Limited) that 'it is intended to publish at the rate of five volumes a year.' At this rate the series will, in all probability, be completed before the end of the century now rapidly drawing to a close. The second volume contains a republication of all that is valuable in 2 Cox, 1 & 2 Vesey, jun., 4 & 5 Durnford & East, and 1 H. Blackstone. 'No complaints,' says Sir F. Pollock in his preface, 'have reached me of any case which is still of authority being unduly omitted in the first volume, nor yet any serious complaint of too much having been included;' and we are glad to observe that *Goodright* v. *Rigby*, 5 T. R. 177, and *Roe* v. *Baldwere*, 5 T. R. 104, though they 'look obsolete at first sight to a generation brought up under the Conveyancing Acts,' have been republished, with other cases on which the validity of many titles may still depend. It is in deciding whether particular cases of this class are to be republished or not that the intelligence and resources of the editor and his assistants will be mainly taxed. The notes continue to be good and short, and there are one or two decided improvements —*e.g.* that of noting in the margin the paging by which the original reports are usually cited, '*so as to facilitate reference in Court.*'

The Prince of Wales has been entertained at dinner by the leading members of the Civil Service, and, in proposing the toast of the evening, avowed his belief that the Service would ever retain the confidence of the Sovereign and the country. Sir R. Herbert, in replying, said he did not feel quite sure that Parliament and the public placed that full confidence in them which he thought their fidelity deserved. Lawyers have of recent years been brought more and more in contact with the Civil Service by reason of the ever-growing habit of Parliament to delegate to some public department or other work which in former times was done by Parliament itself—as will appear from the most cursory perusal of Mr. A. Pulling's admirable 'Index to the Statutory Rules and Orders in Force on January 1, 1891,' which has just been issued by authority. If these Rules and Orders were issued with more care and consideration for those who have to interpret them as part of the law of England, much time and trouble now rather heedlessly wasted might be saved.

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We direct the particular attention of such of our readers as are members of the Law Society to the notice (see *ante*, p. 777) of the meeting to be held on Friday, January 29, 1892, and to the statement of the secretary that 'it will be very convenient if members who desire to move resolutions or to ask questions will give notice to that effect on or before Wednesday, January 6.' We hope that some member may move a resolution to the effect that the clerks to county justices ought to be disqualified by statute from conducting prosecutions, and that members inclined to support such a resolution will have agreed beforehand how it is to be worded and what steps ought to be taken in event of its being carried, as we hope it will be, for reasons we have frequently given (see, *e.g.*, *ante*, pp. 1, 15).

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## *NEWSTEAD* v. *SEARLES* IN THE PRIVY COUNCIL.

Few cases probably have presented greater difficulty to the mind of lawyers than that of *Newstead* v. *Searles*, 1 Atk. 264; West. temp. Hardw. (1827 edit.) p. 287, where Lord Hardwicke held that articles made on the marriage of a widow containing provisions in favour of her issue by her first husband were not avoided, under 27 Eliz. c. 4, by a subsequent mortgage for value. The articles in that case provided for the settlement of real estate in favour of the husband and wife for their respective lives, and then, in case there should be no issue of the marriage, in favour of the wife's issue by her former marriage, with a provision that if there should be any child of the marriage each such child should have an equal share of the estate with the issue of the former marriage. Attention should be called to the nature of this limitation, under which the issue of both marriages were blended in one class, the importance of which will presently appear. There were, in fact, no issue of the second marriage, and the husband and wife afterwards mortgaged the estate; and Lord Hardwicke held that the issue of the former marriage were entitled to the estate as against the mortgagee—in other words, that the articles would be enforced at their instance, and that the settlement was not avoided by 27 Eliz. c. 4. The difficulty in understanding his decision arises from the general proposition that a limitation

in a marriage settlement in favour of the relations of the settlor other than the issue of the marriage is not within the consideration of the marriage, and, therefore, in the absence of any other consideration, must be taken to be voluntary; and this difficulty is not removed by the reported judgment of Lord Hardwicke himself, from which it is by no means easy to gather the precise ground of his decision. That decision has frequently been considered—sometimes followed, sometimes distinguished, sometimes explained—and the views taken of it appear to fall under four heads, which we propose shortly to discuss. The first and boldest criticism is simply that the decision was a wrong one, and was arrived at before the Courts had finally settled the true construction and import of the 27 Eliz. c. 4. This was the view of Mr. Justice Williams in *Clarke* v. *Wright*, 30 Law J. Rep. Exch. 113; 6 H. and N. 849, but it met with no support from the other judges in that case, where the majority of the Court expressly upheld a limitation in favour of her illegitimate son contained in a settlement made by a woman on her marriage, as against a subsequent purchaser for value; and although this decision of the Exchequer Chamber has, as we shall see, been since disapproved, yet the House of Lords, in the Scotch case of *Mackie* v. *Herbertson*, L. R. 9 App. Cas. 303, has expressly recognised and adopted Lord Hardwicke's decision in the similar case of a blended gift to the issue of both marriages. The second view was the one adopted by Lord Chief Justice Cockburn and Mr. Justice Wightman in *Clarke* v. *Wright*—viz. that *Newstead* v. *Searles* is to be treated as an authoritative though anomalous exception to the general rule. 'It may be,' said the Lord Chief Justice—speaking of *Newstead* v. *Searles* and another case of *Clayton* v. *Lord Wilton*, 6 M. & S. 67 n.; 3 Mad. 302 n., which involved a similar question—'that these decisions would not stand the test of a very strict analysis or rigorous logic; but it must be borne in mind that the rule on which this exception was engrafted was itself the result of a forced and arbitrary construction of the statute.' The reader, we think, cannot fail to be struck with the unsatisfactory nature of this explanation, and though in recent cases judges of first instance have followed this authority—as *e.g.* Mr. Justice Fry in *Gale* v. *Gale*, 46 Law J. Rep. Chanc. 809; L. R. 6 Chanc. Div. 144—they have not unnaturally refused to extend such an exception one whit further than the actual decision compelled them. Thus, both Vice-Chancellor Hall in *Price* v. *Jenkins*, 46 Law J. Rep. Chanc. 214; L. R. 4 Chanc. Div. 483, 488, and Mr. Justice Kay in *In re Cameron & Wells*, 57 Law J. Rep. Chanc. 69; L. R. 37 Chanc. Div. 32, held that the issue of a former marriage of the husband are not within the exception. The third explanation of *Newstead* v. *Searles* is that given in the judgment of Mr. Justice Blackburn (in which apparently Mr. Justice Willes concurred) in the same case of *Clarke* v. *Wright*, the ground taken being that if it can be inferred from circumstances that the parties when they made their agreement had specially in view that some provision should be made for persons who would otherwise have been volunteers, these persons are no longer to be treated as volunteers because it is a matter of special agreement, although there may be no other valuable consideration for the agreement than the marriage, and a distinction is accordingly taken in terms by Mr. Justice Blackburn between a limitation in favour of a third person 'merely inserted' in the settlement, and one 'appearing from its nature' to have been one of the terms of the bargain. This ground is obviously wider than the former one, and if sound, there seems no reason for limiting the exception to the issue by a former marriage of the wife alone. In one sense, Mr. Justice Blackburn's view appears the more satisfactory of the two, as it has the merit of resting on a distinct principle: but inasmuch as nearly every marriage settlement contains in some form or another a recital that the provisions of the settlement are made pursuant to agreement, his proposition would, as Earl Selborne points out in a case in the Privy Council, to which we shall presently refer, go far to destroy the general rule altogether. It may be added that in *In re Cameron & Wells* a distinct recital was made in the settlement of the stipulation to provide for the children of the husband by his former marriage—evidently framed on the lines suggested by Mr. Justice Blackburn's judgment—but Mr. Justice Kay, as we have stated, refused to treat those children as within the marriage consideration. We now turn to the fourth and most recent explanation of *Newstead* v. *Searles*, which we believe to have been first given by Earl Selborne in *Mackie* v. *Herbertson*, and which is further developed in *De Mestre* v. *West*, 60 Law J. Rep. P. C. 66, a case almost identical in its facts with *Clarke* v. *Wright*, except for the circumstance, which for this purpose is immaterial, that in *De Mestre* v. *West* the wife's son was born in wedlock. The Privy Council in that case held that the limitation in favour of the wife's son by a former marriage, which was not in any way mixed up with the limitation to the issue of the intended marriage, was void against a subsequent purchaser for value under 27 Eliz. c. 4. In other words, the Court rejected the authority of *Clarke* v. *Wright*, and stated that the true explanation of *Newstead* v. *Searles* and *Clayton* v. *Lord Wilton* was that the order of limitations in both those cases was such that the limitations which were not within the marriage consideration were blended with those which were, in such a way that those which were within the consideration could not take effect in the form and manner provided by the instrument without also giving effect to those which were not. The same reasoning, according to Earl Selborne, who delivered the judgment of the Court, was what guided the House of Lords in the Scotch case of *Mackie* v. *Herbertson*. Whether this was the real reason which Lord Hardwicke had in his mind in deciding *Newstead* v. *Searles* may well be doubted; but we presume that for the future this will be taken to be the true *ratio decidendi* of that case, and it is certainly one which puts the matter on a satisfactory and intelligible basis, making the question one of the form and meaning of the instrument in each case, which, we may add, is to be ascertained as at the time of the execution of the deed, and, therefore, is not affected by the circumstance that there may, in fact, be no issue of the intended marriage to share with the collaterals under the blended limitation. On this footing there can, we apprehend, be no reason for giving the benefit of the inclusion to one class of collaterals—such as the issue of the wife by a former marriage—rather than to another; and the decision of the Privy Council involves accordingly a complete reconsideration of the decided cases. Thus, the decision of Mr. Justice Fry in *Gale* v. *Gale* cannot, we think, be supported on this reasoning, any more than that of *Clarke* v. *Wright*. On the other hand, the decisions in *Price* v. *Jenkins* and *In re Cameron & Wells* appear to be right on the facts, though the reasoning on

which they were founded—viz. that the issue of the husband by a former marriage are in all cases to be treated as volunteers—is, if Earl Selborne's view is to prevail, obviously unsound.

## SERVICE OUT OF THE JURISDICTION.—VII.

(*Continued from p. 771.*)

3. Order XI., rule 2, provides that where leave is asked to serve a writ (under rule 1) in Scotland or Ireland, if it shall appear to the Court or judge that there may be a concurrent remedy in Scotland or Ireland, as the case may be, the Court or judge shall have regard to the comparative cost and convenience of proceeding in England or in the place of residence of the party sought to be served and, particularly in cases of small demands, to the powers and jurisdiction under the statutes establishing them or regulating them of the Sheriffs' Courts or Small Debt Courts in Scotland and of the Civil Bill Courts in Ireland respectively.

We have already seen that, according to *Lenders* v. *Anderson* (1883), 53 Law J. Rep. Q. B. 104; L. R. 12 Q. B. Div. 50, this rule applies to the whole preceding rule, but does not enable the Court to allow service under clause (*e*) where the defendant is domiciled or ordinarily resident in Scotland or Ireland. It should also be observed that this rule does not say that the points enumerated in it are the *only* circumstances to which the Court or judge is entitled to have regard, and it is submitted that all the tests by which in other cases the question of 'the balance of convenience' is determined are applicable here also.

The meaning of the words 'concurrent remedy' was recently considered by Mr. Justice Chitty in *In re De Penny* (1891), 60 Law J. Rep. Chanc. 518; L. R. 2 Chanc. Div. 63. 'A remedy,' said his lordship, 'which depends on the will and pleasure of another person is not a concurrent remedy within rule 2 of Order XI.' In that case the plaintiff was resident in England. The defendants were domiciled and resident in Scotland. One of the principal subjects in dispute was a large fund in the hands of G. & S. in England. G. & S. were mere stakeholders as between the plaintiff and the defendants. Leave was asked to serve a writ under Order XI., rule 1 (*f*), on the defendants, out of the jurisdiction. It was suggested, on behalf of the defendants, that there was a concurrent remedy in Scotland, because G. & S., the stakeholders, might institute in Scotland an action of multiplepoinding—which is analogous to our interpleader—the result of which would be that the fund would be deposited in a bank there and the litigation would proceed between the plaintiff and the defendants. G. & S. were, however, under no obligation to take any such proceedings. Mr. Justice Chitty (although deciding against the order for service out of the jurisdiction on other grounds) held that there was no 'concurrent remedy' within the meaning of rule 2.

The judicial construction of the words 'comparative cost and convenience' will be apparent from the following illustrations:—*

(*a*) A., who resided in Ireland, and B. entered into a partnership contract, executed in London, for the construction of a railway in Ireland. In this contract B. was described as a civil engineer, of Victoria Street, Westminster. B. and his family went to reside in Ireland, he having to superintend the progress of the works. The contract provided that the business should be carried on in Victoria Street and Ireland, and that the books should be kept at Victoria Street. This clause was, however, abandoned after a very short time, and the business and the books were carried on and kept in Ireland. A. brought against B. an action of accounts. Comparative cost and convenience require that this action should be tried in Ireland (*Tottenham* v. *Barry* (1879), 48 Law J. Rep. Chanc. 641; L. R. 12 Chanc. Div. 797—and on this point see *Kinahan* v. *Kinahan* (1890), 59 Law J. Rep. Chanc. 705; L. R. 45 Chanc. Div. 78.

(*b*) On the marriage of A., an Englishman domiciled in England, with B., a Scotch lady, a settlement in Scotch form was made of her property, under which, after the death of B., the property went to the children of the marriage, subject only to an annuity to A. On the death of B., the only child of the marriage, an infant, resident with the father in England, commenced an action against the trustees to have the trusts administered by the Court, alleging that the trustees improperly refused to allow maintenance out of the income. The trust property was all in Scotland, and the trustees all resided there. It was held by the Court of Appeal that service of the writ out of the jurisdiction ought not to be allowed. 'Here,' said Lord Justice James, 'is a Scotch settlement, Scotch property, Scotch trustees, and if it were a matter of judicial discretion where the proceedings ought to be carried on, I think that the plaintiffs ought to go where the Scotch defendants are, and get them to render their accounts in a Scotch Court, which knows exactly what is the effect of the Scotch settlement and what is the proper mode of dealing with the trust estate' (*Creswell* v. *Barker*, L. R. (1879) 11 Chanc. Div. 601).

(*c*) *Seymour* v. *Seymour*, W. N. 17 (1888), was a somewhat different case from either of the two preceding ones. It was an action for the execution of the trusts of a marriage settlement and to make good alleged breaches of trust under which the trust fund had been invested on mortgage of land in Ireland. The plaintiff was an infant beneficiary claiming under the settlement. Certain of the defendants who resided in this country were the representatives of a deceased trustee. The other defendants, who resided in Ireland, were the surviving trustee of the settlement and two sub-mortgagees from the trustee. The three last-mentioned defendants were served with the writ in Ireland and the surviving trustee submitted to the jurisdiction. The sub-mortgagees, however, moved to discharge the order for service, *inter alia*, upon the ground that any question which concerned them might effectually be raised in proceedings then pending for the sale of the estates in the Land Court in Ireland upon the ruling of the schedule of incumbrances, and consequently that under Order XI., rule 2, the Court ought not to exercise the jurisdiction even if (which was denied) it possessed it. Mr. Justice Chitty overruled the objection. 'If I were to uphold it,' said his lordship, 'either the parties resident in England would have to be served with the proceedings in Ireland, or two sets of proceedings would have to be carried on—one in England and the other in Ireland. In the first alternative the parties resident here would raise exactly the same objection in the Irish Courts to being taken to

* We shall here notice those cases only which relate to Scotland and Ireland. Other cases are dealt with in next paper, under the heading 'Balance of Convenience.'

Ireland, and there would be a deadlock. In the second alternative there would be two sets of proceedings, in each of which all the same evidence would have to be gone through.'

4. Scotch and Irish firms, of course, fall within the purview of Order XLVIII. A. This Order is considered in a subsequent paper.

*(To be continued.)*

# Reviews.

## A HANDY BOOK OF THE LAW OF TRUSTEES.

*A Handy Book of the Law of Trustees; their Duties and Liabilities: with the New Rules as to Investments and the Trustee Acts, 1888 and 1889.* By R. Denny Urlin, of the Middle Temple, Barrister-at-Law, Author of 'Land Transfer and Registration,' 'The Office of Trustee,' 'A Legal Guide for the Clergy,' &c. New and Revised Edition. London: Effingham, Wilson & Co. 1891.

This little work gives a very good general outline of the law as to the position, rights, and responsibilities of trustees. Mr. Urlin has for the benefit of the general public avoided technical expressions as much as possible. Thus, he tell us, instead of the barbarous expression *cestui que trust* (with its debatable plural) the word 'beneficiary' is used throughout, as conveying a clearer notion to the English reader. On p. 27, the provisions of 4 & 5 Wm. IV. c. 29, as to trustees lending on real securitities in Ireland are stated, but the author has omitted to tell us that the Act was repealed by the Trust Investment Act, 1889. Another slip which we have noticed is that, while on the first page of Chapter V. we have an allusion to the power to obtain judicial advice under Lord St. Leonards's Act and a statement of the law in Chapter X., the more comprehensive provisions of the Judicature Rules on the subject are not mentioned.

## SHIRLEY'S LEADING CASES.

*A Selection of Leading Cases in the Common Law.* With Notes. By Walter Shirley Shirley, Barrister-at-Law. Fourth Edition by Richard Watson, LL.B. (Lond.), Barrister-at-Law, of Lincoln's Inn and North-Eastern Circuit. London: Stevens & Sons (Lim.). 1891.

The author of this work died shortly after the appearance of the third edition, and the task of bringing out the present edition has been accordingly committed to the hands of Mr. Watson. The present editor has done his work with great care, and large additions have been made to the cases. The cases on the subject of 'Contract' have been rearranged. In some cases the notes appear to run somewhat wide of the subject of the leading case. Thus in the case of *Jordan* v. *Norton*, which is entitled 'On the importance of mutuality,' the question was whether there was a contract between two farmers for the sale of a mare, and the decision of Baron Parke was 'the parties have never contracted in writing *ad idem*.' In the notes to this we have nearly a couple of pages devoted to the law of salvage. A few shortcomings in the work may be noticed. At p. 37 the authority of legal advisers is discussed. Here a few words might have been said with regard to the position of barristers in the conduct of actions. At p. 48 it would have been well to notice that the Factors Act was extended to Scotland by 53 & 54 Vict. c. 40. *Peek* v. *Derry* is referred to, but no mention is made of the Directors' Liability Act, 1890. Generally speaking, however, the editing of the work has been well done.

## A TRANSLATION OF DIGEST XIX. 2.

*Digest XIX. 2. Locati Conducti.* Translated, with Notes, by C. H. Monro, M.A., Fellow and Lecturer of Gonville and Caius College, Cambridge. Cambridge: University Press. 1891.

This neat little volume contains the Latin text of the Digest XIX. 2, with a translation in which the author tells us he has endeavoured to adhere about as closely to the Latin as was consistent with writing presentable English—indeed in one respect more closely, as it is often necessary to leave the Roman terms untranslated. Mr. Monro expresses an opinion with which we must concur—the custom is to translate too much. Thus, to take a prominent instance in the little work before us, the subject of the part of the digest dealt with (*locatio* and *conductio*) can never be translated with absolute accuracy by the terms 'letting' and 'hiring;' and such a rendering is sometimes quite beside the mark. The work is carefully done and the notes are instructive.

## CAMPBELL ON SALE AND COMMERCIAL AGENCY.

*The Law relating to the Sale of Goods and Commercial Agency.* Second Edition. By Robert Campbell, M.A., of Lincoln's Inn, Barrister-at-Law; Advocate of the Scottish Bar; and late Fellow of Trinity Hall, Cambridge; Author of the 'Law of Negligence,' &c. London: Stevens & Haynes. 1891.

In the two lines of preface prefixed to this edition, Mr. Campbell claims no more for it than that he has 'spared no pains to bring the work up to date.' Having carefully examined the present edition from this point of view, we are able to say that the task of bringing the book up to date has been thoroughly and well carried out. A few of the most recent cases, reported too late to admit of their being referred to in the text, have been noted in the index under the appropriate heads, and a list of them given at the end of the Table of Cases. We can, therefore, repeat what we said when reviewing the first edition—that the book is a contribution of value to the subject treated of, and that the writer deals with his subject carefully and fully. The book is indeed so good that we all the more regret that some congenital defects, to which we directed attention when reviewing the first edition, do not appear to have been remedied during the ten years that have elapsed since it first appeared. The Table of Contents is far too full, and is wanting in clearness and precision; it might with advantage be simplified and curtailed, and the space thereby gained utilised by giving either in the Table of Cases or throughout the body of the book references in each case to more than one set of reports. We notice, too, that throughout the author, when referring to Blackburn and Benjamin on Sales, ignores

the fact that a second edition of Blackburn was published in 1885 and a fourth edition of Benjamin in 1888. The editors of the latest editions of these works have so far preserved the original texts as to take away, generally speaking, any excuse for referring to the earlier instead of the latest editions. Attention to a few matters of detail of this kind would have rendered what is certainly a good book more useful.

## THE SECRETARY'S MANUAL OF COMPANY LAW.

*The Secretary's Manual on the Law and Practice of Joint-stock Companies.* With Forms and Precedents. By James Fitzpatrick, Secretary of Public Companies and Accountant, and V. de S. Fowke, of Lincoln's Inn, Barrister-at-Law. London: Jordan & Sons. 1891.

The object of this work is to meet an often-expressed want of a legal and practical guide for secretaries and members of the secretarial staff of companies. Its primary object, therefore, is to be a practical treatise. It deals accordingly at considerable length with the subject of bookkeeping. Here the authors have obviously supplied a *desideratum*, as many a secretary, when newly appointed to a company, even though he may have had the advantage of a commercial training, finds himself none too well fitted to deal with the work connected with the technicalities of the accounts of a public company. Law is not neglected, and the authors have here given the secretary a selection of that portion of the vast and bewildering mass of company law which he will require to know for the purposes of his office. The work is well got up and handy.

## ROBERTS AND GOLLAN ON THE PUBLIC HEALTH (LONDON) ACT.

*The Law relating to the Public Health of London.* Being the Public Health (London) Act, 1891, fully Annotated, with References to all the Cases bearing on its Construction, together with an Explanatory Chapter, and other Enactments and Orders relating thereto. By James Roberts, M.A., LL.B., of the Inner Temple, Barrister-at-Law, Joint-Author of the 'Metropolitan Police Guide' and Author of a 'Handbook of Weights and Measures,' and H. C. Gollan, M.A., of the Middle Temple, Esq., Barrister-at-Law. London: Butterworths. 1891.

The Public Health (London) Act, 1891, does not come into operation until New Year's Day, but the authors of the present work very fairly assume that sanitary authorities and other persons who are entrusted with or interested in the administration of the Act will desire an early acquaintance with its provisions. Prefixed to the annotated copy of the Act is an explanatory chapter divided into two parts—one giving an account of the various matters with which the Act deals; the other noting the powers and duties of those bodies or persons who are made chiefly responsible for the due execution of this important statute. The law as to sanitary matters, which had been in an unsatisfactory state, was consolidated for the rest of England by the Public Health Act of 1875; but London had to wait its turn until the last session of Parliament. Now the law has been consolidated and amended by the recent Act. The present work is a careful guide to its provisions, and the work of annotation is well done, the authors having sedulously sought for help from the decisions on the previous law. A prominent position in the Public Health (London) Act, 1891, is assigned to nuisances, and here our authors sketch the law for their readers in a careful manner. Those, however, who desire to study the *minutiæ* of the subject will require to refer to the larger treatises dealing with this particular question.

# Unreported Cases.

## COUNTY COURTS.

### ACTION BY BAILIFF FOR POSSESSION FEES.

At the Wandsworth County Court, on December 8, the case of *Willoughby* v. *J. W. Hobbs & Co.* (*Lim.*) was heard. On December 15 his Honour Judge Holroyd delivered his reserved judgment: This was an action by the registrar and high bailiff of the Wandsworth County Court to recover 1*l.* 10*s.*, being three days' possession fees, under the circumstances which appear fully from the judgment which follows. On September 27, 1891, an execution was levied on the goods of Mr. Borgen, the defendant in an action in the Wandsworth County Court, by the plaintiff, for 15*l.* 4*s.* 6*d.*, the amount of the judgment. On September 28 the landlords, Messrs. Hobbs & Co., gave notice to the high bailiff that Borgen (their tenant) was indebted to them for more than one year's rent at 55*l.* a year, and claiming to have the arrears of rent satisfied under section 160 of the County Court Act, 1888 (51 & 52 Vict. c. 43). On October 1 Borgen, the judgment debtor, paid the debt for which the execution was levied, together with the costs of the execution, including four days' possession-money, from October 27, at 10*s.* a day. On the same day the landlord gave the bailiff notice that he withdrew his claim for rent. The high bailiff then claimed three days' possession-money from the landlords from October 28, and, as the landlords refused to pay, brought this action for the three days' possession-money at 10*s.* a day. On behalf of the defendants it was contended that the high bailiff had no claim, the fees for possession being limited by Order XXV., rule 11, of the County Court Rules, 1889, and by form 163, which is the notice of the warrant of execution subject to this rule, and which limits the amount of possession fees to 10*s.* per day. It was also contended that section 160 of the County Courts Act, 1888, which replaced section 1 of 8 Anne, c. 14, did not extend the application of that section so as to give the bailiff a right to possession fees as against the landlord giving notice of a claim for rent. The cases treating of the relations between a landlord claiming rent of the sheriff and the sheriff are as follows: In *Thomas* v. *Morehouse*, 56 Law J. Rep. Q. B. 653, it was decided that the effect of section 1 of the statute of Anne is to make the sheriff personally liable to the debtor's landlord if the goods seized are removed from the debtor's premises without payment of the rent; but the landlord does not acquire any lien either on the goods seized or on the proceeds of the sale, although when the sale has taken place, and the goods are in the hands of the sheriff, the Court may summarily, upon a summons at chambers, order the sheriff to pay the landlord the amount to which he is entitled. (See also *Yates* v. *Rutledge*, 29 Law J. Rep. Exch. 117.) Further, the landlord is entitled to his rent without any deduction for poundage, as appears from the case of *Davies* v. *Edmonds*, 12 M. & W. 31. It therefore appears to me that there was no re-

tainer by the landlords of the high bailiff to distrain. He merely receives a notice of claim for rent, and his obligation to distrain is solely under the statute, in the case of executions in the County Court, section 160 of the County Courts Act, 1888, for which he is paid his poundage as provided by the rules under the statute, and, as appears, he is not entitled to receive fees for more than one man in possession. Lastly, there is no fee provided in the County Court scale of fees for a man in possession, except in actions in interpleader proceedings after the seventh day of possession, when the judge may allow, in addition to the fees on execution of a warrant, costs out of pocket for a man in possession. The case of *Ball* v. *Price*, 45 Law J. Rep. Q. B. 170; L. R. 1 Q. B. 264, where it was decided that a County Court registrar could sue for fees, has no application. It appears to me, therefore, that this right of action is misconceived, and that there must be judgment for the defendants.—The Registrar (plaintiff) in person. Mr. G. A. Bonner, barrister, appeared for the defendants.

RAILWAY COMPANY—UNPUNCTUALITY—NEGLIGENCE.

A point of some importance to railway passengers came before his Honour Judge Stonor in the Brompton County Court on Thursday, December 10.—The defendant, Mr. Lowenfeld, a gentleman of fortune, on August 7 last travelled to Teignmouth, to join his family there, by a train of the Great Western Railway Company, timed to arrive at that place at 7.42 P.M., and to stop ten minutes at Swindon. The train arrived at Swindon several minutes late, and the defendant inquired of the guard if it would stop ten minutes, and was answered in the affirmative. In fact, it only stopped seven minutes, and the defendant was left behind. The stationmaster told Mr. Lowenfeld that he had started the train before the time as it was late, and that the next train for Teignmouth was timed to get there at 10.50. The defendant asked for a special train, and was advised to go on by the next train to Bristol, and take the special train there. This he did, and the special train provided for him at Bristol reached Teignmouth at 8.20. The stationmaster demanded 31*l.* 17*s.*, the usual charge for a special train for that journey; the defendant said he would settle with the company, but ultimately gave a cheque for the amount to the stationmaster, payment of which, however, he stopped at his bankers'. The company now sued him for the amount, and he counterclaimed for damages without stating any definite sum.—His Honour held that the plaintiffs were clearly entitled to the amount claimed, as the defendant had contracted to pay it, and that he could not recover a like amount from the company on the counterclaim as damages. The learned judge held that it was unreasonable for him under the circumstances to have taken a special train on the authority of the well-known case of *Le Blanche* v. *The London and North-Western Railway Company*, 45 Law J. Rep. C. P. 521; L. R. 1 C. P. Div. 286, in which the Court of Appeal held the principle applicable to such cases to be 'that if one party does not perform his contract the other may do so for him as reasonably near as may be, and charge him for the reasonable expense incurred in so doing; and that a proper test of what is reasonable in such a case is to consider whether, according to the ordinary habits of society, a person delayed on his journey, under circumstances for which the company were not responsible, would have incurred the expenditure in question on his own account.' But his Honour thought that the defendant was entitled to set off and counterclaim the following sums as damages for breach of contract—viz. 17*s.* fare from Bristol to Teignmouth, part of his fare from London to Teignmouth, 3*s.* for telegrams, and 2*l.* for discomfort and inconvenience, being a total of 3*l.*; but he said that he would give a written judgment as desired by the parties.—Mr. Talbot was counsel for the plaintiff company, and Mr. Woodfall for Mr. Lowenfeld. The latter stated that the case would be carried to the highest tribunal.

SERVANT-GIRLS' HOLIDAYS.

In the Marylebone County Court, on December 16, the case of *Plummer* v. *Serena* raised the question of the holidays of domestic servants. Plummer had been in the service of Mrs. Serena for about three months, and in August asked for and obtained a week's holiday. She went to Hastings, and she said she found that the sea air was doing her so much good that she wrote to her mistress asking that her holiday might be extended another week. As plaintiff did not return at the end of the first week, her mistress telegraphed to her to come back at once, and two days afterwards wrote to plaintiff telling her that her services were no longer required. The girl also wrote what was described as an impertinent letter, in which she gave her mistress a month's notice. When plaintiff did return from Hastings, Mrs. Serena refused to allow her to resume work; and the girl brought an action for a fortnight's wages while she was away, and a month's wages in lieu of notice. Mrs. Serena paid into Court one week's wages for the time during which the girl was away with leave, and contended that the girl was not entitled to any more as she virtually left her situation.—His Honour said it was monstrous that servant-girls should put their mistresses to so much inconvenience. So far as he knew, a mistress was not bound to give her servant any holiday, but it was absurd to suppose that a girl could extend her holiday at her own pleasure. In the circumstances he doubted whether the girl could have recovered her wages for the week she was away with leave; but the money had been paid into Court, and she might consider herself lucky to get that. Judgment was given for the defendant.

## SESSIONS CASE.

UNQUALIFIED PRACTITIONERS.

At the Horsham Petty Sessions, on Saturday, Albert Stovell, an agent, residing in the town, was summoned at the instance of the Incorporated Law Society with wilfully and falsely using a description implying that he was qualified to act as an attorney or solicitor at Horsham on September 19. There was a second summons against him for wilfully and falsely pretending to be an attorney or solicitor on the same date.—Mr. J. F. A. Cotching, solicitor, of Horsham, appeared to prosecute on behalf of the society. He detailed the facts of the case, stating that a Mrs. Stone had lived for many years at Bonnett's Farm, in the parish of Capel, and recently she had had a dispute with a carter named George Goacher, who had been in her employ. He left and made a claim for wages. On September 20 Mrs. Stone received the following letter: '23 Bedford Road, Horsham: September 19, 1891. Madam,—I am instructed by Mr. Geo. Goacher, of Horsham, late in your employ, to apply to you for the payment of 2*l.* 18*s.* wages due to him from you as per enclosed statement. My instructions are, unless the amount be sent to me within seven days from the above date, to take legal proceedings against you for its recovery.—Yours, &c., ALBERT STOVELL.' Mrs. Stone was aware that defendant was not a solicitor, for the simple reason that she had lived in the neighbourhood all her life and she knew the names of the Horsham solicitors. Had it not been for this fact she would have thought that the defendant was really a solicitor. The letter was drawn in the terms solicitors used in the ordinary way. Mrs. Stone did not take any notice of the letter under these circumstances. Unfortunately, perhaps, for the defendant, a barrister-at-law had taken

apartments at Mrs. Stone's house for some time in the autumn, and the letter was shown to him, and he brought the matter before the Incorporated Law Society. After a consideration of the case by the committee, these proceedings were ordered to be taken. After writing the letter defendant visited Mrs. Stone's house and told her that he had written the letter, and that he generally liked to see the people before taking out a summons. He also told her that it would cost 4*l.* if the case went on. Mrs. Stone told him he was not a lawyer and had no business to write the letter. Defendant admitted to her that he was not a solicitor.—Mrs. Stone was called, and gave evidence in support of the statement.—Defendant stated that he was ignorant that he had committed an offence in writing the letter.—The bench decided that the defendant did not wilfully hold himself out to be a solicitor, and dismissed the case.—The chairman advised him to be more careful in his mode of drawing up letters in future. —Mr. Cotching said this was a case of great importance to the Incorporated Law Society, and he asked the magistrates to state a case for a superior Court.—The bench granted the application.

## POLICE.

### STREET MUSIC—SALVATION ARMY.

At Lambeth, on December 15, William Burgess, a member of the Salvation Army, appeared to a summons taken out by Mr A. W. Wright, landlord of the Queen Tavern, Neate Street, Camberwell, for unlawfully playing upon an instrument after being requested to desist by the complainant. Mr. Sydney, in opening the case, said that for some time past members of the 'army' had been in the habit on Sundays of meeting just outside the house of the complainant. The complainant had spoken to them on several occasions, and had asked them to desist from playing and singing, but despite this they continued to act in such a manner as to cause great annoyance to complainant and others in the neighbourhood. The complainant had used every effort to obtain the names and addresses of some of the members of the 'army,' but only obtained fictitious names and addresses. On Sunday, November 29, shortly after two o'clock in the afternoon, a number of the members of the 'army' assembled close to the complainant's house. A few minutes afterwards more members arrived having musical instruments with them, the defendant playing a cornet. The complainant, who was accompanied by a constable, asked the defendant to desist. He took no notice, but continued to blow the cornet for ten minutes or a quarter of an hour.—Mr. Richardson contended that, according to the opening statement of Mr. Sydney, there was no case to answer, and urged that the Act of Parliament referred to 'street musicians' and 'street singers,' and did not apply to such persons as the defendant.—Mr. Hopkins said he would hear the evidence before giving an opinion.—The complainant was then called, and gave evidence bearing out the statement of Mr. Sydney.—In cross-examination the complainant denied that there was any counter-demonstration against the 'army.' No bags of flour were thrown. He did not know that on a previous occasion Herbert Booth had mud thrown at him, or that red ochre was thrown on another occasion.—Mr. Richardson submitted that no offence had been proved under the Act, which was meant to deal with musicians playing instruments in the streets for gain. He added that a large amount of crime was caused by drink, and that the complainant was a man who lived by selling drink chiefly to the poor.—Mr. Hopkins said such an observation showed that the defendant and others went to the place to annoy and hinder the complainant in his business.—Mr. Richardson said the 'army' or its members went there, not because it was a publichouse, but because it was a convenient street corner. —Mr. Hopkins, after hearing arguments on both sides, said it had been put forward that a Salvation Army musician was not a street musician, but he had no difficulty in holding that he came within the meaning of the Act. It was also urged that the Salvation Army ought not to be moved on by a publican, because he was carrying on a trade which was the cause of crime. He had no hesitation in saying that such an argument ought not to be listened to for one moment. He considered the offence proved, and ordered the defendant to pay a fine of 10*s.* and 2*s.* costs.—Mr. Richardson asked his Worship to state a case for a superior Court, but Mr. Hopkins refused to do so.—Mr. H. J. Sydney, solicitor to the South London Licensed Victuallers Protection Society, prosecuted; and Mr. Richardson, solicitor, defended.

## HONOURS EXAMINATION FOR SOLICITORS.

### NOVEMBER, 1891.

AT the examination for honours of candidates for admission on the roll of solicitors of the Supreme Court, the examination committee recommended the following candidates as being entitled to honorary distinction:—

FIRST CLASS.

WILLIAM CHARLES VALLANCE, who served his clerkship with Mr. Francis Robert Jeffery and Mr. John Wallis Roberts, of Ottery St. Mary; and Messrs. Braikenridge, of London.

SECOND CLASS (in Alphabetical Order).

JOHN WILLIAM BARTON, who served his clerkship with Mr. John Millington Simpson, of Boston; and Messrs. Collyer-Bristow, Russell & Hill, of London.

WILLIAM KENSHOLE, who served his clerkship with Mr. Henry Piper Linton (firm of Messrs. Linton & Kenshole), of Cardiff.

CYRIL HERBERT KIRBY, who served his clerkship with Mr. Charles Bampfylde Daniell (firm of Messrs. Salmon, Daniell & Major), of Ulverston; and Messrs. Thompson & Light, of London.

JOHN ALFRED BISQUE, who served his clerkship with Mr. Edwyn Holt, of Manchester.

WALTER HENRY STURGES, who served his clerkship with Mr. William Maurice Williams, of Leicester.

THIRD CLASS (in Alphabetical Order).

HAROLD POPE ADDLESHAW, who served his clerkship with Messrs. Addleshaw & Warburton, of Manchester.

LENNOX JOHN BEARDALL, who served his clerkship with Mr. Charles Everett, of London.

WARWICK VERNON BRADLEY, who served his clerkship with Mr. Charles Gervaise Boxall, of London.

HARRY BRAY, who served his clerkship with Mr. Richard Thomas Gratton, of Chesterfield.

JOHN HENRY COCKBURN, who served his clerkship with Mr. Henry Walter Badger (firm of Messrs. Leeman, Wilkinson & Badger), of York.

ESMONDE HENRY AUGUSTINE KENRICK DOWSE, who served his clerkship with Mr. Henry Archibald Dowse, and with Mr. William Stewart Forster (firm of Frere, Forster & Co.), of London.

WILLIAM DUNN, M.A., LL.B., who served his clerkship with Messrs. Parker, Garrett & Parker, of London.

EDWARD EVANS, who served his clerkship with Mr. Marmaduke Tennant (of the firm of Messrs. Tennant & Jones), of Aberavon.

WILLIAM HENRY GORDON, B.A., who served his clerkship with Mr. Alfred Bright (of the firm of Messrs. Bateson, Bright & Warr), and with Mr. Augustus Frederic

Warr (of the firm of Messrs. Bateson, Warr & Bateson), of Liverpool.

Charles Villiers Johnson, who served his clerkship with Mr. Herbert Henchman Cole, of Norwich; and Messrs. Sharpe & Co., of London.

Francis Thomas Jones, B.A., who served his clerkship with Messrs. Hughes, Masterman & Rew, of London.

Frederick Charles Lloyd, who served his clerkship with Mr. Joseph Larke Wheatley, of Cardiff.

Charles Duncan Murton, B.A., who served his clerkship with Mr. Thomas Markby, of London.

Douglas Robert Crawfurth Smith, who served his clerkship with Mr. Joseph Edward Turner, of London.

Lewis Stroud, M.A., who served his clerkship to Mr. William Flux, of London.

John Barlow Thistlethwaite, B.A., who served his clerkship with Mr. William Eaton (of the firm of Messrs. Eaton, Sons & Co.), of Manchester.

Herbert Edwin Wright, B.A., LL.B., who served his clerkship with Mr. Hume Chancellor Pinsent (of the firm of Messrs. Smith, Pinsent & Co.), of Birmingham; and Messrs. Radford & Franklyn, of London.

The council of the Incorporated Law Society have accordingly given class certificates and awarded the following prizes of books:—

To Mr. Vallance, the prize of the Honourable Society of Clement's Inn—value 10 guineas; the Daniel Reardon prize—value about 25 guineas; and the John Mackrell prize—value about 12*l.* 10*s.*

The council have given class certificates to the candidates in the second and third classes.

Ninety candidates gave notice for the examination.

By Order of the Council,

E. W. Williamson,

Law Society's Hall, Secretary.

Chancery Lane, London: December 10.

## CHRISTMAS VACATION NOTICE.

There will be no sitting in Court during the Christmas Vacation.

During Christmas Vacation all applications which may require to be immediately or promptly heard are to be made until December 31 to the Honourable Mr. Justice Collins, and afterwards to the Honourable Mr. Justice Jeune.

Mr. Justice Collins will act as vacation judge from Tuesday, December 22, to Thursday, December 31, both days inclusive. His lordship will sit in Queen's Bench Judges' Chambers on Wednesday, December 23, and Thursday, December 31. On other days, within the above period, applications in urgent Chancery matters may be made to his lordship at 3 Bramham Gardens, Earl's Court, S.W.

Mr. Justice Jeune will act as vacation judge from Friday, January 1, to Saturday, January 9, both days inclusive. His lordship will sit in Queen's Bench Judges' Chambers on Wednesday, January 6, and Thursday, January 7. On other days, within the above period, applications in Chancery matters may be made to his lordship at Arlington Manor, Newbury.

In any case of great urgency the brief of counsel may be sent to the judge by book post or parcel, prepaid, accompanied by office copies of the affidavits in support of the application, and also by a minute, on a separate sheet of paper, signed by counsel, of the order he may consider the applicant entitled to, and also an envelope, capable of receiving the papers, addressed as follows: 'Chancery Official Letter: To the Registrar in Vacation, Chancery Registrars' Chambers, Royal Courts of Justice, London, W.C.'

On applications for injunctions, in addition to the above, a copy of the writ, and a certificate of writ issued, must also be sent.

The papers sent to the judge will be returned to the registrar.

The chambers of Mr. Justice Kekewich will be open, for Vacation business only, from 11 to 2 on Thursday, December 24; Tuesday, December 29; Wednesday, December 30; Thursday, December 31; Friday, January 1; Tuesday, January 5; and Wednesday, January 6.

Chancery Registrars' Chambers,

Royal Courts of Justice: Dec. 12, 1891.

## THE SESSIONS AT NEWINGTON.

On Saturday, December 12, Mr. Somes took his seat in the second Court at the Sessions House, Newington Causeway, for the purpose of continuing a part-heard case of alleged dealing in bogus cheques. Two full juries were in attendance. Several counsel occupied the benches allotted to them, and witnesses and police were present, when a telegram arrived from Sir Peter Edlin stating that the Court could not sit without further instructions, as it was understood that one Court would be sitting at Clerkenwell, while he would preside in the first Court at Newington. When the judge arrived matters could be carried no further, and, after a delay of nearly two hours, Mr. Somes announced that a message had just arrived stating that a second Court was sitting at Clerkenwell, and as only two Courts could sit at once under the terms of the Act, he must adjourn his sitting until Monday. Upon this, Mr. F. J. Lowe, rising to address the Court as the mouthpiece of the barristers present, said he was quite sure that no one present in Court held Mr. Somes in any way responsible for this, but he thought it only right, in the interest of every one assembled there for the administration of justice, to protest in the strongest possible manner against the possibility of the recurrence of such a state of affairs and against the continual waste of public time occurring at these sessions. It was very hard for the professional men engaged, who were afraid to enter into engagements, not knowing if they could fulfil them; it was very hard to have witnesses brought there day after day at great expense and inconvenience, and kept hanging about in the none too healthy atmosphere of public Courts; but he protested still more earnestly on behalf of the jury, who were summoned there, frequently from distant parts of the country, and who had to give their services day after day without any reward whatever for the discharge of the duties imposed upon them; and seeing that was so he thought every one present would agree with him when he said that it was disgraceful that they should be told to come there that morning to continue a part-heard case and then be sent away and ordered to come again on Monday, having wasted a morning, which they might have devoted to their various avocations, and which might be of vast importance to them. He took it that the day was practically spoilt for them, and all this because of the stupid technicality which prevented more than two Courts sitting in the county of London at the same time. Several of the jury complained not only that they had been summoned for three successive sessions, but that the same irregularities had been going on during the whole of the three months that they had given their attendance there, and that the same objections were being made by everybody as to the fitful way in which the sessions at the south side of the water were being held. Mr. Somes observed that he sympathised with what had been said, but regretted his inability to alter the state of affairs. A conference afterwards took place between the bar, the jury, and others concerned with a view to remedying the irregularities so long complained of.

## CALENDAR OF THE COUNTY COURTS.

FROM DECEMBER 21 TO DECEMBER 26.

| No. of Circuit | His Honour | Dec. 21 | Dec. 22 | Dec. 23 | Dec. 24 | Dec. 25 | Dec. 26 |
|---|---|---|---|---|---|---|---|
| 7 | Judge Ffoulkes | Birkenhead | Runcorn | — | — | — | — |
| 15 | Judge Turner | Middlesbrough | Stockton-on-Tees | — | — | — | — |
| 16 | Judge Bedwell | Howden | — | — | — | — | — |
| 47 | Judge Bristowe | — | Lambeth | — | — | — | — |

## THE WESLEYANS AT EASTBOURNE.

MR. F. ALLEN, of Beachy College, Eastbourne, has received the following letter from Mr. R. W. Perks, lay secretary of the committee of privileges of the Wesleyan Conference, in regard to the action of the watch committee of the Eastbourne Corporation in prohibiting street meetings in the town on Sundays: '9 Clement's Lane, Lombard Street, London, E.C., December 14. My dear Sir,—Perhaps you are aware that the Wesleyan minister at Eastbourne has written to the Rev. J. E. Clapham, my colleague, asking his advice as to whether the services conducted by the Wesleyan authorities at Eastbourne should not temporarily be suspended pending the corporation coming to some satisfactory arrangement with the Salvation Army. This, of course, is a very serious step to take, and I have told Mr. Clapham that I do not think that such a course should be adopted without calling together our committee of privileges, which I have suggested should be summoned for Monday next to decide this very serious question. It is, perhaps, not generally known that the clause inserted in the Eastbourne Local Act was passed by a committee of three members of Parliament, and on the casting vote of one of the three, who is an extreme ecclesiastic in his opinions. The subject itself was never discussed in the House of Commons, and I think there is very little doubt that, when the bill which is now being promoted for the repeal of the Eastbourne clause comes before the House of Commons, the House will adopt precisely the same course with reference to Eastbourne as it adopted with regard to an equally favourably situated town—namely, Torquay. To admit at the present juncture the right of the town council to stop open-air services in places where there is no interference with public traffic would be the admission of a very extraordinary power, because, if this can be done now, it can be done at any future time, and if your town council were ever constituted of extreme sectarians, whether Church of England or any other denomination, they might take it into their heads to prohibit any outdoor services in your town. There is no knowing where a power of this sort may stop, and how it may be abused, and while perhaps one cannot entirely sympathise with the course which has been pursued by the Salvation Army in Eastbourne, yet I very much doubt whether the Wesleyan community as a body would do anything at the present juncture to weaken the cause of the Salvationists and to increase the powers which appear to be used so despotically by the town council of Eastbourne. Those of us who are at a distance cannot help feeling that, if the town council had wisely decided to deal with the Salvation Army at the outset, they would have been able to do so and would not have allowed mob rule to gain the upper hand.—Yours truly, R. W. PERKS.' The correspondence has been forwarded to the watch committee.

MR. JUSTICE STIRLING.—Mr. Justice Stirling has now recovered from his recent illness, and has left town for the country.

# House of Lords Register.

DECEMBER 10, 11.

*Taylor* v. *Russell* (Mortgage—Priorities—Equitable mortgagees—Fraud of mortgagor—Title-deeds—Legal estate—Negligence. Appeal from the Court of Appeal. Reported 60 Law J. Rep. Chanc. 1).—Stand over.

DECEMBER 14, 15.

*London Joint-stock Bank* v. *Simmons* (Bankers—Deposit of securities by broker—Foreign bonds payable to bearer—Negotiable securities—*Bonâ fide* holder—Sale by bankers—Measure of damages. Appeal from the Court of Appeal. Reported 60 Law J. Rep. Chanc. 313).—Part heard.

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, LOPES, L.J., and KAY, L.J.

THURSDAY, DECEMBER 10.

*Regina* v. *The Judge of the City of London Court and G. F. Payne* (Q.B. *Crown Side*) (appeal of prosecutors from order of Wills, J., and Lawrance, J., dated November 9, discharging *mandamus* to hear action *Green and others* v. *Payne*).—Part heard.

FRIDAY, DECEMBER 11.

*Regina* v. *The Judge of the City of London Court and G. F. Payne* (Q. B. *Crown Side*).—*Cur. adv. vult.*

SATURDAY, DECEMBER 12.

*Whiffen and another* v. *The Licensing Justice of Malling, Kent* (Q. B. *Crown Side*) (appeal of Whiffen and another from judgment of Cave, J., and Charles, J., dated May 23, affirming sessions order subject to case).—Dismissed.

MONDAY, DECEMBER 14.

*Regina* v. *Farmer and another, Justices of Salford* (Q. B. *Crown Side*)—on application of R. B. Riley (rule *nisi* for *certiorari* for bastardy order granted by Court of Appeal, returnable December 14; refused by Divisional Court on December 1).—Rule absolute.

*Worth et Cie.* v. *Tilden* (appeal of defendant from order of the Lord Chief Justice and Wright, J., dated November 12, granting liberty to defend on payment into Court or sign judgment).—Dismissed.

TUESDAY, DECEMBER 15.

*Green* v. *Briggs* (appeal of defendant from judgment of Cave, J., dated June 6, at trial without a jury in Middlesex).—Dismissed.

*Dickinson and another* v. *Fanshaw and another* (appeal of defendants from judgment of Charles, J., dated June 6, at trial without a jury in Stafford).—Part heard.

WEDNESDAY, DECEMBER 16.

No sitting.

## APPEAL COURT II.

Before LINDLEY, L.J., BOWEN, L.J., and FRY, L.J.

THURSDAY, DECEMBER 10.

*In re Bechuanaland Company (Lim.) and Companies Acts* (appeal of shareholders from order of Kekewich, J., dated August 8, directing company to be wound up).—Appeal allowed on terms.

*In re G. Lepine, dec. Dowsett* v. *Culver* (appeal of G. L. Jackson from order of Kekewich, J., dated July 29, on further consideration).—Allowed.

*In re E. Cross, dec. Cross* v. *Cross* (appeal of plaintiffs and defendants F. C. Cross and another from order of Kekewich, J. (for North, J.), dated October 28).—Dismissed.

FRIDAY, DECEMBER 11.

*Lowther* v. *Caledonian Railway Company* (appeal of defendants from judgment of Stirling, J., dated July 22).—Allowed.

*In re Sarah Grimshaw, dec. Barnard* v. *Yewdall* (appeal of defendant Mary Yewdall from order of Chitty, J., dated October 27).—Dismissed.

SATURDAY, DECEMBER 12.

*In re The Ailesbury Settled Estates, in the Counties of Wilts and Berks, and Settled Land Acts*, 1882-1890 (appeal of petitioner from judgment of Stirling, J., dated August 18).—Allowed.

MONDAY, DECEMBER 14.

*In re Hodgson & Simpson's Registered Trade-mark and Patents, &c. Acts*, 1883-88 (appeal of Messrs Hodgson & Simpson from order of Chitty, J., dated November 10). *Hodgson* v. *Sinclair* (appeal of plaintiffs from order of Chitty, J., dated November 10, refusing to restrain alleged infringement of trade-marks—part heard).—Compromised.

TUESDAY, DECEMBER 15.

*Duke of Sutherland* v. *Heathcote* (appeal of plaintiff from judgment of Williams, J. (sitting as an additional judge of the Chancery Division), dated August 3, 1891).—Part heard.

WEDNESDAY, DECEMBER 16.

*In re Cathcart* (application of Mrs. Cathcart as to costs of lunacy proceedings; heard November 23).—Petitioner to have part costs.

*Duke of Sutherland* v. *Heathcote*.—Part heard.

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A JUDICIAL DICTIONARY.—'The Judicial Dictionary of Words and Phrases Judicially Interpreted,' by F. Stroud, of Lincoln's Inn, Barrister-at-Law, published by Sweet & Maxwell, London, is one comely volume of about 1,000 pages. This is evidently a very complete work. Extracts from judicial opinions are very frequent but very concise, and the results are generally stated rather than the discussion leading up to them. Such a work could only be the outcome of many years' research and of a talent for wise selection and pointed and pregnant statement. In this way a single paragraph of half a page boils down and expresses the juice of a great number of cases. Mr. Stroud is a master of this sort of statement.—*Albany Law Journa*

## NOTICES FOR THE WEEK.

ROTA OF REGISTRARS.

MONDAY, December 21.—Court of Appeal No. 2: Mr. Carrington. Mr. Justice Chitty: Mr. Pugh. Mr. Justice North: Mr. Ward. Mr. Justice Stirling: Mr. Jackson. Mr. Justice Kekewich: Mr. Godfrey. Mr. Justice Romer: Mr. Rolt.

Tuesday, December 22.—Court of Appeal No. 2: Mr. Lavie. Mr. Justice Chitty: Mr. Beal. Mr. Justice North: Mr. Pemberton. Mr. Justice Stirling: Mr. Clowes. Mr. Justice Kekewich: Mr. Leach. Mr. Justice Romer: Mr. Farmer.

Wednesday, December 23.—Court of Appeal No. 2: Mr. Carrington. Mr. Justice Chitty: Mr. Pugh. Mr. Justice North: Mr. Ward. Mr. Justice Stirling: Mr. Jackson. Mr. Justice Kekewich: Mr. Godfrey. Mr. Justice Romer: Mr. Rolt.

The Christmas Vacation will commence on Thursday, December 24, 1891, and terminate on Wednesday, January 6, 1892, both days inclusive.

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WILL OF MR. PARNELL.—Letters of administration of the personal estate of Mr. Charles Stewart Parnell, who died on October 6, aged forty-five years, intestate, have been granted to his wife, Mrs. Katherine Parnell, of 10 Walsingham Terrace, Brighton, by whom the gross value of his personal estate has been sworn at 11,774*l.* 7*s.* 3*d.*, and the net value at 6,252*l.* 13*s.* 1*d.* The parties to the administration bond are Mrs. Parnell, Mr. Rochfort Maguire, M.P., of 10 Park Lane, and Mr. Henry Harrison, M.P., of 10 Walsingham Terrace, Brighton.

THE LONDON COUNTY COUNCIL SCHEMES IN PARLIAMENT.—Under their General Powers Bill, deposited by the County Council, power is sought to carry out street improvements in Cromwell Road and in Spitalfields, to acquire land in Clerkenwell for fire brigade purposes, to exchange land at the southern end of Peckham Rye for certain other land adjoining Peckham Rye Common, to purchase Fairseat House, Highgate, adjoining Waterlow Park, for the purpose of dedicating the same to the recreation and enjoyment of the public, to purchase Lincoln's Inn Fields gardens, and to extend the time for the compulsory purchase of land for the purposes of the Blackwall Tunnel works. With regard to water supply, both the County Council and the Corporation of the City have deposited bills providing for the appointment of a water committee, with power to promote schemes in Parliament for the acquisition, construction, and maintenance of waterworks in order to afford a new or supplemental supply of water to the metropolis, to acquire or lease existing or future waterworks, providing for the dissolution and winding up of any water company, and for these purposes to raise further capital. Powers are also sought for making and enforcing regulations similar to those now issued by the existing water companies as to the character and material of all fittings and appliances, and to enable the county council and the corporation to hold public or private inquiries into the existing supply of water within the metropolitan area, together with the charges made for the same, and into any possible future sources of supply. By another bill it is sought to empower the London Financial Association, the Middlesex County Council, the Corporation of London, the London County Council, and the Hornsey, Tottenham, and Wood Green Local Boards to purchase or lease the Alexandra Palace and grounds. While the county council, in its Subways Bill requires the several gas and water, telephone, and electric light companies to make use of subways for the reception of all their mains, pipes, and wires, the National Telephone Company ask to be allowed to erect additional overhead wires.

Mr. Thomas Brett, B.A., LL.B., of the Middle Temple, has been appointed a Member of the Board of Examiners to the New Council of Legal Education for the Bar.

We are reminded of the new year by the Sun Fire and Life Offices, who have sent us some excellent specimens of decorative art. Evidently the sun is shining at 40 Chancery Lane.

Commercial Failures.—According to *Kemp's Mercantile Gazette*, the number of failures in England and Wales gazetted during the week ending December 12 was 98. The number in the corresponding week of last year was seventy-four, showing an increase of twenty-four, being a net increase in 1891 to date of 168.

St. Helens and District Law Society.—Mr. Thomas Brewis, president of the St. Helens and District Law Society, entertained the members and honorary members of that society to dinner on the 4th inst., at the Town Hall, St. Helens. Among the guests were his Worship the Mayor (Councillor F. R. D. Nuttall), the deputy mayor (Councillor Edward Johnson), Mr. H. Seton Karr, M.P., Mr. W. R. Kennedy, Q.C., Mr. W. F. Taylor, Mr. Registrar Tyrer, and Messrs. Robert Cook, James Cook, H. L. Riley, J. O. Swift, James Malkin, Geo. Davidson, J. W. Green, W. J. Jeeves, S. C. Samuels, H. S. Oppenheim, Bertram Brewis, Joseph Massey, G. T. Lee, and Ben H. Lomax. A very pleasant evening was spent, and the following toasts were honoured: 'The Queen,' 'The Houses of Parliament,' 'The St. Helens and District Law Society,' 'The Magistrates,' 'The Bench and Bar,' 'The Mayor and Corporation of St. Helens,' and the toast of 'The President' was received with musical honours.

The Solicitor-General and the Eastbourne Act.—Mr. Addison, Q.C., M.P., who has written to his constituents favouring the repeal of clause 169 of the Eastbourne Act, has been encouraged in this action by receiving the following letter from Sir Edward Clarke, Q.C., M.P.: 'My dear Addison,—I do not wonder that you are hearing from your constituents about the Eastbourne troubles, for they involve what is, to my mind, a very important question. The bye-law which, in its enforcement, has caused so much disorder, was no doubt adopted by Parliament after consideration by a small committee, the attention of the House of Commons not being called to this particular point. I think it a serious and unjustifiable interference with a public right. If street processions are so carried on as to create a public nuisance they are punishable by the ordinary law, or a bye-law can be made under the powers of the Municipal Corporations Act, providing for summary procedure and punishment. If they do not create a nuisance they ought not to be prevented. It is absurd to say the Salvation Army processions necessarily constitute a public nuisance. At Folkestone, a few years ago, there were serious riots, and the Skeleton Army followed and ill-treated the Salvationists, but the local authorities did their duty; substantial punishments were inflicted on the rioters, and now there is no disturbance or trouble of any kind. The Salvation Army procession passes along certain streets once a day, and people living in those streets hear for three or four minutes the sound of their instruments and their hymns. At Torquay, while a bye-law existed similar to that at Eastbourne, there were very great disturbances. Fortunately, an opportunity was offered for the repeal of the bye-law, and now the whole difficulty has disappeared. I hope you will help to repeal this exceptional law. The rights of public meeting and public procession are so important that I look with great jealousy on any attempt to limit or infringe them.—I am, my dear Addison, very faithfully yours, Edward Clarke.'

The Law Courts.—The judges will rise for the Christmas Vacation on Monday, the 21st inst., after which there will be no further sittings in Court until Monday, January 11, when the Hilary Sittings begin. Mr. Justice Collins and Mr. Justice Jeune will be the vacation judges, and the former will be in attendance at Queen's Bench Judges' Chambers on Wednesday, the 23rd, and Thursday, the 31st inst., while the latter will attend there on Thursday and Friday, January 7 and 8 respectively.

Law in the Malay Protected States.—The mail from Singapore has brought to the Colonial Office a petition from the Chamber of Commerce and the Singapore branch of the Straits Association, setting out that the merchants, bankers, traders, and other British residents in the Straits Settlements are largely interested in the progress of the native States of the Malay Peninsula under the British protection, and that a large part of the capital invested in those States is the property of British subjects, European and Asiatic. In the colony the petitioners allege that there exists a feeling of misgiving and distrust respecting the administration of the law by the Courts of the protected native States, and it is believed that this has a prejudicial effect in checking the flow of capital into them. The Indian penal code is generally adopted throughout these States as a basis on which offences are defined and punished. But a want of certainty is believed to exist in that respect also, and there is but little confidence in the administration of the criminal law, both on account of the close connection of the executive with the judicial officers as well as of the want of legal experience and training on the part of the officers entrusted with this duty. All the protected native States, it is said, refuse to allow litigants to be represented by counsel in either civil or criminal cases, no matter how large the interests involved or how great the gravity of the offence. In the early days of British protection such an administration of justice sufficed, but it is now insufficient for the large interests involved. As a large majority of cases coming before these Courts will be likely to continue to be of small importance, and therefore any great alteration in their constitution is perhaps hardly practicable, the remedy suggested is to give to British subjects a right of appeal to the Supreme Court of the Straits Settlements in cases both civil and criminal. In civil cases such appeals might be restricted by the amount involved, and in criminal appeals to offences of a certain gravity. It is suggested that the privilege of appeal might be allowed only when the sum at issue in the suit is not less than 1,500 dollars, or where the appellant is convicted of an offence carrying a maximum penalty of not less than six months' imprisonment.

## BIRTHS.

On Dec. 12, at 53 Chowringhee, Calcutta, the wife of A. Oswald Acworth, Barrister-at-Law, of a daughter.

On Dec. 12, at 12 Alfred Place, Thurloe Square, S.W., the wife of J. P. Munster, Barrister-at-Law, of a daughter.

## DEATHS.

On Dec. 7, at Freshfield, near Liverpool, of typhoid fever, George Cooper, Barrister-at-Law, M.A., St. John's College, Cambridge, elder son of the late John Cooper, Esq., J.P., of The Oaks, near Preston, Lancashire, aged 40.

On Dec. 9, at Newcomin Lodge, Dartmouth, Lucius Henry Fitz-Gerald, Esq., Barrister-at-Law, third son of the late Gerald Fitz-Gerald, Esq., of Coolanowl, Queen's County, Ireland, and St. James's Square, Bath, aged 76.

On Dec. 10, at Skelmorlie, Eleanora Charlotte, fourth daughter of the late Right Hon. David Boyle, of Shewalton, Ayrshire, Lord Justice-General of Scotland, aged 75.

On Dec. 13, at 2 Hartington Place, Edinburgh, James Haig, Barrister-at-Law, of Lincoln's Inn, aged 78.

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# The Law Journal.

*SATURDAY, DECEMBER* 26, 1891.


## 'OBITER DICTA.'

ACCORDING to the latest accounts, the health of Mr. Justice Hawkins has greatly benefited by his stay in the South of France. It is stated that his lordship hopes to return to London about the middle of January. The learned judge having been appointed in November, 1876, is now entitled to his pension, but there seems little reason to suppose that he contemplates retirement just at present. Should the state of his health permit, the learned judge will probably take his seat in Court early next sittings.

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MR JUSTICE MATHEW has earned golden opinions for the ability and expedition with which he has disposed of Mr. Justice Stirling's list of witness actions. Mr. Justice Williams, who acted as an additional judge of the Chancery Division in the summer, also gave great satisfaction in that capacity. The selection of these two learned judges was a very judicious one, for, without any disrespect to the other judges of the Queen's Bench Division, it is certain that few of them would have performed the duties of a Chancery judge with the same speed and ability.

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THE *Law Times* is of opinion that Mr. Justice Denman 'went a little too far in saying he would have sketching barristers turned out of Court' in *Osborne* v. *Hargreave and Wife*. Perhaps the threat was a little too strong, but we cannot help thinking that the interposition of the learned judge was well advised. One of the many duties of a judge is to protect witnesses from annoyance, primarily because the evidence of a perfectly calm witness makes better material for the Court to act on; and, secondarily, because on grounds of humanity the position of witnesses ought to be made as little disquieting as possible. Now out of every ten witnesses it is quite conceivable that one or two would very much dislike being sketched while giving their evidence.

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THE letter of the Solicitor-General to Mr. Addison, Q.C., in connection with the 'Eastbourne troubles,' which we published last week (*ante*, p. 794), is a very remarkable one. 'If street processions,' writes the Solicitor-General, 'are so carried on as to create a public nuisance, they are punishable by the ordinary law, or a bye-law can be made under the powers of the Municipal Corporations Act, providing for summary procedure and punishment.' The reference is to section 23 of the Municipal Corporations Act, 1882, which substantially re-enacts sections 90 and 91 of the Municipal Corporations Act, 1835, and provides that the council of any municipal borough 'may from time to time make such bye-laws as to them seem meet for the good rule and government of the borough, and for *prevention* and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the borough.' In *Johnson* v. *The Mayor of Croydon*, 55 Law J. Rep. Q. B. 117, it was held that a bye-law under the Act to the effect that 'no person not being a member of Her Majesty's Army or auxiliary forces acting under the orders of his commanding officer should *sound or play* upon any musical instrument in any of the streets in the borough on Sunday,' was held unreasonable and *ultra vires*, and therefore void. Section 169 of the Eastbourne Improvement Act, 1885 (48 & 49 Vict. c. clxv.), enacts that 'no *procession* shall take place on a Sunday in any street or public place in the borough accompanied by any instrumental music, fireworks, discharge of cannon or firearms or other disturbing noise, provided that the foregoing prohibitions shall not apply to any of Her Majesty's naval, military, or volunteer forces.' Is there not strong ground for saying that a bye-law following the exact terms of this enactment would be a good bye-law for *preventing* a nuisance?

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THE Solicitor General's letter is singularly unhappy in its tone and temper. Pressure of official and private work may possibly have prevented Sir E. Clarke from following with attention the actual course of events, but his implied censure on the local authorities strikes us as totally unwarranted. The *Standard*, in a recent

leader, made no secret of the surprise and regret caused by the utterances of a law officer of the Crown on this subject, and more will probably be heard of it when Parliament meets.

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A somewhat curious and technical decision upon the question of specially indorsed writs is to be found in our Notes of Cases, p. 179, in the case of *Elliott* v. *Roberts*. In that case the plaintiff indorsed his writ for the amount of a dishonoured bill of exchange, and added a claim for interest on the amount 'at the rate of 25 per cent. per annum from the date hereof until payment or judgment.' He then applied under Order XIV. for leave to sign judgment. Objection was taken that the writ was not specially indorsed within the meaning of Order III., rule 6, by reason of the claim for interest, and the judge at chambers was so far impressed with the argument that he struck out that part of the claim and gave leave to sign judgment for the amount of the bill. This course was clearly wrong, because Order XIV. only applies where a defendant appears to a specially indorsed writ, and consequently no change made in the writ after the defendant's appearance can affect the matter (*Gurney* v. *Small*, 60 Law J. Rep. Q. B. 774). The question, therefore, for the Lord Chief Justice and Mr. Justice Mathew, before whom the matter came on appeal, was whether the writ as it originally stood was specially indorsed. In spite of section 57 of the Bills of Exchange Act, 1882, which says that the damages recoverable upon the dishonour of a bill are to be deemed liquidated, and in spite of cases in which writs containing a claim for interest have been held to be specially indorsed, the Court allowed the defendant's appeal. The ground of the decision was that the indorsement did not show that the rate of 25 per cent., at which interest was claimed, was the rate reserved in the bill, and that words should have been added to make this clear; and the lesson to be drawn from the case is that the Courts will not allow a plaintiff to avail himself of this summary procedure unless he brings himself with the utmost technical preciseness within the strict words of the rules by which it is governed.

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A correspondent of the *Solicitors' Journal* draws attention to the fact that leases of property belonging to the City of London companies frequently contain covenants that all assignments and underleases shall be drawn by officials of the lessor companies, they (the officials) 'taking reasonable satisfaction for their pains in that behalf.' 'As a rule,' it is stated, 'the clerks to the companies will generally accept a fee, ranging from three to five guineas, for waiving their right to prepare the assignment or other instrument.' 'But why,' it is very pertinently asked, 'should a man be compelled to pay a fee for employing his own solicitor?' We have no hesitation in describing the covenant as disgraceful and oppressive, and we hope that Mr. Bolton, when he reintroduces his bill dealing with relief against forfeiture for assignment without leave of the lessor, will see his way effectually to rendering it inoperative. We much doubt, however, whether a Court would require compensation in money, as a condition of relief, to be made by a lessee for a breach of such an absurd covenant, even under the present law. For what possible damages to the lessor can result from the breach? Damages to the lessor's servant, no doubt, may result, but that is a very different thing.

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Section 80 of the Larceny Act, 1861, with an offence against which a member of Parliament has recently, to his great surprise, been charged, is rather a remarkable one, forming one of a string of twelve sections of that Act directed against 'frauds by agents, bankers, or factors.' It is first provided by section 75 that any agent, &c. fraudulently appropriating money, &c. entrusted to him 'shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable' to penal servitude for not more than seven years, or imprisonment for not more than two, with or without hard labour; but it is added that 'nothing in this section relating to agents shall affect any trustee under any instrument in respect of any act done by such trustee in relation to the property comprised in any such trust.' Then follow four sections dealing with frauds by various kinds of agents, and subjecting the offenders against them 'to any of the punishments which the Court may award as hereinbefore mentioned.' Then comes section 80, by which 'whosoever, being a trustee of any property for the use of some other person, shall, with intent to defraud, convert or appropriate the same to his own use, or otherwise dispose of or destroy such property, shall be liable, at the discretion of the Court, to any of the punishments which the Court may award as hereinbefore last mentioned.' Two provisoes follow: (1) that no prosecution may be commenced 'for any offence included' in the section without the sanction of the Attorney-General, and (2) that 'where any civil proceeding shall have been taken against any person' to whom 'the provisions of the section may apply,' no person who shall have taken such civil proceedings 'shall commence any prosecution' under the section 'without the sanction of the Court or judge before whom such civil proceedings shall have been had or shall be pending.' A charge of an offence against the section is one on which the justice of the peace before whom it is brought has an absolute discretion to grant or refuse bail, by virtue of section 121 of the Larceny Act as read with 11 & 12 Vict. c. 42, s. 23, and 7 Geo. IV. c. 64, ss. 22, 25, the short effect of which is that bail may be allowed or refused at discretion in all cases where the expenses of the prosecution may be defrayed out of the county rates, and that the expenses of the prosecution of any offence made indictable by the Larceny Act may be so defrayed.

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The House of Lords has unanimously affirmed the judgment of the majority of the Court of Appeal in *The Mogul Steamship Company* v. *M'Gregor, Gow & Co.*, 58 Law J. Rep. Q. B. 465, to the effect that, as Lord Justice Bowen put it in his luminous judgment, 'competition in trade, however severe and egotistical, if unattended by circumstances of dishonesty, intimidation, molestation, or other illegalities, gives rise to no cause of action at common law.' That this judgment is correct in principle we have no doubt, but inasmuch as it does not affect to overrule the decision of a Court of Error in the celebrated case of *Hilton* v. *Eckersley*, 25 Law J. Rep. Q. B. 190, but rather affirms that decision, it is of material importance to distinguish the two,

and to point out that whereas in *The Mogul Steamship Case* the action was by sufferers from the contract alleged to be illegal against the contractors for a tort, in *Hilton* v. *Eckersley* the action was by one contractor against the others upon the contract which the Court held to be illegal and, therefore, not enforceable at law. In *Hilton* v. *Eckersley* the defendant and seventeen other obligors, being mill owners at Wigan, mutually agreed by bond to pay such wages only as the majority of them should decide for a period of twelve weeks. The Court of Queen's Bench, and afterwards the Exchequer Chamber, held that this bond was in restraint of trade, and therefore illegal and void, inasmuch as it tended to restrain each man's power of carrying on his trade according to his own discretion for his own best advantage. It was argued, however, that the stipulations of the bond, otherwise illegal, were prevented from being so considered by the fact that a counter combination existed amongst the workmen, the object of the bond being to counteract the combination, and to set the willing and industrious workmen free from its powers. But the Court held that this would only be to put one wrong as counterbalancing another wrong; 'to place the industrious workman in the fearful situation of being oppressed by a majority of masters, in order to prevent him from being oppressed by a majority of his fellow-workmen.' And the law as thus enunciated has not been affected by the Conspiracy and Protection of Property Act, 1875, for that Act merely enacts that 'an agreement or combination by two or more persons to do or procure to be done, any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a conspiracy, if such act committed by one person would not be punishable as a crime.'

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*Truth* is a little hard on Dr. Forrest, the rector of St. Jude's, Kensington, who not long ago was appointed to the Deanery of Worcester, in insinuating that the very reverend gentleman was enjoying the emoluments of both offices at the same time. As we read the First Fruits Acts, the first year's emoluments of every spiritual office are payable, not to the holder of it, but to the treasurers of Queen Anne's Bounty for the benefit of poor livings. There are, no doubt, abatements, first established generally by 1 Eliz. c. 4, s. 6 (under which first fruits, afterwards diverted to Queen Anne's Bounty, belonged to the Crown) and afterwards applied to 'deans, archdeacons, prebendaries, and other dignitaries, by 6 Anne, c. 54, for the benefit of such spiritual persons as by death or promotion should hold their offices for very short periods, but the Legislature in 1 Eliz. c. 4 clearly provides that 'Yf yt shall happen any suche "person" to lyve to thende of twoo hole yeres next after the last advoydance of his promotion spuall, and not to bee lawfully evicted, remooved, or put from the same,' the whole of the first fruits—that is, the whole of the profits of his first year of office—become lost to him.

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THE second edition of the 'Statutes Revised' is proceeding very slowly, and the working men, for sale to public libraries accessible to whom (see preface to vol. i. p. iv.) the edition is being mainly provided, must experience great disappointment at the tardiness with which their expectations of being able to peruse the whole statute law in convenient shape are being realised. In November, 1888, the edition was announced in the preface as being expected to be completed 'within three or four years'; more than three years have elapsed since then, and only four volumes have yet appeared. These volumes, no doubt, bring the edition down to so late a period as 1830, but it is obvious that the number of statutes which will require republication as being unrepealed will increase with every year, and at the present rate of progress it is doubtful whether the nineteenth century or the second edition of the 'Statutes Revised' will come to an end first. Considering that any Statute Law Revision Bills which it may still be considered expedient to pass will be doing the work of revision a second time, it may well be asked whether it is worth while to continue passing such bills. Why should not the volumes covering the period from 1830 to 1890 be issued all in one goodly bunch at once, without waiting for any more Statute Law Revision Bills? Thus would the working men acquire *at once* a collection less technically exact indeed, but for all practical purposes as good as any Statute Law Revision Bills could make it. We may add that the edition, which is the work of Mr. G. A. R. Fitzgerald, appears to us to have been very well done as far as it goes.

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IN these days of agricultural depression it would be a subject for regret if the technicalities of the law stood in the way of the peasant utilising his farm in the most profitable way where he is not tied down by express contract to any particular form of culture or rotation of crops. In *Meux* v. *Cobley*, reported in our Notes of Cases for this week, p. 186, the tenant holding a farm under an agricultural lease for the term of twenty-one years was engaging in the culture under glass of tomatoes, grapes, and other garden produce. Under his lease he was bound to cultivate the farm in a good, proper, and husbandlike manner, according to the best rules of husbandry practised in the neighbourhood, but without any other restriction as far as the terms of the lease went. The farm was situate at Cheshunt and Enfield. Mr. Justice Kekewich held that the cultivation of garden produce under glass and the erection of the necessary houses were not prohibited by the character or terms of the lease. The only other point was whether these acts amounted to waste. The old common law doctrine on this head is very technical, and it was argued that the conversion of arable land into market garden and glass-houses was a complete alteration of the demised premises, and fell within the definition of 'waste.' Possibly the argument is technically right, though there may be a question whether the legislation as to tenants' improvements contained in the Agricultural Holdings Acts has not modified the common law even where the improvement, being made without the landlord's consent, is not the subject of compensation. Mr. Justice Kekewich, however, did not think it necessary to go into this, as he was of opinion that, even if technically the tenant's acts amounted to waste, it was of the class known as 'ameliorating waste,' and caused no injury, but, on the contrary, a distinct advantage to the inheritance, and in respect of which, therefore, no damage was incurred, and no injunction would be granted.

The Factory and Workshop Act, 1891 (54 & 55 Vict. c. 75), contains no less than forty-one sections, amending in very numerous particulars the great Consolidating Act of 1878 (41 & 42 Vict. c. 16), which in only 107 sections and five schedules strings together, with little amendment, the multitudinous statutes on the subject from Mr. Addington's Act of 1801 (42 Geo. III. c. 73) to the Factory Act, 1874. It need hardly be said that the general tendency of the new Act is in favour of the workmen employed in factories and workshops. The most important of the enactments we take to be those of section 24, which direct certain important particulars to be supplied to workmen who are paid by the piece, either as weavers in the cotton, worsted, or woollen or linen or jute trade, or as winders, weavers, or reelers in the cotton trade. 'Every such workman,' says the Legislature, 'shall have supplied to him with his work sufficient particulars to enable him to ascertain the rate of wages at which he is entitled to be paid for his work, and the occupier of the factory or workshop shall supply him with such particulars accordingly.' The word 'entitled' is a very curious one. No person can be entitled to be paid anything except by contract express or implied. In the absence of express contract, there would be an implied contract by the master, on exhibiting or delivering the piece, to pay what was reasonable. Does the Act mean that the master cannot stipulate for payment of any but the wages which other masters are giving? We think not, and construe the Act as meaning that, though all information is to be given, the power to make express contracts remains as before. But the subject is a very difficult one to deal with by law, as is shown by a proviso to the section, that 'in the event of anyone who is engaged as an operative in any factory or workshop receiving such particulars, and subsequently disclosing the same with a fraudulent object or for the purpose of gain, whether they be furnished directly to him or to a fellow-workman, he shall be liable for each offence to a fine not exceeding 10*l*.'

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Out of the seventy-six public Acts of Parliament which received the royal assent the greater number came into operation at the date of such assent. This is the case, for instance, with such important statutes as the Penal Servitude Act, the Forged Transfers Act, the Foreign Marriage Act, the Custody of Children Act, the Mortmain and Charitable Uses Act, the Lunacy Act, the Savings Banks Act, and the Taxes (Regulation of Remuneration) Act. Amongst statutes, the commencement of which was postponed, may be mentioned the Education Act, which received the royal assent on August 5, and commenced on September 1, the two Stamp Acts, the Factory and Workshop Act, and the Public Health (London) Act, which also received the royal assent on August 5, but do not commence till January 1 next, and the Land Registry (Middlesex Deeds) Act, which does not commence till April 1 next. The Tithe Act, by section 10, extends 'to every sum on account of tithe rent-charge,' which first became payable 'on or after the half-yearly day of payment of such tithe rent-charge' which occurred next after the passing of the Act, 'whether such sum accrued before or after that day.' The Act passed so far back as March 26, and is probably now in full operation throughout the greater part of the country, though questions might arise as to the date of its commencement in cases where quarterly collections have long been discontinued, and the whole amount due collected annually in one lump sum.

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Not only to lawyers and sanitary authorities, but to members of the public at large, some of the provisions of the Public Health (London) Act, 1891, should be made known. In former days people were more careless as to spreading infection, and one used to hear of patients mixing with their friends when scarlet fever had caused their skin to peel and they were really centres of contagion. Public conveyances were supposed to be peculiarly liable to promote disease, as invalids would be likely to drive in them. Section 70 makes it illegal for a driver to convey a person suffering from a dangerous infectious disease, and for such a person to go in a public conveyance. The driver is not liable unless he knowingly conveys, but the fare evidently has the risk cast on him as to his state of health, and as nothing is said about his knowledge, he is presumably responsible, though he believes himself to be free from infection. But the care of the law not only surrounds us in omnibuses, cabs, and trains, but even in our walks, for section 68 makes anyone liable to a fine of 5*l*. who, 'while suffering from any dangerous infectious disease wilfully exposes himself without proper precautions against spreading the said disease in any street, public place, shop, or inn.' A fine of 10*l*. can be exacted from a person who, though he knows that he is suffering from a dangerous infectious disease, engages in any occupation connected with food or carries on any trade or business so as to be likely to spread the disease (section 69). Milk is especially likely to be a medium for infection, and it is well to feel that there is this protection against cows being milked by persons who would cause their illness to pass to the drinkers of the milk. One of the things that shocks sanitary reformers much is the way in which the poor retain their dead in their living-rooms. Section 72 provides that the body of anyone who has died of a dangerous infectious disease shall not remain unburied for more than forty-eight hours elsewhere than in a room not used as a dwelling-place, sleeping-place, or work-room; and by section 88 every sanitary authority has to provide and fit up a proper place for the reception of dead bodies before interment. Section 96 makes it necessary for occupiers of underground rooms, not let or occupied separately as dwellings before this Act, to observe a long list of sanitary requisites. *Sanitas, sanitas, omnia sanitas!*

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## A DESK AND ITS CONTENTS.

There is a charming simplicity in a bequest of 'my old mahogany desk, with the contents thereof,' which, however, though possibly attractive to the lay mind, will to the lawyer always appear to seal a commission to a blank of danger. One risk in this form of bequest, which is pointed out by Mr. Justice Chitty in the case to which we immediately refer, is that during a last illness valuables may easily be put in a desk for safety by some person other than the testator with perfectly honest intentions. But, assuming the actual contents to be those which the testator was aware of, it will always be more or less arguable whether the contents

are of a kind to pass under the specific disposition. We are led to these remarks by a perusal of the judgment of Mr. Justice Chitty in *In re Robson; Robson* v. *Hamilton*, 60 Law J. Rep. Chanc. 851, where the 'old mahogany desk,' which was disposed of to the testator's nephew in the terms we have quoted, contained the following things: First, banknotes and cash in silver; secondly, a banker's deposit receipt, an unindorsed cheque payable to the testator's order, and unindorsed promissory notes, also payable to his order; and, thirdly, the key of a tin box in which the testator kept securities and other papers. The banknotes and cash, it was admitted, would pass under the bequest, but the residuary legatees contended that the remaining contents of the desk did not pass. As regards the second class of contents, the *choses in action*, the argument against their inclusion was that these were mere evidence of title to property elsewhere, and would not pass under a gift, for instance, of chattels in a house, for which proposition *Chapman* v. *Hart*, 1 Ves. Sen. 271, and several other old authorities were cited. Mr. Justice Chitty, however, held that the *choses in action*, whether they required indorsement by the executors or not, passed under the bequest, but not the tin box or its contents, the key of which was found in the desk. That, he remarked, was a mere accessory to the tin box, and added: 'I hold this as I should have held that the title-deeds found in the desk did not pass the land to which they related, being merely accessories to the title to the land.' Amongst other cases referred to was that of *Roberts* v. *Kuffin*, 2 Atk. 112, decided by Lord Hardwicke in 1740. There a testator gave 'all goods and things of every kind and sort which shall be found in my closet at the time of my death.' Lord Hardwicke thought the sum of 45*l.* 0*s.* 7*d.* 'in money' found in the closet did not pass under this bequest, because 'goods' would mean such things as are usually kept in a closet, and 'things' ought to be cut down by the *ejusdem generis* rule to similar things. He also observed that the 'testator would certainly have mentioned cabinet or bureau or any other thing where money is usually kept if he had intended a further bequest of money.' The main argument against the inclusion in similar bequests of *choses in action* has always been based on the general proposition that a *chose in action* has no locality. It is obvious, however, that this consideration by no means determines the question of construction, for there may be a sufficient indication on a will to include, from a testator's point of view, under the description of property in a particular place, that which, from a legal point of view, really cannot have any particular locality. This was the view recently taken in *In re Prater; Desinge* v. *Beare*, 57 Law J. Rep. Chanc. 342; L. R. 37 Chanc. Div. 481, where the Court of Appeal held that a bequest of 'half my property at Rothschild's bank' passed not only a moiety of the testator's cash balance, but also a moiety of the property represented by certificates for French rentes *nominatives*, inscribed in the testator's name, for *actions nominatives* of the Paris and Lyons Railway Company, which were also registered in the testator's name, and for actions *au porteur* of the same company and transferable by mere delivery, which certificates the bankers held in their hands for safe custody at the time of the testator's death. Mr. Justice Chitty in this case had decided that the cash balance only passed by the bequest, and excluded the certificates; but his judgment on the latter point was reversed by the Court of Appeal, which did not feel itself much trammelled by the old authorities. The modern view of the subject appears to us to be well expressed by Lord Justice Bowen. He says: 'The question we have to decide is the meaning to be given in this will to the words "my property at Rothschild's bank." We have been pressed with a great many cases of gifts of property described as situate in, or connected with, a particular locality. . . . With regard to all such cases it seems to me to be important to remember that they must all be decisions upon the language of particular wills. The terms "property at a bank" or "property situate locally at any other place than a bank" is not language which has received or is capable of receiving a stereotyped meaning which is to last for all time and to apply to every will by whomsoever made, but is an expression which must receive light or colour from one or other of two sources, the context and the circumstances of the testator. Though ninety-nine out of one hundred cases in which similar words have been used may have been decided in the same way, they are no authority for the hundredth case if the circumstances and the context in the hundredth case are such as to be sufficient to make a difference in the meaning of the words.'

One other remark may be made as to a bequest of money or other contents of a desk or similar receptacle. It is, from one point of view, as Mr. Justice Chitty observes in *In re Robson*, an unwise form of gift, for the contents may be moved from time to time, and it operates, of course, only on what is found at the time of the testator's death. This possibility of fluctuation it shares in common with the much more frequent bequest of money at a bank. There is, however, a compensating advantage—viz. that this form of bequest enables a testator, after executing his will without any further testamentary act, to alter and regulate the amount of the benefit he intends to confer on the legatee.

## SERVICE OUT OF THE JURISDICTION.—VIII.

(*Continued from p.* 787.)

ORDER XI., rule 1 (*d*), has not yet apparently been the subject of direct judicial consideration, but it would seem from *In re Eager* (1882) 52 Law J. Rep. Chanc. 56; L. R. 22 Chanc. Div. 86, that service under this clause will not be ordered unless the conditions mentioned in the clause are *present in combination*.

'(*f*) Any injunction is sought as to anything to be done within the jurisdiction, or any nuisance within the jurisdiction is sought to be prevented or removed, whether damages are or are not sought in respect thereof.'

All the cases that have been decided under this clause relate either to the question of jurisdiction or to the question of the balance of convenience. We shall deal with these two branches of the subject in turn.

1. *The question of jurisdiction.*—(*a*) The injunction need not be *the only* relief sought by the plaintiff. Thus, in *The Lisbon-Berlyn Gold Fields* v. *Heddle* (1885) 52 L. T. 796, the plaintiffs claimed not only an injunction, but also rescission of a certain contract and the return of certain sums of money paid by them in pursuance thereof, and yet an order under the present clause was made. (*b*) The act which it is sought to restrain must be an act which is to be done within the

jurisdiction. It need not apparently be an act which can *only* be done within the jurisdiction (*In re De Penny* (1891) 60 Law J. Rep. Chanc. 518; L. R. 2 Chanc. Div. 63). The judgment of Mr. Justice Manisty in *The British Marine Association* v. *Macinnes*, 31 Sol. Jo. 95, seems to have turned on the question not of jurisdiction, but of balance of convenience. In that case his lordship held that Order XI., rule 1 (*f*) did not apply to restraining a domiciled Scotchman from bringing an action in England where it would be open to him to sue in respect of the same matter in Scotland, but the *ratio decidendi* was that the injunction would not be effectual. (*c*) The clause applies only to a present threatened danger (*The British Marine Association* v. *Macinnes*). (*d*) It will be convenient at this point to notice once and for all the scope of and the practice in regard to the words 'within the jurisdiction' which so constantly recur throughout this order. We shall not attempt to exhaust the cases bearing on the interpretation of these words, but shall simply indicate the points which they establish. For the purposes of jurisdiction under Order XI., 'the territory of England and the sovereignty of the Queen stop at low-water mark' (*Harris* v. *The Owners of the Franconia* (1877), 46 Law J. Rep. C. P. 363; L. R. 2 C. P. Div. 173 (*per* Lord Coleridge, C.J.)). An officer on board the Queen's ship is, however, within the jurisdiction even upon the high seas (*Seagrove* v. *Parks* (1891), L. R. 1 Q. B. Div. 551). The question as to whether a particular act was or is to be done 'within the jurisdiction' is a question partly of law and partly of fact. Thus: (1) A., living at Lincoln, in England, contracts to deliver machinery to the B. Company in the Isle of Man, payment to be made on delivery. The B. Company make default in payment. This is a breach of contract which ought to have been performed in England. It is the duty of the debtor to seek out his creditor, and the contract to pay ought to have been executed at Lincoln (*Robey* v. *Snaefell, &c. Company* (1888), 57 Law J. Rep. Q. B. 134; L. R. 20 Q. B. Div. 152). (2) In *Reynolds* v. *Coleman* (1887), 56 Law J. Rep. Chanc. 903; L. R. 36 Chanc. Div. 453, it was held that Order XI., rule 1 (*e*), does not require that a contract should state in terms that it is to be performed within the jurisdiction, but it is enough if it appears from a consideration of the terms of the contract *and the facts existing when the contract was made* that it was intended to be performed within the jurisdiction (cf. *Bell & Co.* v. *Antwerp, London, and Brazil Line* (1891), 60 Law J. Rep. Q. B. 270; L. R. 1 Q. B. Div. 103). (3) Where the Court is not satisfied that the act in question was or is to be done 'within the jurisdiction,'* a limitation framed after the model of the order in *Diamond* v. *Sutton* (1866), 35 Law J. Rep. Exch. 129; L. R. 1 Exch. 130, is usually inserted in the order allowing service. (Cf. *Thomas* v. *Hamilton* (1886), 55 Law J. Rep. Q. B. 555; L. R. 17 Q. B. Div. 592.)

2. *The question of the balance of convenience.*—In considering whether or not the balance of convenience is in favour of a certain action being tried in England, the Courts apply the following among other tests:—

(1) *Will a judgment obtained in England by the plaintiff be effectual?*

*Illustrations.*—(*a*) A. applies for an injunction to restrain B., a domiciled Scotchman, from suing him in England. B. has a right to sue A. in the Scotch Courts in respect of the same subject-matter. An order under Order XI., rule 1 (*f*), will not be made. The injunction would be ineffectual (*The British Marine Association* v. *Macinnes, ubi sup.*). (*b*) A. alleging that B., a manufacturer resident in Scotland, was passing off his goods as and for those of A. in England by his agents there, applied for leave to serve a writ, claiming an injunction, on B. out of the jurisdiction. Leave was refused by the Court of Appeal, affirming the decision of Mr. Justice North. 'If an injunction,' said Lord Justice Cotton, 'were granted by an English Court, that Court could not enforce it against the defendant himself, but only against his servants and agents in England, who are not the persons primarily responsible. On the other hand, a Scotch Court could enforce its orders against the defendant himself, and this being so, I think there is no sufficient reason for withdrawing the case from the Scotch Courts' (*Marshall* v. *Marshall* (1888), L. R. 38 Chanc. Div. 330). (*c*) The *ratio decidendi* of this case does not apply where the defendant *in consimili casu* is a corporation whose property within the jurisdiction may be attached by sequestration (*In re Burland's Trade-mark*, (1889), 58 Law J. Rep. Chanc. 591; L. R. 41 Chanc. Div. 542).

(2) *What is the extent of the property, if any, in England?* *Per* Mr. Justice Pearson, in *The Société Générale de Paris* v. *Dreyfus Brothers* (1885), L. R. 29 Chanc. Div. at p. 246.

(3) *The comparative convenience of the respective parties and witnesses.*

In *Robey* v. *The Snaefell Mining Company* (*ubi sup.*) an action was brought by the plaintiffs, engine makers in England, for the price of machinery erected by them in the Isle of Man for the defendants, a company carrying on business in the island. Mr. Justice Stephen and Mr. Justice Charles held that, as the plaintiffs were entitled to choose their *forum*, they might, if they pleased, spare themselves and their witnesses and advocates the possibility of a disagreeable voyage.

4. *The 'primâ facie' merits of the case.*—D. P., a native of Scotland, went to Bolivia, and died intestate there. A., his widow, commenced an action for administration and an injunction against B. and C., sisters of the deceased, who had been appointed by the Scotch Court his 'executrices dative,' and against G. & Co., D. P.'s agents in England. The confirmation so obtained by B. and C. in Scotland had, pursuant to the Probate Act of 1858, been sealed by the Probate Court in England, notwithstanding that a *caveat* had been entered on behalf of the plaintiff, and B. and C. thereby became the duly constituted personal representatives of the intestate in England. The main point at issue between the parties was as to whether the domicil of the deceased was Scotch or Bolivian. The Scotch Court had decided in favour of the former, the Bolivian Court in favour of the latter, but in both cases the proceedings were *ex parte*. Mr. Justice Chitty held that, having regard to the legal position of B. and C., to the fact that the Scotch Court had to some extent seisin of the case, and to the *primâ facie* case shown for the Scotch domicil, the preponderance of convenience was in favour of Scotland (*In re De Penny*, 60 Law J. Rep. Chanc. 518; (1891) L. R. 2 Chanc. 70).

'(*g*) Any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction.'

* Where a plaintiff has obtained leave under Order XI. to serve a writ out of the jurisdiction, and the defendant moves to discharge the order, affidavits are admissible to contest the question whether the cause of action arose within the jurisdiction (*Fowler* v. *Barstow* (1881), 51 Law J. Rep. Chanc. 103; L. R. 20 Chanc. Div. 240).

Before an application under this clause can be successful the following conditions must combine:—

There must be (*a*) an action *properly brought* (*b*) against some person *duly served* within the jurisdiction, and (*c*) a person out of the jurisdiction who is *a necessary and proper party* to the action aforesaid. Of these elements neither (*a*) nor (*b*) need detain us (cf. *The Yorkshire Tannery and Boot Manufactory* v. *The Eglinton Chemical Company*, 54 Law J. Rep. Chanc. 81). (*c*) is very fully and ably dealt with by Mr. Justice Wills in *Masey* v. *Heynes* (1888), 57 Law J. Rep. Q. B. 521; L. R. 21 Q. B. Div. 330. 'If,' said his lordship, 'according to the regular practice of the Courts of this country—supposing all parties subject to the jurisdiction—the person to be served is one who, as a matter of course, would be joined on the same writ and be treated as one of the defendants in the action, he is a "proper" if not a "necessary" party to the action.' Space prevents us from pursuing this subject further, but it will be found that all the material cases under this heading can be brought within the above-mentioned principle.

# Reviews.

## THE STATUTES OF 1891.

*The Statutes of Practical Utility in the Civil and Criminal Administration of Justice passed in 54 & 55 Victoria* (1891), *Alphabetically Arranged.* With Notes and a Copious Index. By J. M. Lely, Barrister-at-Law. Being the Annual Continuation of 'Chitty's Statutes,' Vol. III., Part 1. Price 12*s.* paper cover. London: Sweet & Maxwell (Lim.); Stevens & Sons (Lim.). 1891.

*Paterson's Practical Statutes.* The Practical Statutes of the Session 1891 (54 & 55 Victoria); with Introductions, Notes, Tables of Enactments Repealed and Subjects Altered, Lists of Local and Personal and Private Acts, and a Copious Index. Edited by James Sutherland Cotton, Barrister-at-Law. Price 12*s.* 6*d.* cloth. London: *Law Times* Office. 1891.

The public statutes of 1891 are more voluminous than those of any recent year since the coming of Home Rule, but many of them are of little daily concern in England. Those which a practitioner is likely to need are dealt with by the two annual publications above mentioned in a manner which considerably facilitates the understanding of their scope and effect. Mr. Lely's work is executed with great care, and on his established plan as an annual supplement to 'Chitty's Statutes.' He has selected forty-four Acts out of seventy-six for inclusion and annotation, the selection differing to some extent from Mr. Cotton's—*e.g.* as to the Consular Salaries and Fees Act, and he has added some of the regulations of the Education Department as elucidating the existing law on education, and the rules and forms applicable to the Tithe Act, 1891. The chief Acts noted are those relating to the Custody of Children, Free Education, Factories, Lunacy, Museums and Gymnasiums, Penal Servitude, Post Office, Public Health (London), Savings Banks, Stamps, Stamp Duties Management, and Tithes. His notes clearly and succinctly indicate the more important changes effected in the law, and the more salient points of doubt or obscurity likely to arise in the construction of the new Act; and those on the Stamp Act are especially full and valuable. The Index is, as last year, much less full than Mr. Cotton's; but Mr. Lely's arrangement being alphabetical, far less is necessary. Judge Paterson this year takes no part in the edition named after him, which now appears for the forty-third time; but the task of editing has been ably discharged by Mr. J. S. Cotton, his former collaborator. His book may be described as a pocket dictionary of the year's legislation, with the sole but inevitable failing of unduly small print. The Acts of importance have a most useful preface, indicating the state of the law at the time of its passing and the changes which it was intended to effect. The prefaces and the notes are concise, and are prepared with evident care and grasp of the subject-matter. The table of enactments repealed (p. ix.) is, perhaps, less conveniently arranged for noting up than that appended at p. 578 of the Sessional Publication of the Statutes. But the alphabetical table (p. xii.) of subjects as to which the law has been changed is of great value to readers who wish a general outline of the character of the year's legislation, and Mr. Lely in the longer Acts, and Mr. Cotton in all Acts included by him, prefix an abstract of contents which, in the public editions, is relegated to the index, and is there much less convenient for reference. Each edition has its own special merits, and both deserve a place in every lawyer's library as aids to mastering the general result of the year's legislation. But many points not anticipated by the learned editors must arise, even on those Acts which profess merely to consolidate the existing law owing to the change in phraseology and minor amendments.

# Correspondence.

## MORTGAGE STAMPS.

Sir,—Among things not generally known is, probably, that an equitable mortgage (under hand only) for 10*l.* requires a duty of 1*s.* By placing a seal on it, a duty of 3*d.* will suffice. B.

# Unreported Cases.

## CITY OF LONDON COURT.

### THE LIABILITY OF CLUB MEMBERS.

In the City of London Court on December 18, before Mr. Commissioner Kerr, the case of *Restall* v. *Starbuck and others* was heard, affecting the personal liability of club members for the debts of clubs. The plaintiff, Mr. Thomas Restall, of 3 Bird-in-Hand Court, Cheapside, E.C., sought to recover 9*l.* 9*s.* 9*d.* for medals supplied to the Tower Athletic Club, the secretaries of which were two of the defendants, Mr. H. Starbuck, 7 Stanhope Road, Walthamstow, and Mr. W. F. Tyrrell, Markhouse Road, Walthamstow. The defendants had disputed their personal liability, and by order of the Court the whole 180 members had been added as co-defendants, and they now appeared.—Mr. Whateley, on behalf of some of the members, said that Mr. Starbuck had given the order at the instance of the club, whose authority was obtained on the statement that the club was in a flourishing condition. It was now found that the club owed 200*l.*, and this was a test case which was being fought in order to determine

the liability of the members personally.—Mr. Butterworth, for Starbuck, said that his client only acted as the servant of the club in giving the order. The club sanctioned the expense being incurred at a special meeting.—Mr. Commissioner Kerr said, he did not know whether the members of the club had any sense of shame, but he thought they ought to be ashamed of themselves in not having paid for the medals. He would find for the plaintiff against those twenty members of the club who attended the meeting when the medals were ordered, but those members would have a right to recover a moiety from every member of the club. All the members were personally liable alike.

## MAYOR'S COURT.

### HEAVY CLAIMS FOR CALLS ON SHARES.

On December 22, in the Lord Mayor's Court, the case of *The Crystal Reef Gold Mining Company (Lim.)* v. *Fenton* was tried before the assistant-judge and a jury. The plaintiff company sought to enforce payment of 3,095*l.*, being calls on shares which the defendant, Mr. Ferrar Fenton, a company promoter and financial broker, of 20 Bucklersbury, E.C., held in the company.—Mr. Winch said that the defendant was well known in company business in connection with South African affairs. It appeared that a Mr. Reginald Fenton, a brother of the defendant, was possessed of certain mining claims in South Africa, which he was desirous of selling to a British company, and through the instrumentality of the defendant he was able to sell his interests to the plaintiff company for 65,000*l.*, of which 15,000*l.* was in cash and the balance in fully paid-up shares. On going to the public, about 100 *bonâ fide* applications for shares were received, and the company went to allotment. The defendant, who was at one time both a promoter and chairman of the company, managed so skilfully to manipulate the market that the shares of the company, which were nominally of 1*l.* each, went up to 4*l.*, and the defendant succeeded in making several thousands of pounds out of them. But in dealing 'in and out' the defendant had not succeeded in getting out of all his shares, and he had become liable to the company in the calls to the amount claimed. Evidence was then given as to the formation of the company, the allotment of the shares, and the making of the calls, some of which were made when the defendant himself was in the chair at the board meeting. Mr. Candy then took several objections to the claim of the plaintiffs. He argued that only two directors were present when some of the calls were made, whereas a quorum was three directors. Further he contended that the company had no property whatever either in Africa or England except the outstanding calls, and that the possibility of the money being misapplied would constitute a defence. No evidence was called for the defence, and counsel having addressed the jury, a verdict was entered for the plaintiffs for the amount claimed. Leave was given to appeal, provided the amount of the verdict was paid into Court within twenty-one days. There were four other cases in which the same company were plaintiffs, but the defendants were different.—Mr. Winch, Q.C., and Mr. Carrington were counsel for the plaintiffs; Mr. Candy, Q.C., and Mr. Lewis Glyn for the defendant.

Mr. T. E. Sampson, solicitor, was on Tuesday elected by the Liverpool City Council coroner for the city, in place of the late Mr. Clarke Aspinall.

Calendar of the County Courts.—Circuit 7—His Honour Judge Ffoulkes: December 29, Birkenhead; December 31, Warrington.

## RULES OF THE SUPREME COURT, 1883.

### Order XXXVI., Rule 29 (A).

The plaintiff or his solicitor in any action in the London list may apply to the Master of the Associates' Department to have the action tried at the Guildhall; and the master may order it to be there tried, subject to any order made by the Lord Chief Justice of England, or in his absence by the senior judge of the Queen's Bench Division in London, on the application being adjourned before him, whose decision shall respectively be final.

(Signed) Halsbury, C.
Colebridge, L.C.J.
Esher, M.R.
Nathl. Lindley, L.J.
Edward E. Kay, L.J.

## THE VICE-CHANCELLOR'S JURISDICTION AT CAMBRIDGE.

On December 18 a special meeting of the Cambridge Town Council was called to consider a resolution to appoint delegates to confer with the borough member with a view to promoting in the ensuing session of Parliament a public bill for abolishing altogether or obtaining necessary limitation to the powers at present possessed or exercised by the university over persons not members of that body.

A resolution to that effect was moved by Councillor Vinter, who said that the provisions of the charter gave the vice-chancellor, the proctors, and their servants (1) the power of visitation and search without warrant by day or by night in any house in the town for persons suspected of evil, and (2) the persons so arrested, male or female, might be imprisoned by the vice-chancellor or banished the realm, and there was no limit of imprisonment. The vice-chancellor was the sole judge without appeal, and he had only to find as a fact that they were suspected of evil to pass sentence. He was not bound by any rules of evidence; he could take evidence on oath or not at pleasure; he could remit any sentence he passed, and apparently increase it; he could refuse to remand or adjourn, and was absolute and sole judge. Although no judge of the land could imprison for more than two years, the vice-chancellor could, if he thought fit, imprison for any time, and confine the person to the spinning-house, a place of confinement where no visiting justices could enter by right, and, as far as they knew persons there confined were subject to greater hardship and treated with more severity than would be permitted in any of Her Majesty's prisons. There were no rules in this prison permitting visits from friends or writing letters.

After some debate, Alderman Finch (University) moved as an amendment: 'That the whole question be referred to the Parliamentary committee;' and Councillor Hills seconded this.

Councillor Dale (University) asked the council to bear in mind that the senate of the university had up to the present had no opportunity of expressing their opinion upon the matter at issue. If the amendment were carried, the University as a whole could not refuse to consider the question.

The Mayor then put the amendment, for which eleven voted and nineteen against. The original proposition was carried by twenty votes to six.

Mr. Justice Hawkins, we are glad to learn, is benefiting by his sojourn in France. According to present arrangements, he will return to town about the middle of January.

## LAW AND PROFESSIONAL NOTES.

By T. F. UTTLEY, Solicitor, Manchester, Author of 'Hints on Stephen's Commentaries,' 'Hints on Criminal Law,' &c.

### A CASE FOR MARITIME PRACTITIONERS.

A POINT of great interest with regard to the detention of a ship in connection with its load-line was before Mr. Justice Collins at the Liverpool Assizes recently. A firm of shipowners at Liverpool sued the secretary of the Board of Trade and the collector of Customs at Liverpool to recover damages for the unlawful detention of the iron sailing-ship Reliance. The defendants admitted that they had no probable cause for detaining the vessel and paying a sum into Court. It appeared that the Reliance came to Liverpool in August last to be loaded with salt for Calcutta. According to the Merchant Shipping Act of 1890, it is obligatory for all shipowners to submit their ships for examination in order that the position of the load-line disc should be determined Here the requisite measurements had been supplied, and on a certain day in October the ship was ready for sea, having been cleared at the Custom House; but the Board of Trade, through the Customs officials, directed the detention of the Reliance until her disc was altered to show a 6-foot freeboard. The plaintiff, however, pointed out that he had given a bond guaranteeing a legal freeboard; and, further, that the ship's actual freeboard was in excess of that assigned by the authorities. The vessel was subsequently released, but encountered severe weather, which she would otherwise have escaped. A ship could not be arrested except for actual unseaworthiness or overloading, which was a misdemeanour, and a reasonable amount for demurrage and expenses incurred by the detention had been offered. Counsel for the Board submitted that it had acted in good faith, without malice, and in the performance of their duty respecting an Act of Parliament, and it would be unreasonable to call upon them to pay for the detention, which was not the result of any act of the Board's officials. There was held to be no case against the secretary, and the jury ultimately awarded the plaintiff 100*l.* for the imputation on his character, but could not agree regarding damages for detention, and the parties then agreed to allow a certain sum for that, and judgment was given accordingly.

### DECREASE OF CRIME IN MANCHESTER.

The Recorder of Manchester (Mr. H. W. West, Q.C.), when charging the grand jury at the City Sessions, commented on the very large proportion of the depredations which arose from a foolish custom of exposing goods at the doors and windows of tradespeople. In future the city would not pay for the carelessness of these persons, and where prosecutions took place in such cases he would not allow the whole of the costs of the proceedings in that Court. Referring to the general state of crime in Manchester, the Recorder compared the state of crime now with the state of crime ten years ago. There had been an increase in Manchester's population in the ten years to the extent of about 35 per cent., and, while 1,884 indictable offences were said to have been committed in 1891, in 1882 the total number of charges amounted to 3,748. The diminution of crimes said to have been committed had been astonishing. It had actually reduced by two-thirds per thousand of the population. Therefore they had the marvellous result that only one-third of the number of crimes committed ten years ago were committed during the past year; nor was that observation confined to the number of crimes committed, for the persons committed for trial were fewer, and the number of arrests also diminished, and so, too, the sources and provocatives of crime. The reasons for this criminal diminution were several. One was the increase of educational advantages; another, the greater activity of persons devoting themselves to religious work; a third, the increase of places of recreation for the working classes in the daytime and of places of study at night; a fourth, the excellent and efficient organisation of police; and, lastly, the firm administration of the criminal law in the city; but to this may be added also the regular work which the city people enjoyed. A more satisfactory result could not be conceived than followed from the combination of all these causes.

### RIGHTS OF ROMAN CATHOLICS IN PROTESTANT PEWS.

In an application by the vicar and churchwardens of the parish of Warton, near Preston, for a faculty for reseating the church, the Chancellor of the Manchester Consistory Court gave an important judgment. It appeared that a Mr. Gillow, of Leighton Hall, claimed by prescription a pew in respect of the Hall, and that no alteration should be made in it. The chancellor, however, after making an inspection and hearing evidence, decided that Mr. Gillow, as owner and occupier of the Hall, was entitled by prescription to the pew in question. The pew had passed to Mr. Gillow as owner of the Hall in 1824, but since that date there had been no occupation of the pew owing to the Gillow family being Roman Catholics. The question was whether, by non-user for a period of sixty-seven years, the right of prescription was lost. Lord Denman, in the case of *Pepper* v. *Barnard*, laid it down that in the case of a Roman Catholic owner they were not to look for the same amount of user that they should in an ordinary case. During the last forty years, however, the pew had been let to another person by Mr. Gillow, and that had been practically the only exercised right of ownership on his part. Such a letting was wholly illegal both by the ecclesiastical and common law, and no right could be conferred or acquired under such an arrangement. On behalf of the vicar and churchwardens it was argued that, as the pretended letting was wholly illegal, it could not indicate a maintenance of the right claimed, but though it could certainly not confer any right upon any person, yet it was the exercise of a right of ownership such as was available for the purpose of maintaining Mr. Gillow's claim. Assuming Mr. Gillow had a right by prescription or faculty, he could have repaired the pew without the consent of the vicar and churchwardens, but not to pull down or rebuild, otherwise he would be liable to expenses and even penalties. These acts, however, would show there was a right by prescription. So, too, the persistent letting and persistent occupation by the alleged tenant without the vicar or churchwardens' interference was an exercise of the right of ownership, showing the non-abandonment of the right which his predecessor in title acquired with the estate in 1824. Mr. Gillow, as the owner and occupier of Leighton Hall, was therefore entitled by prescription to the pew in question. On his consenting to its being removed, another one marked on the plan of the proposed alterations as the Leighton Hall pew would be substituted for it, and be thenceforth enjoyed by Mr. Gillow and his assigns, owners, and occupiers of Leighton Hall and families and servants.

### THE JURISDICTION OF THE SALFORD COURT OF RECORD.

The district of Heywood, Lancashire, is, for legal purposes, within the jurisdiction of the Salford Hundred Court, but the Heywood Town Council consider that their town should have a Court of Record of their own. Accordingly one of the members moved that the corporation should take all steps necessary for the exclusion of the jurisdiction of the Salford Hundred Court of Record within the borough of Heywood in all cases where the debt did not exceed 20*l.* There were alleged to be many hardships in cases connected with the Court. One writ,

dated 1890, was for goods sold of the value of 8*l.* 14*s.*, and the sum entered for costs was 1*l.* 8*s.* 10*d.*, and if not paid within four days the costs would be 2*l.* 6*s.* 2*d.* In another case, where the debt was 4*l.* 10*s.*, the taxed bill for costs came to 9*l.* 1*s.* 10*d.* People paid debts when they believed they did not owe them sooner than face the costs. One person was sued for a debt of 5*l.*, and as he fought the case the costs alone were 35*l.* It was said that it would cost money to get the jurisdiction of the Court of Record excluded, but he did not think it would cost a single penny. The Mayor thought it would be as well to appoint a small sub-committee to go into the matter. With reference to the excessive costs said to be charged, he mentioned that the County Courts Act, 1888, clause 117, provided that, if a verdict recovered in any Court other than the High Court was for less than 10*l.* the costs should be on the same scale as in actions in the County Court. After further discussion, when it was pointed out that it cost Bolton 71*l.* 11*s.* 6*d.* to get exemption from the jurisdiction of the Court, and Heywood would also have to pay to do so, a sub-committee was appointed.

ARE BILL-POSTING ADVERTISING STATIONS RATABLE?

The Recorder of Salford, Mr. J. M. Yates, says 'Yes,' in a case where the Manchester Advertising and Bill Posting Company (Lim.) were the appellants and the Churchwardens and Overseers of the Poor for the township of Pendleton and the Assessment Committee of the Salford Union were the respondents, in an appeal directed against the rating of certain advertising stations erected in the usual way on unoccupied ground. The appellants had contended that the Act passed in 1889 altered the statute of Elizabeth with regard to this matter, and that advertising stations were no longer ratable. The Recorder, however, considered that the Act of 1889 had only codified the law as it previously existed, and he therefore dismissed the appeal with costs. It was arranged that, with the view of giving the appellants an opportunity of carrying the case to a superior Court, the judgment should be respited until the next sessions.

A QUESTION OF TITHES.

At a recent meeting of the Lancashire and Cheshire Antiquarian Society, one of the legal members, Mr. C. T. Tallent Bateman, described a curious and interesting case submitted to counsel having reference to a local claim for 'small tithe' and sundry ecclesiastical dues which, with the great tithes, had been leased to the claimant by the warden and fellows of the collegiate church in 1795. There was trouble in collecting the small tithes and measures for their recovery were unpopular. The justices were reluctant to give assistance, one reason being that it was troublesome and painful to proceed against indigent persons, and another, that they had doubts as to the legality of their proceedings in the matter. The opinion of counsel was that the justices could be compelled by *mandamus* to hear a complaint, but, that if they drew a wrong conclusion from the evidence, there could be no redress in this particular case except possibly by way of appeal, while there was some doubt as to the right of appeal. 'Small tithes,' it was pointed out, were always personal or mixed tithes, and included hops, flax, saffrons, potatoes, and (sometimes by custom) wood.

## PRIVATE BILLS FOR 1892.

The following is the list of private bills for the ensuing session which have now been lodged in the Parliament Office; and, as without a suspension of the Standing Orders no others can be proceeded with, the list virtually represents the committee-room work in relation to private bill legislation during the ensuing year. The number of bills is 219, as compared with 197 lodged for last session:—

Aberdare Cattle Market and Slaughterhouses, Abergele, Rhyl, and St. Asaph Joint Water, Airdrie and Coatbridge Water, Alexandra (Newport and South Wales) Docks and Railway, Alexandra Palace and Grounds, Ardrossan Harbour, Ards Railway, Armagh and Keady Light Railway, and Ashton-under-Lyne, Stalybridge, and Dunkinfield (District) Water.

Baker Street and Waterloo Railway, Barrow-in-Furness Corporation Water, Barry and Cadoxton Gas and Water, Barry Railway, Bedford and Grand Junction Canal, Belfast City Central Station and Railway, Belfast Corporation (Lunatic Asylum, &c.), Birmingham Bishopric, Birmingham Corporation Water, Blackburn Corporation, Blackpool Improvement, Blackrock and Kingstown Main Drainage and Improvement, Borough Market (Southwark), Bournemouth Improvement, Bradford Corporation Water, Bray and Enniskerry Railway, Bristol Gas, Brynmawr and Abertillery Gas and Water, Buenos Ayres and Pacific Railway Company (Lim.), Bute Docks (Cardiff), and Buxton Local Board.

Caledonian Insurance Company, Caledonian Railway (Dumbarton and Balloch Joint Line, &c.), Cathcart District Railway (Extension of Time), Central London Railway, Channel Tunnel (Experimental Works), City and South London Railway (Islington Extension), City of Glasgow Life Assurance Company, Cleator Moor Local Board (Gas), Cleveland Extension Mineral Railway (Abandonment), Clyde, Ardrishaig, and Crinan Railway (Abandonment), Colchester Corporation, Cork and Fermoy and Waterford and Wexford Railway, Cork Harbour (Pilotage), and Corporation of London (Stamps *and* Loans).

Derry City and County Railway, Dumbarton, Jamestown, and Loch Lomond Railway, Dundee Extension, Police Improvement, and Tramways, Dundee Harbour, and Dundee Suburban Railway.

East and West India Dock Company, East Grinstead Gas and Water, East Indian Railway Company, Eastbourne Improvement Act (1885) Amendment, Eastbourne, Seaford, and Newhaven Railway (Abandonment), Easton and Church Hope Railway, Edinburgh Street Tramways, Epsom Downs Extension Railway, and Exmouth and District Water.

Falmouth, Penryn, and Flushing Bridge Dam and Tidal Basin, Felixstowe and Bawdsey Ferry Railway (Abandonment), Folkestone, Sandgate, and Hythe Tramways (Lift, &c.), and Frimley and Farnborough District Water.

Garve and Ullapool Railway, Glasgow and South-Western Railway, Glasgow Bridge, Glasgow Buildings Regulations, Glasgow Corporation, Glasgow Corporation Water, Glasgow Hydraulic Power Company, Glasgow Police, Glasgow, Yoker, and Clydebank Railway, Great Northern and City Railway, Great Northern Railway (Ireland), Great Southern and Western Railway, Great Western Railway, Great Western Railway (Neath River Crossing, &c.), and Great Western Railway (Tranmere Dock).

Halifax High Level and North and South Junction Railway, Hampstead, St. Pancras, and Charing Cross Railway, Highland Railway, Holsworthy and Bude Railway (Abandonment), Holsworthy and Bude Railway (Extension of Time), Hull and North-Western Junction Railway (Abandonment), and Hull and North-Western Junction Railway (Extension of Time).

Ilkley Local Board, Imperial Life Insurance, and Ipswich Corporation.

John Crossley & Sons (Lim.).

Kilmarnock Corporation Water, and Kingstown and Kingsbridge Junction Railway.

Lambourn Valley Railway, Lanarkshire and Ayrshire Railway, Lanarkshire and Dumbartonshire Railway (Dum-

barton and Balloch Joint Line), Lanarkshire (Middle Ward District) Water, Lanarkshire and Yorkshire and London and North-Western Railways (Steam Vessels), Lancashire and Yorkshire Railway (Steam Vessels), Lancashire and Yorkshire Railway (Various Powers), Lancashire, Derbyshire, and East Coast Railway, Lancaster Marsh, Lea Valley Drainage, Leeds and Liverpool Canal, Leeds Corporation (Consolidation and Improvement), Leith Harbour and Docks, Liskeard and Caradon Railway (Abandonment), Liskeard and Caradon Railway (Extension of Time), Liverpool Overhead Railway, Liverpool Tramways, Liverpool United Gas Light Company, Llanarmon District Mines Drainage, Llanbradach District and Aber Valley (Eglwysilan) Water, London and North-Western Railway (Additional Powers), London and North-Western Railway (New Railways), London, Brighton, and South Coast Railway (Various Powers), London, Chatham, and Dover Railway, London County Council (General Powers), London County Council (Subways), London County Council (Tramways), London, Tottenham, and Epping Forest Railway, London Tramways (Extensions), London Water (No. 1), London Water (No. 2), Looe and Liskeard Junction Railway, Lostwithiel and Fowey Railway, and Lynton Railway.

Manchester, Sheffield, and Lincolnshire Railway (Extension to London, &c.), Manchester Ship Canal, Medina Tunnel, Medway (Upper) Navigation, Mersey and Irwell (Prevention of Pollution), Mersey Railway, Metropolitan Railway, Middlesbrough Corporation, Midland Great Western Railway of Ireland, Midland Railway, Milford Docks, Mold Water, and Mumbles Railway and Pier.

National Penny Bank (Lim.), National Telephone Company, Neuchatel Asphalte Company (Lim.), New Forest, New Telephone Company (Lim.), Newcastle-upon-Tyne Improvement, Newport Corporation, Newport, Godshill and St. Lawrence Railway, Newport Pagnell and District Tramways, North British and Mercantile Insurance Company, North British Railway, North-Eastern Railway, North-Eastern Railway (Hull Docks), North Metropolitan Tramways, North Pembrokeshire and Fishguard Railway, North Shields Water, North Sunderland Railway, Nussey and Leachman's and other patents.

Ormskirk Gas, Oxford and Aylesbury Tramroad, and Oxford Gas.

Plymouth Tramways, Pontypool Gas and Water, Pontypridd Burial Boards, Pontypridd Water, Porthdinellyn Railway (Abandonment), Portmadoc, Beddgelert and Rhyd-ddu Railway, Portsmouth and Arundel Navigation (Chichester Canal Transfer), and Public Trustee (Lim.).

Railway Passengers' Assurance Company, Regent's Canal City and Docks Railway, Rhondda and Swansea Bay Railway, Rhyl District Water, Rhyl Improvement Commissioners, Rhymney Valley Gas and Water, Rossendale Valley Tramways (Abandonment), Rotherham, Blyth, and Sutton Railway (Swinton and Barnsley Extension), Royal Bank of Scotland Officers' Widows' Fund, and Royal Exchange and Waterloo Railway.

St. Austell Valleys Railway and Dock (Abandonment), St. Barnabas' Church, Liverpool, St. Bartholomew's (Bristol) Church School, &c., St. John's Chapel Railway, St. Margaret's (Leicester) Select Vestry, St. Pancras' Vestry, Scottish Union and National Insurance Company, South-Eastern Railway, South Leeds Junction Railway, South Yorkshire Junction Railway, Southampton Docks, Southborough Local Board (Gas), Southend Gas, Southend Marine Lake, Southport and Cheshire Lines Extension Railway, Stamford and St. Martin's (Stamford Baron) Gas, Stourport Bridge, Stratford-upon-Avon, Towcester and Midland Junction Railway, Sunderland and South Shields Water, Sutton Coldfield Corporation Electricity and Gas, Swansea Corporation Water, and Swinton and Pendlebury Local Board.

Taff Vale Railway, Tees Conservancy, Tranmere Dock and Railway, Tredegar Local Board Water, Trent (Burton-upon-Trent and Humber) Navigation, and Twrch and Tawe Valleys Railway.

Union Society and Union Life Office, and Uttoxeter Water.

Vale of Glamorgan Railway.

Ward Electrical Car Company (Lim.), Waterloo and City Railway, Waterloo-with-Seaforth Local Board, Wear Valley Extension Railway, Welshpool and Llanfair Railway (Abandonment), Western Valleys (Monmouthshire) Water and Gas, Westminster (Parliament Street, &c.) Improvements, Weston-super-Mare Marine Lake, Whitland, Cronware, and Pendine Railway (Abandonment), and Worcester and Broom Railway.

# Court of Appeal Register.

## APPEAL COURT I.

Before the MASTER OF THE ROLLS, LOPES, L.J., and KAY, L.J.

THURSDAY, DECEMBER 17.

*Hansard* v. *Lethbridge and others* (application of defendants for stay of execution pending appeal from judgment of Denman, J., dated December 10, at trial in Middlesex).—Refused.

*Harvey & Co. (Lim.)* v. *Sir T. G. F. Hesketh* (Q. B. *Crown Side*) (appeal of defendant from order of Mathew, J., and Smith, J., dated November 2, discharging motion for prohibition to Stannaries Court).—Dismissed.

*Regina* v. *Sir F. Young and others, Justices of the County of London* (Q. B. *Crown Side*) (appeal of London County Council (prosecutors) from order of Day, J., and Grantham, J., dated November 4, discharging *nisi* for *mandamus* to hear summons under Weights and Measures Act).—Dismissed.

FRIDAY, DECEMBER 18.

*Metropolitan Railway Company* v. *Fowler and others* (appeal of plaintiffs from order of Cave, J., and Williams, J., dated May 14, directing Judgment for defendants on special case; heard November 13).—Dismissed.

*Regina* v. *The Judge of the City of London Court and G. F. Payne* (Q.B. *Crown Side*) (appeal of prosecutors from order of Wills, J., and Lawrance, J., dated November 9, discharging *mandamus* to hear action *Green and others* v. *Payne*; heard December 11).—Dismissed.

*In re Paine Brothers, ex parte Paine Brothers* (appeal of debtors from order of Mr. Registrar Brougham, dated November 27, disapproving creditor's scheme).—Dismissed.

*Williams* v. *South of England Marine Assurance Company (Lim.)* (appeal of plaintiff from order of the Lord Chief Justice and Wright, J., dated November 2, refusing appointment of special examiners at Baltimore.)—Allowed.

SATURDAY, DECEMBER 19.

*King* v. *Croft* (appeal of plaintiff from order of the Lord Chief Justice and Mathew, J., dated November 26, setting aside judgment and reference back to referee for further evidence).—Referred back on terms.

*Pollock* v. *Corbin* (appeal of plaintiff in person from order of the Lord Chief Justice and Wright, J., dated November 13, for reduction of taxed costs from rent paid into Court).—Dismissed.

## APPEAL COURT II.

Before Lindley, L.J., Bowen, L.J., and Fry, L.J.

### Thursday, December 17.

*In re Queensland Mercantile and Agency Company (Lim.) and Companies Acts* (appeal of Union Bank of Australasia (Lim.) from order of North, J., dated January 14, 1891; part heard November 17—stand over till December 17, by order).—Dismissed.

*In re Radcliffe, dec. Radcliffe* v. *Bewes* (appeal of plaintiff from judgment of North, J., dated April 14, on originating summons; part heard November 17—stand over till December 17, by order).—*Cur. adv. vult.*

*W. Smith* v. *C. Hellewell (G. Hellewell intervener)* (appeal of plaintiff from judgment of Jeune, J., dated November 5, and from refusal to direct payment of costs).—Dismissed.

### Friday, December 18.

*In re A. G. Sharpe, dec. In re H. A. Bennett, dec. Masonic and General Life Assurance Company* v. *Sharpe* (appeal of defendant J. A. Bennett from judgment of North, J., dated July 17; heard December 3).—Dismissed.

*Lane-Fox* v. *Kensington and Knightsbridge Electric Lighting Company (Lim.)* (appeal of defendant company from order of Romer, J. (for Kekewich, J.), dated November 21, refusing in part application for better answer to interrogatories).—Dismissed.

### Saturday, December 19.

*In re Radcliffe, dec. Radcliffe* v. *Bewes* (heard December 17).—Allowed.

*Duke of Sutherland* v. *Heathcote* (appeal of plaintiff from judgment of Williams, J. (sitting as an additional judge of the Chancery Division), dated August 3).—*Cur. adv. vult.*

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Whitaker's Almanack for 1892.—The new edition of this valuable reference-book is now before us, and, as usual, contains much that cannot be found elsewhere. 'The most important alterations to be noted in the contents for 1892 are to be found in the enlargement of its sections. Additional space has been allotted to educational matters, and a separate article dealing with educational progress and occurences is given for the first time. Agricultural education also forms the subject of a separate article. The extension of Methodism during the century which has passed since the death of its founder is dealt with in another article. An article on our present ocean mail supplies a convenient record of the rise, progress, and best achievements of the great lines of ocean steamers. Naval gunnery and a synopsis of the results of the census are also amongst the subjects separately treated. The editor states that he has found it annually more difficult to omit any portion of the contents which has once appeared for the purpose of finding room for fresh articles. Readers accustomed to consult the Almanack for information on various subjects resent the omission when they find the usual place of what they required filled with something else. If, however, various sections of the work are similar in subject to those of previous years, they are for the most part entirely fresh in substance. Every page and almost every line of the work has been corrected, and as nearly as possible brought up to the date of issue. In many instances the changes wrought during the brief interval of a single year are so numerous that scarcely a line of the section in which the subject is dealt with remains unaltered.' It is unnecessary for us to do more than announce the fact of its publication.

New Diaries.—Messrs. Abram & Sons' Diaries for 1892 are quite up to the mark. Their Tablet Diary, with one week on a page, is particularly handy and convenient, while their Pocket Diary is all that can be desired.

The Highland Land Court.—This Court has now completed its work on Lady Gordon Cathcart's property in the Outer Hebrides. One hundred and twenty-nine tenants in the island of South Uist came last before the Court, and were awarded an average reduction of nearly 38 per cent. on their rent. They were 4,607*l.* in arrears, equal to over seven years' rental of their holdings. The Court has cancelled 3,489*l.*, or over 75 per cent. of the whole.

The 'Law Quarterly Review' for January will contain: 'The Criteria of Jurisdiction,' by A. V. Dicey, Q.C.; 'The Early History of the Incorporated Law Society,' by V. J. Chamberlain; 'The Declaration of Future Rights,' by W. A. Bewes; 'Conveyancing under the Ptolemies,' by E. P. Fry; 'Married Women's Debts,' by Ernest C. C. Firth; 'The Quadripartitus,' by W. F. Maitland; 'The New German Patent Act,' by Ernest Schuster; 'Notes;' and a portrait of the learned editor, Sir Frederick Pollock, Bart.

United Law Society.—A meeting was held at the Inner Temple Lecture Hall on November 14. Mr. Sherrington moved: 'That the House of Lords needs reform.'—Mr. Fox opposed, and Messrs. Le Maistre, Lewis, S. Williams, and Symonds also spoke.—The motion was carried by a majority of three.—A meeting was held at the same place on November 21, at which Mr. Austen moved: 'That this house expresses its strongest disapproval of the action of certain members of the London County Council in instructing counsel to appear on their behalf before the licensing committee, upon which they themselves sat.'—Mr. Hardy opposed, and the debate was continued by Messrs. Moyle, Bagram, Le Maistre, S. Williams, Kains, Jackson, Atkin, Sherrington, Hildesheim, and Hawkins.—The motion was carried by a majority of nine.—The next meeting will be held on January 11, and will be devoted entirely to business.

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## BIRTHS

On Dec. 15, at Lyndhurst, Aylestone Hill, Hereford, the wife of A. H. Matthews, Solicitor, of a son.

On Dec. 16, at 46 Belsize Park, N.W., Edith Marion, wife of Henry Pigeon, Barrister-at-Law, prematurely, of twin sons, one stillborn.

## MARRIAGES.

On Aug. 27, by the Rev. F. Wickham, at St. Mary Magdalene's, Holmwood, Lieutenant Charles Windham de la Poer Beresford, Royal Navy, to Mary, daughter of John Warrington Rogers, Esq., Q.C., of Brighton, Melbourne.

On Dec. 12, at St. Matthew's, Oakley Square, N.W., Thomas Henry Philpots, Solicitor, 89 Chancery Lane, London, W.C., to Sarah Bunney King (widow of the late George King), of Percival House, Ealing.

On Dec. 15, at All Saints', Plymouth, Hamilton Adrian Balfour Piffard, son of the late Charles Piffard, Esq., M.A., Barrister-at-Law, and grandson of the late James Hume, Esq., Chief Magistrate of Calcutta, to Blanche Rosamond Chilton, of South Court House, Linslade Bucks, widow of Major Henry Chilton, 4th Royal Irish Dragoon Guards.

On Dec. 16, at All Saints' Church, Highgate, Lionel Eustace, third son of Wm. Taylor, M.D., J.P., of Cardiff, to Cicilia Ellen Savile, eldest daughter of the late Savile Richard Hoyle, Esq., Solicitor, and Mrs. Hoyle, Cholmeley Villas, Highgate.

## DEATHS.

On Dec. 16, at her residence, 26 Fitzwilliam Square, Dublin, Susanna second daughter of the late William Henn, Esq., one of the Masters of Her Majesty's High Court of Chancery in Ireland.

On Dec. 18, at Sydenham, Miss Frances Gregg, daughter of the late William Gregg, Esq., Barrister-at-Law, and step-daughter of the late Nathaniel Ellison, Esq.